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WHO: The Office of the Federal Register.

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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.

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WHEN: March 4, at 9:00 a.m.
WHERE: Federal Building,
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WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building,
880 Front St.
Conference Room 45–13
San Diego, CA
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Contents

Federal Register

Vol. 56, No. 22

Friday, February 1, 1991

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agricultural Marketing Service
PROPOSED RULES
Tomatoes grown in—
Florida, 3983

Agriculture Department
See also Agricultural Marketing Service; Farmers Home Administration; Forest Service
RULES
Agricultural commodities; sales and exports financing, 3966
NOTICES
Organisms with deliberately modified hereditary traits; research guidelines involving planned introduction into environment, 4134

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 4051

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Coast Guard
PROPOSED RULES
Drawbridge operations:
Connecticut, 4023
Massachusetts, 4024

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service; Patent and Trademark Office
NOTICES
Agency information collection activities under OMB review, 4039
(2 documents)

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 4049, 4050
(2 documents)

Congressional Budget Office
NOTICES
Omnibus Budget Reconciliation Act:
Sequestration preview report; transmittal notice, 4162

Copyright Office, Library of Congress
NOTICES
Resale Royalties for Works of Art study; inquiry, 4110

Customs Service
NOTICES
Petroleum products approved public gauger:
Caribbean Petroleum Inspectors, Inc., 4123
United Surveyors of Chemicals, Inc., 4123

Defense Department
See also Air Force Department
NOTICES
Agency information collection activities under OMB review, 4050
Meetings:
Special Operations Policy Advisory Group, 4050

Drug Enforcement Administration
PROPOSED RULES
Registration of manufacturers, distributors, and dispenser of controlled substances:
Detoxification; definition, 3987
NOTICES
Applications, hearings, determinations, etc.:
Avakian, Edward V., Jr., Ph.D., 4077
Baldoni, John E., D.D.S., 4079
Gittleman, Irwin, R.Ph., et al., 4079
Worley, Wyeth Hardy, D.D.S., 4080
Wuchinich, Jane W., M.D., 4081

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Indian education program—
Formula grants, 4051
Robert C. Byrd Honors Scholarship Program, 4154

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 4108

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Atomic energy agreements subsequent arrangements, 4051
Conflict of interests:
Contract awards; potential organizational conflict of interest, 4051
Grants and cooperative agreements; availability, etc.:
Laser fusion research, 4053

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Toxicity characteristics; hydrocarbon recovery operations, 3978
NOTICES
Drinking water:
Underground injection control program—
Oxygen activation method mechanical integrity test for injection well classes I–V, 4063

Environmental statements; availability, etc.:
Agency statements—
Comment availability, 4061
Weekly receipts, 4061
Meetings:
Science Advisory Board, 4062
Toxic and hazardous substances control:
Compliance audit program applications, 4128

Executive Office of the President
See Presidential Documents; Science and Technology Policy Office

Farmers Home Administration
RULES
Program regulations:
Farmer program loan applicants; eligibility criteria clarification, 3971

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 3972
CASA, 3974
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 3983
McDonnell Douglas, 3984, 3986
(2 documents)

Federal Communications Commission
PROPOSED RULES
Television broadcasting:
Cable television systems—
Basic service rates regulation; effective competition standard reexamination, 4027

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Indiana, 4065
(3 documents)

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Northern Border Pipeline Co., 4053

Federal Highway Administration
RULES
Engineering and traffic operations:
Truck size and weight—
Dromedary boxes, decks, and plates, 4164
NOTICES
Environmental statements; notice of intent:
Alameda and Santa Clara Counties, CA, 4120

Federal Procurement Policy Office
NOTICES
Nonconforming products and materials; draft policy letter, 4112

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
BB&T Financial Corp. et al., 4065
Farmers & Merchants Investment Co., 4066

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Ute ladies'-tresses, 4028

Food and Drug Administration
NOTICES
Biological products:
Export applications—
OncoScint® CR103 with Sodium Acetate Solution. 0.5M 4066
Committees; establishment, renewal, termination, etc.:
Center for Devices and Radiological Health advisory committees and panels, 4067, 4068
(2 documents)
Human drugs:
New drug applications—
Superpharm Corp. et al.; approval withdrawn correction, 4125

Forest Service
NOTICES
Environmental statements; availability, etc..
Angeles National Forest, CA, 4036
Lewis and Clark National Forest, MT, 4037
Shasta-Trinity National Forests, CA, 4038

Government Ethics Office
RULES
Conflict of interests, 3961

Health and Human Services Department
See also Food and Drug Administration; National Institutes of Health; Public Health Service; Social Security Administration
NOTICES
Federal claims; interest rates on overdue debts, 4066

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 4054–4060
(3 documents)

Historic Preservation, Advisory Council
NOTICES
Meetings, 4036

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability etc.
Facilities to assist homeless—
Excess and surplus Federal property, 4073

Interior Department
See Fish and Wildlife Service; Land Management Bureau

Internal Revenue Service
RULES
Income taxes:
Highly compensated employee; definition, 3976
PROPOSED RULES
Income taxes:
Highly compensated employee; definition
Cross reference, 4023
Hearing, 4022

Qualified separate lines of business, 3988

International Trade Administration
NOTICES
Antidumping:
Melamine from Japan, 4039
Shop towels of cotton from China, 4040
Countervailing duties:
Carbon black from Mexico, 4042
Standard pipe and line pipe from Argentina, 4044
Export trade certificates of review, 4045
Applications, hearings, determinations, etc.:
NASA Langley Research Center et al., 4047
University of—
Arizona et al., 4046

Interstate Commerce Commission
PROPOSED RULES
Contracts and exemptions:
Freight car hire compensation practice, 4028
NOTICES
Railroad operation, acquisition, construction, etc.:
Massachusetts Central Railroad Corp., 4077

Justice Department
See Drug Enforcement Administration; Prisons Bureau

Labor Department
See also Employment Standards Administration; Mine Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 4083
Consumer price index; U.S. city average, 4108
Organization, functions, and authority delegations:
Wage Appeals Board, 4156

Land Management Bureau
NOTICES
Alaska Native claims selection:
Eklutna, Inc., 4074
Tyonek Native Corp., 4074
Closure of public lands:
Nevada, 4074
Management framework plans, etc.:
Idaho, 4075
(2 documents)
Meetings:
California Desert District Advisory Council, 4075
Phoenix District Advisory Council, 4076
Realty actions; sales, leases, etc.:
California; correction, 4076
Resource management plans, etc.:
Pocatello Resource Area, ID, 4076
Withdrawal and reservation of lands:
New Mexico, 4077

Library of Congress
See Copyright Office, Library of Congress

Management and Budget Office
See Federal Procurement Policy Office

Maritime Administration
RULES
Practice and procedure:
American Great Lakes vessels; application for designation, 3979

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Magma Copper Co., 4109
Western Fuels-Utah, Inc., 4109
Wolf-Creek Collieries Co., 4109

National Archives and Records Administration
RULES
Records management:
Creation and maintenance of records; adequate and proper documentation; CFR correction, 3978

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts National Council, 4111
(2 documents)
Literature Advisory Panel, 4111
Music Advisory Panel, 4111

National Institutes of Health
NOTICES
Committees; establishment, renewal, termination, etc.:
Medical Rehabilitation Research National Advisory Board, 4070
National Toxicology Program; Scientific Counselors Board, 4070
Meetings:
National Institute of Allergy and Infectious Diseases, 4071
National Institute of Dental Research, 4071
National Library of Medicine, 4071, 4072
(2 documents)

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic surf clam and ocean quahog, 3980, 3981
(3 documents)
PROPOSED RULES
Fishery conservation and management:
Foreign fishing—
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 4029
Marine mammals:
Stranded marine mammals; disposition of tissues and procedures for transfer of materials for scientific and educational purposes, 4029
Pacific Halibut Commission, International:
Pacific halibut fisheries, 4029
NOTICES
Permits:
Marine mammals, 4047, 4048
(2 documents)

National Technical Information Service
NOTICES
Inventions, Government-owned; availability for licensing, 4048

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Fewell Geotechnical Engineering, Ltd., 4112
Northeast Nuclear Energy Co., 4112

Patent and Trademark Office
NOTICES
Meetings:
Trademark Affairs Public Advisory Committee, 4049

Presidential Documents
ADMINISTRATIVE ORDERS
Bulgaria; waiver under the Trade Act of 1974 (Presidential Determination No. 91–18 of January 22, 1991), 4169
Mongolia; waiver under the Trade Act of 1974 (Presidential Determination No. 91–19 of January 23, 1991), 4171

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Security level designations, 4158

Public Health Service
See also Food and Drug Administration; National Institutes of Health
NOTICES
Meetings:
Food and Drug Administration Advisory Committee, 4072

Science and Technology Policy Office
NOTICES
Meetings:
President's Council of Advisors on Science and Technology, 4113

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 4114
Self-regulatory organizations; proposed rule changes:
Midwest Stock Exchange, Inc., 4114
National Association of Securities Dealers, Inc., 4115
Applications, hearings, determinations, etc.:
Public utility holding company filings, 4116

Social Security Administration
NOTICES
Agency information collection activities under OMB review, 4072

State Department
NOTICES
Passport travel restrictions, U.S.:
Lebanon, 4118

Tennessee Valley Authority
NOTICES
Privacy Act:
Systems of records, 4119
(3 documents)

Thrift Supervision Office
NOTICES
Conservator appointments:
Beach Savings Bank, FSB, 4123
Irving Federal Savings & Loan Association, 4124
Receiver appointments:
Beach Savings Bank, 4124
Founders Federal Savings & Loan Association, 4124
Irving Savings & Loan Association, 4124
Padre Federal Savings & Loan Association, 4124
Silver Savings Association, F.A., 4124

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Maritime Administration

Treasury Department
See also Customs Service; Internal Revenue Service; Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 4121, 4122
(4 documents)
Meetings:
National Center for State and Local Law Enforcement Training Advisory Committee, 4123

Veterans Affairs Department
PROPOSED RULES
Medical benefits:
Transportation of eligible veterans and beneficiaries; authorized beneficiary travel payments, 4025

Separate Parts In This Issue

Part II
Environmental Protection Agency, 4128

Part III
Department of Agriculture, 4134

Part IV
Department of Education, 4154

Part V
Department of Labor, 4156

Part VI
Department of Justice, Bureau of Prisons, 4158

Part VII
Congressional Budget Office, 4162

Part VIII
Department of Transportation, Federal Highway Administration, 4164

Part IX
The President, 4169

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 91-18 of January 22, 1991 4169

No. 91-19 of January 23, 1991 4171

5 CFR

2637 3961

2641 3961

7 CFR

17 3966

1941 3971

1943 3971

1945 3971

Proposed Rules:

966 3983

14 CFR

39 (2 documents) 3972, 3874

Proposed Rules:

39 (3 documents) 3983-3986

21 CFR

Proposed Rules:

1301 3987

23 CFR

658 4164

26 CFR

1 3976

Proposed Rules:

1 (3 documents) 3988-4023

28 CFR

511 4158

540 4158

541 4158

33 CFR

Proposed Rules:

117 (2 documents) 4023, 4024

36 CFR

1222 3978

38 CFR

Proposed Rules:

17 4025

40 CFR

261 3978

46 CFR

380 3979

47 CFR

Proposed Rules:

76 4027

49 CFR

Proposed Rules:

1033 4028

50 CFR

652 (3 documents) 3980, 3981

Proposed Rules:

17 4028

216 4029

301 4029

611 4029

672 4029

675 4029

Rules and Regulations

Federal Register
Vol. 56, No. 22
Friday, February 1, 1991

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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2637 and 2641

RIN 3209-AA08

Post-Employment Conflict of Interest; Exemption Procedures and Agency Component Designations for the Executive Branch

AGENCY: Office of Government Ethics.

ACTION: Interim rule with request for comments.

SUMMARY: Since 1980, 5 CFR part 2637 (formerly 5 CFR part 737) has provided guidance concerning the post-employment conflict of interest restrictions of 18 U.S.C. 207. As a result of recent amendments to 18 U.S.C. 207 effective January 1, 1991, executive branch employees terminating Government service on or after that date will be subject to substantially revised post-employment restrictions. The Office of Government Ethics intends to publish a comprehensive revision of its regulatory guidance to reflect these amendments. This guidance will be published in this new part 2641. Pending the completion of this comprehensive revision, however, the Office of Government Ethics is issuing this interim rule in new part 2641: (1) To establish procedures to exempt senior employee positions from 18 U.S.C. 207(c); (2) to designate separate agency components for purposes of 18 U.S.C. 207(c) as authorized by 18 U.S.C. 207(h); and (3) to establish procedures for the future designation and modification of agency component designations. Former employees, ethics officials, and others will continue to consult part 2637 for guidance concerning the previous version of 18 U.S.C. 207, which will continue to apply to individuals terminating Government service prior to January 1, 1991.

DATES: Interim rule effective January 1, 1991. Comments from agencies and the public are invited and must be received by March 4, 1991.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917, Attention: Ms. Loring.

FOR FURTHER INFORMATION CONTACT: Julia S. Loring or Barbara Mullen-Roth, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion of Exemption and Agency Component Designation Procedures

The post-employment conflict of interest restrictions of 18 U.S.C. 207 were substantially revised by the Ethics Reform Act of 1989, Public Law No. 101-194, 103 Stat. 1716, with technical amendments enacted by Public Law No. 101-280, 104 Stat. 149 (1990). Effective January 1, 1991, 18 U.S.C. 207 sets forth revised substantive prohibitions restricting the activities of individuals who terminate Government service or who leave certain high-level positions on or after that date. While certain of the restrictions of revised 18 U.S.C. 207 apply to Members of Congress and other officials in the legislative branch, this part 2641 is intended to provide guidance concerning the provisions of 18 U.S.C. 207 only as they apply to Federal employees in the executive branch, including independent agencies. The Office of Government Ethics has interpretive rulemaking authority with respect to 18 U.S.C. 207 pursuant to Executive Order 12674, as modified by Executive Order 12731.

Pending the completion of a comprehensive part 2641 that will provide guidance concerning all substantive prohibitions of revised 18 U.S.C. 207, interim rule will permit the immediate exercise of the Director's authority in relation to the scope of section 207(c). Agencies should continue to consult 5 CFR part 2637 for guidance concerning the previous version of 18 U.S.C. 207, which will continue to apply to employees terminating Government service prior to January 1, 1991. The Office of Government Ethics is adding an editorial note to part 2637 to explain the purpose of that part's continued publication. The authority citation is also being revised to indicate that part 2637 reflects the version of 18 U.S.C. 207 in effect prior to January 1, 1991.

Under the one-year "cooling-off" restriction of 18 U.S.C. 207(c), former senior employees are prohibited for one year from contacting their former departments or agencies for the purpose of influencing official action. The prohibition is applicable only to "senior" employees of the executive branch. The definition of "senior employee" in § 2641.101 of this rule reflects the recent amendment of 18 U.S.C. 207(c)(2)(A)(ii) by section 101(b)(8)(A) of the Federal Employees Pay Comparability Act of 1990, Public Law No. 101-509, 104 Stat. 1389.

In addition to the general exceptions set forth in section 207(j), revised 18 U.S.C. 207 provides for two methods by which the restrictions of section 207(c) can be narrowed or eliminated in the case of certain former senior employees. Both of these methods require action by the Director of the Office of Government Ethics. Accordingly, § 2641.201(d) of this interim rule establishes a procedure by which the Director may waive the application of section 207(c) to certain positions or categories of positions. Appendix A to this part is reserved for a listing of any positions exempted from the restrictions of section 207(c) under this procedure. The interim rule also sets forth at § 2641.201(e) the procedure by which the Director may designate separate departmental and agency components, thereby limiting the scope of the prohibition of section 207(c). Appendix B to this part lists initial separate departmental or agency component designations.

Pursuant to 18 U.S.C. 207(c)(2)(C), section 207(c) is not applicable to any former senior employee whose Government position has been exempted from the prohibition by the Director. As explained in § 2641.201(d)(1) of the interim rule, the granting of an exemption for a particular senior employee position means that the one-year restriction of 18 U.S.C. 207(c) will not apply upon any employee's termination from the position. Section 2641.201(d)(3) of the rule sets forth procedures by which a designated agency ethics official may request, on behalf of his agency, that the Director exempt a particular position or positions from the coverage of 18 U.S.C. 207(c). As described in § 2641.201(d)(5) of the rule,

the Director may exempt a position or category of positions from section 207(c) if he determines that (1) granting the exemption would not create the potential for use of undue influence of unfair advantage based on past Government service, and (2) imposition of the restrictions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions. In making the latter determination, the Director may consider, for example, the fact that the incumbent of the position receives a special rate of pay pursuant to specific statutory authority or is required to have outstanding qualifications in a scientific, technological, or other technical discipline. Section 2641.201(d)(2) of the rule specifies senior employee positions that are not eligible for exemption from 18 U.S.C. 207(c).

The impact of 18 U.S.C. 207(c) can be narrowed through designation, by the Director, of separate departmental or agency components. The representational bar of section 207(c) will ordinarily extend to the whole of the department or agency in which a former senior employee served in any capacity during the year prior to termination from senior service. The terms "department" and "agency" are defined in § 2641.101 of the interim rule. However, as explained in § 2641.201(e)(1) of the rule, certain former senior employees may engage in representational activities before a component of their former department or agency if that component has been designated by the Director of the Office of Government Ethics pursuant to 18 U.S.C. 207(h) as a distinct and separate agency or bureau within that department or agency. As described in § 2641.201(e)(2) of the rule, certain categories of senior employees are ineligible to benefit from the narrowing effect of component designations. Unless ineligible, a senior employee who formerly served in a parent organization will be permitted to contact current employees of designated components during the one-year cooling-off period notwithstanding the fact that his official responsibilities may have included the exercise of general supervision over the component.

In general, revised 18 U.S.C. 207(h) combines authorities previously set forth in 18 U.S.C. 207 (e) and (d)(1)(C) as in effect prior to January 1, 1991. Section 207(e) previously gave the Director of the Office of Government Ethics authority to designate separate statutory components, while section 207(d)(1)(C) authorized the designation of separate administratively created components. Appendix B to this part sets forth initial component designations effective as of January 1, 1991. These initial designations reflect a combined listing of the statutory and nonstatutory components as last designated under authority of prior sections 207 (e) and (d)(1)(C). 55 FR 4308 (Feb. 7, 1990), as supplemented by 55 FR 24855 (June 19, 1990). In addition, the 21 Offices of the U.S. Trustee have been designated as separate components of the Department of Justice is response to a request from that department's alternate designated agency ethics official that was received subsequent to June 19, 1990. All initial designations are consistent with the criteria set forth in 18 U.S.C. 207(h), as implemented in § 2641.201(e)(6) of this rule, requiring that the Director finding that (1) there exists no potential for use of undue influence or unfair advantage based on past Government service, and (2) the component is an agency or bureau, within a department or agency, that exercises functions which are distinct and separate from the functions of the parent department or agency and from the functions of other components of that parent. The distinct and separate character of a component can be demonstrated, for example, by the fact that it has a separate statutory basis or by the fact that it exercises distinct and separate subject matter of geographical jurisdiction. Section 2641.201(e)(3) of the rule provides for the future addition and revocation of designations. The Director can consider requests from designated agency ethics officials for additional designations or revocation of current designations at any time after January 1, 1991.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to section 553 of title 5 of the United States Code, the Director of the Office of Government Ethics finds that good cause exists for waiving the general notice of proposed rulemaking and 30-day delayed effective date, and for making this interim rule retroactively effective to January 1, 1991. These requirements are being waived because the revised post-employment restrictions of 18 U.S.C. 207, as amended by Public Laws 101–194, 101–280, and 101–509, are effective as of January 1, 1991. Section 207, as amended, authorizes administrative actions that can narrow the coverage and scope of certain of the revised statute's substantive restrictions. The Director of the Office of Government Ethics has authority to take action to exempt certain Government positions from the coverage of section 207(c) and to designate certain departmental or agency components in order that the scope of that provision's representational bar may be limited to less than the whole of a department or agency. The interim rule lists the Director's initial designations of departmental and agency components and prescribes interim procedures for the modification of these initial designations. The rule also prescribes procedures for exempting senior positions from the coverage of section 207(c). Consequently, it is essential to the workings of executive branch ethics programs that this implementing rule go into effect as soon as possible. However, this is an interim rule with provision for a 30-day comment period. The Office of Government Ethics will review all comments received and consider any modifications to this rule which appear warranted.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Parts 2637 and 2641

Conflict of interests, Government employees.

Approved: January 7, 1991.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble and pursuant to its authority under the Ethics in Government Act, 18 U.S.C. 207, and E.O. 12674 as modified by E.O. 12731, the Office of Government Ethics is amending part 2637 and adding a new part 2641, both to subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2637—[AMENDED]

1. The authority citation for 5 CFR part 2637 is revised to read as follows:

Authority: 5 U.S.C. appendixes; 18 U.S.C. 207 (1988).

2. A note is added at the end of the table of contents of 5 CFR part 2637 as follows:

Note: The post-employment conflict of interest restrictions of 18 U.S.C. 207 were substantially revised effective January 1, 1991, by the Ethics Reform Act of 1989, Public Law No. 101–194, 103 Stat. 1716, with technical amendments enacted by Public Law No. 101–280, 104 Stat. 149 (1990). The Office of Government Ethics has published substantive guidance for the executive branch concerning the amended version of 18 U.S.C. 207 in part 2641 of this subchapter. This part 2637 will continue to provide guidance concerning the previous version of section 207, which will continue to apply to individuals terminating Government service prior to January 1, 1991.

3. A new 5 CFR part 2641 is added to read as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

Subpart A—General Provisions

Sec.
2641.101 Definitions.

Subpart B—Substantive Provisions

2641.201 One-year restriction on a former senior employee's representations to employees of former agency concerning matter, regardless of prior involvement.

Appendix A to Part 2641—Positions Exempted from 18 U.S.C. 207(c) [Reserved]

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

Authority: 5 U.S.C. appendixes; 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547.

Subpart A—General Provisions

§ 2641.101 Definitions.

The following terms are defined for purposes of this part:

Agency includes any department, independent establishment, commission, administration, authority, board, or bureau of the United States, and includes a Government corporation. 18 U.S.C. 202(e)(1); 5 U.S.C. 105.

Department means one of the executive departments enumerated in 5 U.S.C. 101.

Designated agency ethics official means an officer or employee who is designated by the head of an agency to coordinate and manage an agency's ethics program in accordance with § 2638.203 of this subchapter. 5 CFR 2638.202.

Employee means any officer or employee of the executive branch as that term is defined in this section. Unless otherwise indicated, the term does not include the President or the Vice President. 18 U.S.C. 202(c). It does not include an individual performing services for the United States as an independent contractor under a personal services contract or an enlisted member of the armed forces as defined in 5 U.S.C. 2101(2). 18 U.S.C. 202(a). Unless otherwise indicated, the term encompasses senior employees, very senior employees, and special Government employees as defined in this section.

Executive branch includes each executive agency as defined in 5 U.S.C. 105, other than the General Accounting Office, and also includes any other entity or administrative unit in the executive branch. 18 U.S.C. 202(e)(1).

Former employee, former senior employee, or *former very senior employee* means one who was, and is no longer, an employee, senior employee, or very senior employee.

Senior employee means an employee, other than a very senior employee, who is:

(1) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule);

(2) Employed in a position for which the basic rate of pay, exclusive of any locality-based pay adjustment under 5 U.S.C. 5302 (or any comparable adjustment pursuant to interim authority of the President) is equal to or greater than the rate of basic pay payable for Level V of the Executive Schedule (including any such position in the Senior Executive Service or other SES-type systems, e.g., the Senior Foreign Service);

(3) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B);

(4) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B);

(5) Employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in 37 U.S.C. 201) is pay grade O–7 or above; or

(6) Detailed to any such position.

Special Government employee includes an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis. See 18 U.S.C. 202(a).

Very senior employee means an employee who is:

(1) Serving in the position of Vice President of the United States;

(2) Employed in a position at a rate of pay payable for Level I of the Executive Schedule;

(3) Employed in a position in the Executive Office of the President at a rate of pay payable for Level II of the Executive Schedule;

(4) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(A);

(5) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(A); or

(6) Detailed to any such position.

Subpart B—Substantive Provisions

§ 2641.201 One-year restriction on a former senior employee's representations to employees of former agency concerning matter, regardless of prior involvement.

(a) *Basic Prohibition of 18 U.S.C. 207(c).* For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one-year period prior to termination from "senior" service, if that communication or appearance is made on behalf of any other person (except the United States) in connection with any matter on which he seeks official action by any employee.

(b) *Applicability.* 18 U.S.C. 207(c) applies to all former "senior employees" as defined in § 2641.101 of this part. Certain individuals who served in "very senior" positions are subject to the one-year bar set forth in section 207(d) in lieu of that set forth in section 207(c). See definition of "very senior employee" in § 2641.101.

(1) *Special Government Employees.* 18 U.S.C. 207(c) does not apply to an individual as a result of service as a special Government employee unless the individual:

(i) Served in a senior employee position while serving as a special Government employee; and

(ii) Served 60 or more days as a special Government employee during the one-year period before terminating service as a senior employee.

(2) *Exemption from 18 U.S.C. 207(c).* 18 U.S.C. 207(c) does not apply to an individual as a result of service in a senior position if that position has been exempted from section 207(c) pursuant to the waiver procedures set forth in § 2641.201(d) of this part.

(c) *Measurement of Restriction.* 18 U.S.C. 207(c) is a one-year restriction. The one-year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously.

(d) *Waiver of 18 U.S.C. 207(c).* Certain positions or categories of positions can be exempted from 18 U.S.C. 207(c) through the grant of a waiver by the Director of the Office of Government Ethics. 18 U.S.C. 207(c)(2)(C).

(1) *Effect of Exemption.* When an eligible position is exempted from 18 U.S.C. 207(c) by the Director of the Office of Government Ethics, the one-year restriction of section 207(c) will not be triggered upon any employee's termination from the position.

(2) *Eligible Senior Employee Positions.* Any senior employee position is eligible for exemption except the following:

(i) Positions for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule);

(ii) Positions whose occupants are appointed by the President pursuant to 3 U.S.C. 105(a)(2)(B); or

(iii) Positions whose occupants are appointed by the Vice President pursuant to 3 U.S.C. 106(a)(1)(B).

(3) *Procedure.* An exemption shall be granted in accordance with the following procedure:

(i) *Initial Exemption.* An agency's designated agency ethics official shall forward to the Director of the Office of Government Ethics a written request that a certain senior employee position or category of positions be exempted from 18 U.S.C. 207(c). Any such request shall address the criteria set forth in paragraph (d)(5) of this section. A designated agency ethics official may also request that a current exemption be revoked.

(ii) *Agency Update.* Designated agency ethics officials shall by November 30 of each year forward to the Office of Government Ethics a letter stating whether positions or categories of positions currently exempted should remain exempt from the application of 18 U.S.C. 207(c) in light of the criteria set forth in paragraph (d)(5) of this section.

(iii) *Action by Office of Government Ethics.* The Director of the Office of Government Ethics shall promptly provide to the designated agency ethics official a written response to each initial request for exemption or revocation. The Director shall annually publish in appendix A to this part an updated compilation of all exempted positions or categories of positions. The Director shall publish notice in the **Federal Register** when he determines to revoke an exemption based on his finding that the position or positions no longer qualify for exemption.

(4) *Effective Date of Exemption.* Exemptions issued under paragraph (d) of this section shall be effective as of the date of the Director's written response to the designated agency ethics official indicating that the request for exemption has been granted. An exemption shall inure to the benefit of the individual who holds the position when the exemption takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the exemption. Revocation of an exemption shall be effective 90 days after the date that the Director publishes notice of the revocation in the **Federal Register.** Individuals who formerly served in an exempted position will not become subject to 18 U.S.C. 207(c) in the event the position's exempted status is revoked subsequent to the individual's termination from the position.

(5) *Criteria for Exemption.* Before exempting a position or positions from 18 U.S.C. 207(c), the Director of the Office of Government Ethics must find that with respect to the position or category of positions:

(i) The granting of the exemption would not create the potential for use by former senior employees of undue influence or unfair advantage based on past Government service; and

(ii) The imposition of the restrictions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions as shown by relevant factors which may include, but are not limited to:

(A) The payment of a special rate of pay to the incumbent of the position pursuant to specific statutory authority; or

(B) The requirement that the incumbent of the position have outstanding qualifications in a scientific, technological, or other technical discipline.

(e) *Separate Departmental or Agency Components.* For purposes of 18 U.S.C. 207(c) only, the Director of the Office of Government Ethics is authorized by 18 U.S.C. 207(h) to designate departmental and agency "components" that are distinct and separate from the "parent" department or agency and from each other. Absent such designation, the representational bar of section 207(c) extends to the whole of the department or agency in which the former senior employee served.

(1) *Effect of Designation.* An eligible former senior employee who served in a "parent" department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employee of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been designated. An eligible former senior employee who served in an designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.

(2) *Eligible Senior Employees.* All former senior employees are eligible to benefit from this procedure except those who were senior employees by virtue of having been:

(i) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule);

(ii) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B); or

(iii) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B).

(3) *Procedure.* Distinct and separate components shall be designated in accordance with the following procedure:

(i) *Initial Designation.* Initial designations of departmental and agency components are set forth in appendix B to this part and are effective as of January 1, 1991.

(ii) *Agency Update.* A designated agency ethics official may at any time recommend the designation of an additional component or the revocation of a current designation by forwarding a written request to the Director addressing the criteria set forth in paragraph (e)(6) of this section. Designated agency ethics officials shall by November 30 of each year forward to the Office of Government Ethics a letter stating whether components currently designated should remain designated in light of the criteria set forth in paragraph (e)(6).

(iii) *Action of Office of Government Ethics.* The Director of the Office of Government Ethics shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official. The Director shall annually publish in appendix B to this part an updated compilation of all designated departmental or agency components.

(4) *Effective Date of Designation.* Initial component designations shall be effective as of January 1, 1991. Any subsequent designation shall be effective as of the effective date of the rule that creates the designation, but

shall not be effective as to employees who terminated senior service prior to that date. Revocation of a component designation shall be effective 90 days after the effective date of the rule that revokes the designation, but shall not be effective as to individuals who terminated senior service prior to the expiration of such 90-days period.

(5) *Unauthorized Designations.* No agency or bureau within the Executive Office of the President may be designated as a separate departmental or agency component.

(6) *Criteria for Designation.* Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director of the Office of Government Ethics must find that:

(i) There exists no potential for use by former senior employees of undue influence or unfair advantage based on past Government service; and

(ii) The component is an agency or bureau, within a department or agency, that exercises functions which are distinct and separate from the functions of the parent department or agency and from the functions of other components of that parent as shown by relevant factors which may include, but are not limited to:

(A) The component's creation by statute or a statutory reference indicating that it exercises functions which are distinct and separate; or

(B) The component's exercise of separate and distinct subject matter or geographical jurisdiction.

(7) *Supervisory Relationship.* Provided that a component has a separate statutory basis or exercises distinct and separate subject matter or geographical jurisdiction, the parent will generally be deemed by the Director of the Office of Government Ethics to be distinct and separate from that component notwithstanding that the parent may exercise general supervisory authority over the component. However, the degree of a parent's supervision over a component will be a factor in determining whether subject matter or geographical jurisdiction is in fact distinct and separate. The Director will not ordinarily consider two components as distinct and separate from one another where one component exercises supervisory authority over another.

Appendix A to 5 CFR Part 2641—Positions Exempted from 18 U.S.C. 207(c) [Reserved]

Appendix B to 5 CFR Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following departments or agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it distinct and separate components as set forth below:

Parent: Department of Commerce

Components:
- Bureau of the Census
- Economic Development Administration
- International Trade Administration
- Minority Business Development Administration
- National Oceanic and Atmospheric Administration
- National Telecommunication and Information Administration
- Patent and Trademark Office

Parent: Department of Defense

Components:
- Department of the Air Force
- Department of the Army
- Department of the Navy
- Defense Communications Agency
- Defense Intelligence Agency
- Defense Logistics Agency
- Defense Mapping Agency
- Defense Nuclear Agency
- National Security Agency

Parent: Department of Energy

Component:
- Federal Energy Regulatory Commission

Parent: Department of Health and Human Services

Components:
- Health Care Financing Administration
- Food and Drug Administration
- Public Health Service
- Social Security Administration

Parent: Department of Justice

Components:
- Antitrust Division
- Bureau of Prisons (including Federal Prison Industries, Inc.)
- Civil Division
- Civil Rights Division
- Community Relations Service
- Criminal Division
- Drug Enforcement Administration
- Federal Bureau of Investigation
- Foreign Claims Settlement Commission
- Immigration and Naturalization Service
- Independent Counsel
- Environment and Natural Resources Division
- National Institute of Justice [1]
- Bureau of Justice Assistance [1]
- Office of Juvenile Justice and Delinquency Prevention [1]
- Office for Victims of Crime [1]
- Bureau of Justice Statistics [1]
- Offices of the United States Attorney (94) [2]
- Offices of the United States Marshal (94) [3]
- Offices of the United States Trustee (21) [4]
- Tax Division
- United States Parole Commission

Parent: Department of Labor

Components:
- Bureau of Labor Statistics
- Employment and Training Administration
- Employment Standards Administration
- Mine Safety and Health Administration
- Occupational Safety and Health Administration

Parent: Department of State

Components:
- Foreign Service Grievance Board
- International Joint Commission, United States and Canada (American Section)

Parent: Department of Transportation

Components:
- Federal Aviation Administration
- Federal Highway Administration
- Federal Railroad Administration
- Maritime Administration
- National Highway Traffic Safety Administration
- Saint Lawrence Seaway Development Corporation
- United States Coast Guard
- Urban Mass Transportation Administration

Parent: Department of the Treasury

Components:
- Bureau of Alcohol, Tobacco and Firearms
- Bureau of Engraving and Printing
- Bureau of the Mint
- Bureau of the Public Debt
- Comptroller of the Currency
- Federal Law Enforcement Training Center
- Financial Management Service
- Internal Revenue Service
- Office of Thrift Supervision
- United States Customs Service
- United States Secret Service

Parent: Federal Emergency Management Agency

Component:
- United States Fire Administration

Parent: National Credit Union Administration

Component:
- Central Liquidity Facility

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[1] These five components shall not, for purposes of 18 U.S.C. 207(c), be considered separate from one another but only from other separate components of the Department of Justice.

[2] Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office. However, the Office of the United States Attorney for a judicial district shall not be considered separate from the Office of United States Marshal for the same judicial district.

[3] Each Office of the United States Marshal for a judicial district shall be considered a separate component from each other such office. However, the Office of United States Marshal for a judicial district shall not be considered separate from the Office of United States Attorney for the same judicial district.

[4] Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule.

SUMMARY: The Foreign Agricultural Service (FAS) is amending the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), to comply with amendments made by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) to Public Law 480 which became effective January 1, 1991. Also, certain non-substantive editorial changes have been made.

EFFECTIVE DATE: February 1, 1991. See **"SUPPLEMENTARY INFORMATION."**

ADDRESSES: Comments should be sent to F. Paul Dickerson, General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4071 South Building, 14th and Independence SW., Washington, DC 20250–1000.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, U.S. Department of Agriculture, 14th and Independence SW., Washington, DC 20250–1000. Telephone: (202) 447–3664.

SUPPLEMENTARY INFORMATION: The interim rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "nonmajor." It has been determined that this rule will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since 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 this rule.

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 3015, subpart V, published at 48 FR 29115 June 24, 1983).

Agents of the Participant or Importer

Agent Nomination Process

The regulations are revised to delete references to USDA "approval" of agents of the participant or importer. The use of this term has led to confusion on the part of some foreign governments and members of the trade that assumed that USDA investigated firms and maintained a list of "approved" agents from which a selection could be made. This is not the case; USDA simply accepts the nomination of an agent by the participant (importing country or private trade entity) if the prerequisites of the regulations are met. Section 17.5 is generally revised to more clearly describe USDA's action in this area.

Conditions on Participation by Agents

Currently, an agent that is nominated by a participant must promise that neither the agent nor any affiliate will act as a ships broker, supplier of commodity or ocean transportation, or selling agent in any title I transaction with the participant during the term of the agency agreement. 7 CFR 17.5(c)(6).

The regulations are expanded to require that a participant must submit the nomination of any entity which the participant or importer has selected to act for it as an agent (including a purchasing or shipping agent), broker, consultant, or other representative (hereafter collectively referred to as an "agent") in connection with arranging the purchase of commodities under title I of Public Law 480 (hereafter "the Act") or arranging ocean transportation for such commodities, whether or not the ocean transportation is financed by CCC. Upon nomination as agent, the nominee is required to state that, during the U.S. fiscal year in which the nominee acts as an agent for a participant, the agent and the agent's affiliates: (1) Have not engaged in, and will not engage in, furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act (titles I, II, and III of Pub. L. 480), whether or not any part of the ocean transportation is financed by the U.S. Government; (2) have not served, and will not serve, as an agent, broker, consultant or other representative for any firm engaged in providing such ocean transportation or ocean transportation-related services; (3) will not act as a commodity supplier or selling agent in any title I transaction with the participant; and (4) have not shared and will not share freight commissions with the participant, importer, or any agent, broker, consultant or other representative of the participant or importer for services provided during the U.S. fiscal year covered by USDA's acceptance of the nomination.

After December 31, 1990, USDA will not accept a participant's nomination of an agent unless the above statement is provided. Purchasing or shipping agents whose nominations were accepted before January 1, 1991, must submit the required statement before acting for a participant or importer to arrange commodity purchases or ocean transportation on or after January 1, 1991.

These changes (§ 17.5(c)(7)) reflect the requirements of section 407(c)(4) of the Act, as amended by section 1512 of the 1990 Act, and section 1204(b)(3) of the Omnibus Budget Reconciliation Act of 1990, regarding conflicts of interest. The interim rule also prohibits an agent from sharing with the participant or importer or their agent any commissions, fees, or other payments for ocean transportation brokerage services for services provided during the U.S. fiscal year covered by USDA's acceptance of the nomination as agent in accordance with section 407(c)(3) of the Act. Address commissions would also be prohibited (§ 17.8(c)(8)) in order to eliminate attempts to avoid this restriction by arranging payment directly from vessel owners.

Section 407(c)(4) of the Act precludes a person from acting as an agent of a participant in the same U.S. fiscal year during which the person "acts as an agent, broker, consultant, or other representative if the person is engaged in providing ocean transportation or ocean transportation-related services" for commodities provided under the Act. A literal reading of this provision has a somewhat ambiguous result. That is, the prohibited conflict of interest would appear to arise only when a person acts as an agent, broker, consultant, or other representative in some undefined capacity and is also providing ocean transportation or ocean transportation-related services. The word "providing" could also include any activities connected with arranging ocean transportation in addition to actually being a supplier. The Conference Report accompanying H.R. 3950, which became

the Food, Agriculture, Conservation, and Trade Act of 1990, indicates Congressional intent to prohibit a person from acting as an agent of a participant during the same U.S. fiscal year in which the person "acts in a similar capacity" for a person engaged in providing ocean transportation or ocean transportation-related services. The interim regulations reflect the intent to encompass an agent's role as well as a direct supplier of ocean transportation or ocean transportation-related services.

Examples of "ocean transportation-related services" are provided in § 17.5(a)(5), reflecting those services specifically mentioned in section 407(c)(4) of the Act.

The regulations also provide for implementation of section 407(d)(3) of the 1990 Act which prohibits freight agents while employed by the Agency for International Development under titles II and III from acting as an agent for a participant or importer under title I.

Fiscal Year 1991 Conflict of Interest Provisions

The prohibition on the participation of agents which had been suppliers of ocean transportation or ocean transportation-related services, or had been an agent of such firms, during the same U.S. fiscal year will only have prospective application. That is, the new prohibition will only cover services provided on or after January 1, 1991, the date the amendments to Public Law 480 made by the 1990 Act became effective. (§ 17.5(c)(7)(i).)

Since the 1990 Act was not enacted until November 28, 1990, some agents may have provided the prohibited services during the current U.S. fiscal year but prior to the effective date of the Act. Precluding their participation because of past actions that were not prohibited at the time would be unfair.

As a general matter, statutes and grants of legislative rulemaking authority are not interpreted to include retroactive operation unless such effect is unequivocally and expressly intended by Congress. Section 407(c)(4) does not clearly mandate retroactive effect. Congress recognized that the title I program would be operating prior to January 1, 1991. To preclude participation by an agent after January 1, 1991, because of actions that were permissible when undertaken, requires an explicit statement of Congressional intent.

The Department is of the view that it is important to assure that the agent eligibility requirements are not avoided by channeling the prohibited activities through affiliated organizations. Consequently, the regulations will also, as is currently the case, encompass affiliates. However, since section 407(c)(4) does not specifically include reference to affiliates, the statement required from agents need only cover affiliates' activities from the effective date of these regulations.

Information To Be Furnished by Agents

Under the interim rule, agent nominees will be required to provide the Department with certain information on all affiliates at the time of the agent's nomination, to allow better monitoring of potential conflicts of interest. The definition of "affiliate" is amended to include the entities covered by the expanded conflict of interest provisions in the Act.

Section 17.8(c) of the regulations is further revised by expanding the definition of payments that are prohibited or are not eligible for financing in connection with a title I transaction. Currently, for food commodities, a "commission, fee or other payment" to a selling agent is prohibited (§ 17.8(c)(1)(ii)), and "commissions" paid to foreign governments or their agents are ineligible for financing (§ 17.8(c) (2) and (3)). The interim rule changes these sections by referring to "payments" rather than "commissions." "Payments" are defined to include commissions, fees and any other compensation in order to be consistent with the items covered in the reporting requirements of § 17.12 of the regulations applicable to suppliers and section 407(c)(2)(B) of the Act.

Additionally, in accordance with section 407(c)(2)(B) of the Act, § 17.8(c) of the regulations is amended to specifically prohibit a payment to any agent of a participant or importer in the purchasing of commodities, and all "payments" to selling agents are prohibited, regardless of whether the transaction involved food commodities.

Supplier Reporting Requirements

In order to reflect the provisions of section 407(b)(4) of the Act, the penalty for failure to file a report or for filing a false report is changed to debarment for "not to exceed five years" instead of "five years."

Public Freight Invitations for Bids

Section 17.14(b) is amended to reflect the provisions of section 407(a) of the Act which require public freight Invitations for Bids for ocean transportation financed under title I. This changes the existing regulation, which allows the Department to authorize an exception to the requirement.

Drawback

Section F of appendix B to the regulations, "Documentation Requirements," is amended to state that contracts for vegetable oil must provide that the commodity to be exported has not been and will not be used as the basis for a claim of a refund, as a drawback, pursuant to section 313 of the Tariff Act of 1930, of any duty, tax, or fee imposed under Federal law on an imported commodity or product. The commodity supplier is required to make this certification on the invoice. This places in the regulations a requirement which is currently found in all vegetable oil purchase authorizations, in order to reflect the requirement of section 416 of the Agricultural Act of 1978 as amended by section 1531 of the 1990 Act.

Miscellaneous

Section 17.6(a)(3), which defines "lowest landed cost," is amended to more clearly reflect existing policy, under which the quantity of a commodity which must be shipped on U.S.-flag vessels in order to meet cargo preference requirements must be considered in determining lowest landed cost (commodity price plus ocean freight rate).

Collection of Information Requirements

The collection of information requirements contained in the rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Public reporting burden for the collection of information in § 17.5(c)(3) is estimated to average 1¼ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total number of responses from agents nominated by importing countries is estimated to be 17, for a total burden of 21¼ hours. This is an increase of ¼ hour per response over the previously approved burden because of the new requirement in § 17.5(c)(3) for a person nominated to act as an agent of the participant or importer to provide certain information on all affiliates. However, because of the reduction in funding for the title I program, the total number of responses is expected to be lower because fewer countries will be participating in the program. This reduces the estimated total burden for this information collection below the 26 hours already approved. Send comments regarding this burden estimate or any other aspect of this collection of information, including

suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0551–0005), Attn.: C. Marshall Mills, Desk Officer for the Foreign Agricultural Service, room 3208 NEOB, Washington, DC 20503.

Effective Date

In order to prevent delay in shipping needed agricultural commodities to recipient countries under the title I program and to allow importing countries to maintain an orderly schedule of such imports and thereby minimize the possibility of spoilage or waste, the regulation will be effective upon publication in the **Federal Register**. However, comments from affected parties are invited. The Department is in the process of reviewing the amendments to Public Law 480 made by section 1531 of the 1990 Act that grant new discretionary authority. Proposed rules with additional regulatory changes as appropriate are expected to be published in the **Federal Register** within the next few months. This would allow publication of a final rule before acceptance of agency nominations with respect to U.S. fiscal year 1992 transactions.

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Finance, Maritime carriers.

Accordingly, 7 CFR part 17, subpart A, is amended as follows:

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

Authority: Secs. 101–105, 407, 409, Pub. L. 83–480, as amended by Pub. L. 101–624, 104 Stat. 3359(7 U.S.C. 1701–1705, 1736a, 1736c), and further amended by Sec. 1204(b)(3), Pub. L. 101–508, 104 Stat. 1388; Sec. 416, Pub. L. 95–501, 92 Stat. 168 as amended by Pub. L. 101–624, 104 Stat. 3359 (7 U.S.C. 5676); E.O. 12220, 45 FR 44245.

2. Section 17.5 is revised to read as follows:

§ 17.5 Agents of the participant or importer.

(a) *General.* (1) A participant or importer is not required to use a purchasing agent or shipping agent, or employ the services of any other agent, broker, consultant or other representative (hereafter "agent") in connection with arranging the purchase of agricultural commodities under title I of the Act and arranging ocean transportation for such commodities; however, if an agent is to be used, the participant shall submit the nomination of the agent to the GSM in writing along with a copy of the proposed agreement between the participant or importer and such agent. The written nomination shall also specify the period of time to be covered by the nomination. A person may not act as agent for a participant or importer unless the Assistant General Sales Manager has provided a written statement that the nomination is accepted in accordance with the provisions of this section.

(2) See § 17.8(c) regarding commissions, fees, or other compensation of any kind to agents, brokers, consultants or other representatives of a participant or importer.

(3) For the purposes of this section, "ocean transportation-related services" means furnishing the following services for commodities provided under any title of the Act: Lightening, stevedoring, and bagging (whether these services are performed at load or discharge), and inland transportation to the destination point in the importing country.

(4) Freight agents employed by the Agency for International Development under tiñes II and III are not eligible to act as an agent for the participant or importer during the period of their contract with the U.S. Government.

(b) *Affiliate* defined. For purposes of this section, the term *affiliate* has the meaning provided in § 17.2(c) and, in addition, persons will also be considered to be affiliates if any of the following conditions are met:

(1) There are any common officers or directors.

(2) There is any investment by approved commodity suppliers, selling agents, or persons engaged in furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, whether or not any part of the ocean transportation is financed by the U.S. Government, or by agents, brokers, consultants or other representatives of such persons; or their officers or directors, in the agent of the participant or importer.

(3) There is any investment by the agent of the participant or importer, or its officers or directors, in approved commodity suppliers; selling agents; or persons engaged in furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, whether or not any part of the ocean transportation is financed by the U.S. Government, or in agents, brokers, consultants or other representatives of such persons.

These conditions include those cases in which investment has been concealed by the utilization of any scheme or device to circumvent the purposes of this section but does not include investment in any mutual fund.

(c) *Information to be furnished.* A person whose nomination has been submitted to act as an agent of the participant or importer shall furnish to the Assistant General Sales Manager the following information or documentation as may be applicable:

(1) The names of all incorporators;

(2) The names and titles of all officers and directors;

(3) The names of all affiliates, including the names and titles of all officers and directors of each affiliate, and a description of the type of business in which the affiliate is engaged;

(4) The names and proportionate share interest of all stockholders;

(5) If beneficial interest in stock is held by other than the named shareholders, the names of the holders of the beneficial interest and the proportionate share of each;

(6) The amount of the subscribed capital;

(7) (i) For USDA acceptance of a nomination covering services provided during U.S. fiscal year 1992 (October 1–September 30) and each U.S. fiscal year thereafter, a written statement signed by such person:

(A) Certifying that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not engaged in, and will not engage in, furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, whether or not any part of the ocean transportation is financed by the U.S. Government; and the person has not served and will not serve as an agent, broker, consultant or other representative of firms engaged in providing such ocean transportation and ocean transportation-related services;

(B) Certifying that, for ocean transportation brokerage services provided during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not shared and will not share freight commissions with the participant, the importer, or any agent, broker, consultant or other representative of the participant or the importer, whether or not CCC finances any part of the ocean freight;

(C) Certifying that the person will not act as commodity supplier or selling agent in any title I transaction with the participant during the term of the agency agreement; and

(D) Undertaking that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, affiliates of such person have not engaged in and

will not engage in the activities or actions prohibited in this paragraph (c)(7)(i).

(ii) For USDA acceptance of a nomination covering services provided during the period January 1, 1991 through September 30, 1991, a written statement signed by such person:

(A) Certifying that, for the period January 1, 1991 through September 30, 1991, the person has not engaged in, and will not engage in, furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, whether or not any part of the ocean transportation is financed by the U.S. Government; and that the person has not served and will not serve as an agent, broker, consultant or other representative of firms engaged in providing such ocean transportation and ocean transportation-related services;

(B) Certifying that, for services provided during the period January 1, 1991 through September 30, 1991, the person has not shared and will not share freight commissions with the participant, the importer, or any agent, broker, consultant or other representative of the participant or the importer, whether or not CCC finances any part of the ocean freight;

(C) Certifying that the person will not act as commodity supplier or selling agent in any title I transaction with the participant during the term of the agency agreement; and

(D) Undertaking that, for the period from February 1, 1991, through September 30, 1991, affiliates of such person have not engaged in and will not engage in the activities or actions prohibited in this paragraph (c)(7)(ii).

(iii) Purchasing and shipping agents whose nominations had been accepted by USDA prior to January 1, 1991, must promptly submit to USDA the statement required by paragraph (c)(7)(ii) of this section before acting for the participant or importer to arrange commodity purchases or ocean transportation. USDA will not approve an Invitation for Bids for commodities or ocean freight from such agents until an acceptable statement has been received, and may withhold such approval for a period not to exceed 30 calendar days pending completion of any further inquiry considered appropriate.

(8) A certification that neither the person nor any affiliates has arranged to give or receive any payment or other benefit in connection with the person's selection as agent or the participant or importer.

(d) *USDA acceptance.* (1) USDA will consider accepting the nomination of a person to act as an agent of the participant or importer when the documents required to be submitted by this section are received by the Assistant General Sales Manager. Action on such nomination may be withheld for a period not to exceed 30 calendar days pending completion of any further inquiry considered appropriate.

(2) Acceptance of such nomination shall remain in effect for the period of time requested by the participant or such shorter period as the Assistant General Sales Manager may determine. Generally, the Assistant General Sales Manager's acceptance of such nomination will not extend beyond the supply period of the current title I agreement. Such acceptance will be automatically withdrawn if the agent of the participant or importer, or any of the affiliates of such agent, violates the written statement in paragraph (c)(7) of this section.

(e) *Notification.* The Assistant General Sales Manager shall promptly notify persons nominated as agents of the participant or importer of the determination or of the need for further inquiry. If USDA will not accept the nomination, the notification shall state the reasons therefor. The determination of the Assistant General Sales Manager is effective immediately and continues in effect pending the result of any appeal to the General Sales Manager.

(f) *Objection or withdrawal.* If USDA does not accept the nomination of a person, or if acceptance has been withdrawn pursuant to the provisions of this section, the person may, within 30 calendar days, present to the General Sales Manager, orally or in writing, any reasons as to why such action should not stand. Nothing herein shall be construed as to prohibit a person whose nomination has not been accepted or whose acceptance has been withdrawn by USDA from being nominated at a later time.

(g) *No USDA written acceptance.* (1) If, in the procurement of commodities made available under title I, Public Law 480, a participant or importer uses an agent whose nomination has not been accepted in writing by the Assistant General Sales Manager, USDA may withhold sales approval.

(2) If, in the shipping of commodities made available under title I, Public Law 480, a participant or importer uses an agent whose nomination has not been accepted in writing by the Assistant General Sales Manager, USDA may withhold vessel approval or may deduct from the ocean freight differential to be paid, the amount of any commission to the agent in connection with the shipment.

3. Section 17.6 is amended by revising paragraphs (a)(1) and (b)(1), removing existing paragraph (b)(2), designating paragraph (b)(3) as (b)(2), designating paragraph (b)(4) as (b)(3), and revising newly redesignated paragraph (b)(3)(i) and revising the first sentence of newly redesignated paragraph (b)(3)(iii) to read as follows:

§ 17.6 Contracts between commodity suppliers and importers.

(a) * * *

(1) Commodity contracts between suppliers and importers are considered to be conditioned on the approval by USDA of the supplier; the selling agent, if any; the contract price; conformance of the sale to the provisions of the purchase authorization; and responsiveness of the offer to IFB terms.

* * * * *

(b) *Contracting procedures*—(1) *Purchasing—general.* (i) Importers must purchase commodities on the basis of Invitations for Bids (IFB's).

(ii) The participant shall maintain a record of all offers received from suppliers until the expiration of three years after final payment under contracts awarded under the purchase authorization. The GSM may examine these records or request specific information in connection with the offers.

* * * * *

(3) *Contract awards.* (i) The importer shall consider only offers which are responsive to the IFB and shall make awards either on the basis of the lowest commodity price(s) offered or on the basis of lowest landed cost, except as provided in paragraph (b)(3)(ii) of this section.

* * * * *

(iii) For purposes of this section, "lowest landed cost" means the combination of commodity price and ocean freight rate resulting in the lowest total cost to deliver the commodity to the importing country, considering the quantity which must be shipped on privately owned U.S.-flag commercial vessels, as determined by the offices specified in § 17.14(c). * * *

* * * * *

4. Section 17.7(d) is amended by revising the last sentence to read as follows:

§ 17.7 Eligibility of suppliers and selling agents.

* * * * *

(d) *Selling agents (requirements).* * * * (See § 17.8(c) regarding commissions to selling agents.)

* * * * *

5. Section 17.8(c) is revised to read as follows:

§17.8 Fees, discounts, commissions, payments, brand names.

* * * * *

(c) *Commissions, fees and payments.* A commission, fee, or other compensation of any kind is hereinafter referred to as a "payment." The term "other compensation of any kind" means anything given in return for any consideration, services, or benefits received or to be received.

(1) A payment to a selling agent as defined in § 17.2(c), employed or engaged by the supplier to obtain a contract, is prohibited.

(i) Any act by a person on behalf of a commodity supplier, which would influence or tend to influence a buyer to award a contract to the supplier, or which may result in the supplier's having a competitive advantage in relation to other potential suppliers, constitutes an act "to obtain a contract." Furthermore, any act by a person on behalf of a commodity supplier to influence USDA to approve a contract for financing constitutes an act "to obtain a contract."

(ii) Services on behalf of a supplier which are purely ministerial in nature and do not require the exercise of personal influence, judgment, or discretion, such as attending bid openings or presenting offers at bid openings, would not in themselves be considered acts "to obtain a contract."

(iii) Services to implement a contract after it has been entered into by the parties thereto, such as handling documentation problems or contract disputes, would not constitute acts "to obtain a contract."

(iv) Payments of any kind to a person who has acted as a selling agent to obtain a contract, including payments for services that may be performed in connection with such contract which in themselves are not services to obtain a contract, are prohibited.

(2) A payment made to any agency, including a corporation, owned or controlled by the participant or the government of the destination country is not eligible for financing.

(3) A payment made to any agent, broker, consultant or other representative of the participant or importer is not eligible for financing. This limitation applies to ocean transportation brokerage commissions which exceed 2½ percent of the freight financed.

(4) For ocean transportation, in addition to this paragraph, see also § 17.14(j).

(5) If a payment is made in violation of paragraph (c) of this section, CCC may demand dollar refund of the entire amount financed by CCC under the contract.

(6) For supplier reporting requirements, see also § 17.12.

(7) A payment to any agent of a participant or importer is prohibited in the purchasing of commodities.

(8) An address commission or payment is prohibited.

* * * * *

6. Section 17.12 is amended by revising paragraph (a), revising the first sentence of paragraph (g), and revising the first sentence of paragraph (h) to read as follows:

§ 17.12 Reports required from suppliers of commodities and ocean transportation.

(a) *General.* Suppliers of—

(1) Agricultural commodities financed under the Act and

(2) Vessels on which such commodities are transported, if ocean freight or ocean freight differential is financed by CCC with respect thereto, shall report to the General Sales Manager any commission, fee or other compensation of any kind (hereinafter referred to as "payment") which, in connection with the supplying of such commodities or vessels, is paid or to be paid by the supplier to any agent, broker, consultant or other representative of the importer or participant, including a corporation owned or controlled by the importer or participant, to which the supplier furnishes such commodities or vessels.

* * * * *

(g) *Failure to file a report or filing a false report.* Failure to file a required report or the filing of a false report hereunder constitutes a cause for debarment. * * *

(h) *Debarment.* If a final determination has been made that a supplier has failed to file a report as required by this section or has filed a false report thereunder, the supplier shall be debarred, for a period of not to exceed five years from the date of such final determination, from furnishing—directly or indirectly—commodities financed under the Act or vessels on which such commodities are to be transported if ocean freight or ocean freight differential is to be financed by CCC with respect thereto. * * *

* * * * *

7. In § 17.14, paragraph (b)(1)(i) is revised, paragraph (b)(1)(ii) is designated as (b)(1)(iii) and a new paragraph (b)(1)(ii) is added, paragraph (j)(8) is revised and paragraphs (j)(9) and (10) are added to read as follows:

§ 17.14 Ocean transportation.

* * * * *

(b) *Contracting procedures.*—(1) *Invitations for Bids (IFB's).* (i) Public freight "Invitations for Bids" are required in the solicitation of freight offers from all U.S. and non-U.S. flag vessels when CCC is financing any portion of the ocean freight.

(ii) For non-U.S. flag vessels when CCC is not financing any portion of the ocean freight, public freight IFB's are also required unless otherwise authorized by the Director, Public Law 480 Operations Division, Foreign Agricultural Service (FAS) or in the case of cotton shipments, by the Director, Kansas City ASCS Commodity Office (hereinafter referred to as "the Director" as applicable) except that IFB's for such non-U.S. flag vessels are not required if the participant requires the use of vessels under its flag or other non-U.S. flag vessels under its control. Vessels considered to be under the control of the participant include vessels under time charters, bare boat charters, consecutive voyage charters, or other contractual arrangements for the carriage of commodities which provide guaranteed access to vessels.

(iii) Prior to release to the trade, all freight IFB's must be submitted to the Director for approval. Freight IFB's for both U.S. and non-U.S. flag vessels, except controlled vessels, must be issued by means of the Transportation News Ticker, New York, plus at least one other means of communication, to assure the broadest possible market coverage with adequate notice to interested parties.

* * * * *

(j) *Items not eligible for CCC financing.* The following costs will not be financed either separately or as part of the commodity contract price:

* * * * *

(8) Ship's disbursements;

(9) Brokerage commissions in excess of 2½ percent of the freight; and

(10) Any payments prohibited in § 17.8(c).

* * * * *

Appendix A [Amended]

8. In appendix A—Contracting Requirements, section (F) is amended by adding a new paragraph (8) to read as follows:

(F) * * *

* * * * *

(8) *Drawback.* Contracts must provide that the commodity to be exported has not been and will not be used as the basis for a claim of a refund, as a drawback, pursuant to section 313 of the Tariff Act of 1930, of any

duty, tax, or fee imposed under Federal law on an imported commodity or product.

Appendix B [Amended]

9. In appendix B—Documentation Requirements, section (F) is amended by revising paragraphs (1)(a) and (2)(a) to read as follows:

(F) * * *

(1) * * *

(a) Two copies of the supplier's invoice, which shall contain the following certification: "The undersigned hereby certifies that this commodity has not been, and will not be, used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product."

* * * * *

(2) * * *

(a) Two copies of the supplier's invoice, which shall contain the following certification: "The undersigned hereby certifies that this commodity has not been, and will not be, used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product."

* * * * *

Signed at Washington, DC on January 16, 1991.

Christopher E. Goldthwait,

Acting General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 91-2433 Filed 1-30-91; 8:45 am]

BILLING CODE 3410-10-M

Farmers Home Administration

7 CFR Parts 1941, 1943, and 1945

Clarification of Eligibility Criteria in Farmer Program Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to clarify one of the eligibility requirements that farm applicants must meet to obtain loan assistance. The reason for amending these regulations is to consistently specify that farmer program loan applicants must provide current, complete and truthful information when applying for assistance. The intended effect is to disqualify those who file incomplete or fraudulent applications from receiving FmHA assistance.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Falcone, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475-4019.

SUPPLEMENTARY INFORMATION: .

Classification

This action was reviewed under USDA procedures established in Department Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Soil and Water Loans are subject to the provisions of Executive Order 12372.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance: 10.404-Emergency Loans, 10.406-Farm Operating Loans, 10.407-Farm Ownership Loans, 10.416-Soil and Water Loans.

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 the proposed 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, an Environmental Impact Statement is not required.

Discussion of Final Rule

On May 3, 1990, FmHA published a proposed rule in the **Federal Register** (55 FR 18607-18608) with a comment period ending June 4, 1990. The purpose of this final rule is to clarify one of the eligibility criteria concerning farm applicants as set forth in the CONACT. The present regulations do not use uniform language and do not clarify the intent of Congress on the specific issue that requires the FmHA County Committee to certify that an applicant will "honestly endeavor to carry out his undertakings and obligations." Therefore, FmHA amends its regulations to explain that the applicant must provide current, complete and truthful information when applying for assistance and make every reasonable effort to carry out the conditions and terms of the proposed loan in order to meet the statutory eligibility requirement.

Discussion of Comments

No comments were received.

Discussion of Changes

The only changes in the final rule that differ from the proposed rule are for grammatical and clarification purposes. The regulations will be revised to clearly state that the applicant must also provide truthful information along with current and complete information when applying for assistance. This revision reflects existing policy. However, based on the Agency's experience, a clarification of existing rules was required to remind FmHA personnel that, in addition to legal proceedings, they also have the option of denying a loan to an applicant who does not provide truthful information.

List of Subjects

7 CFR Part 1941

Crops, Livestock, Loan programs-agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs-agriculture, Recreation, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs-agriculture.

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

PART 1941—OPERATING LOANS

1. The authority citation for part 1941 continues to read as follows:

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

Subpart A—Operating Loan Policies, Procedures, and Authorizations

2. Section 1941.12 is amended by revising paragraphs (a)(5) and (b)(5)(iv) to read as follows:

§ 1941.12 Eligibility requirements.

* * * * *

(a) * * *

(5) Honestly endeavor to carry out the applicant's/borrower's undertakings

and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

* * * * *

(b) * * *

(5) * * *

(iv) They and the entity itself will honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

3. The authority citation for part 1943 continues to read as follows:

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

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

4. Section 1943.12 is amended by revising paragraphs (a)(5) and (b)(4)(iv) to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

* * * * *

(a) * * *

(5) Honestly endeavor to carry out the applicant's/borrower's obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

* * * * *

(b) * * *

(4) * * *

(iv) They and the entity itself must honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

5. Section 1943.62 is amended by revising the introductory text and paragraphs (a)(4) and (b)(2) to read as follows:

§ 1943.62 Soil and water loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is Exhibit C of subpart A of part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) * * *

(4) Honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

* * * * *

(b) * * *

(2) Honestly try to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance, and making every reasonable effort to carry out the conditions and terms of the proposed loan. This requirement also must be met by the individual members, stockholders, partners, or joint operators.

* * * * *

PART 1945—EMERGNECY

6. The authority citation for part 1945 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 D—Emergency Loan Polices, Procedures and Authorizations

7. Section 1945.162 is amended by revising paragraph (h) to read as follows:

§ 1945.162 Eligibility requirements.

* * * * *

(h) *Honestly endeavor.* The applicant will honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan. When the applicant is an entity, this requirement also must be met by the individual members, stockholders, partners or joint operators.

* * * * *

Dated: December 13, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–2321 Filed 1–31–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–261–AD; Amdt. 39–6882]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection of the center wing fuel tank secondary fuel barrier application, and repair, if necessary. This amendment is prompted by reports of the secondary fuel barrier not being applied correctly. This condition, if not corrected, could result in fuel or fuel vapors entering the cargo and passenger compartments in the event of failure of a primary seal or a crack in the center wing box structure.

EFFECTIVE DATE: March 11, 1991.

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

Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kaszycki, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2669. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires inspection of the center wing fuel tank secondary fuel barrier application, and repair, if necessary, was published in the **Federal Register** on July 19, 1990 (55 FR 29382).

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

One commenter objected to the proposed rule since there has never been a reported case of leakage from the center fuel tank except on those aircraft with fuel forward of spanwise beam number 3, and then only at the Stringer 38 bathtub fitting. This commenter proposed that the rule be limited to only those airplanes on which leaks had been identified (namely, all Model 747-200 and 747-300 series airplanes). The commenter further noted that since the unsafe condition identified in the proposal had already been adequately addressed in Boeing Alert Service Bulletin 747-57-A2247 applicable to all Model 747-200 and 747-300 airplanes, and because the Model 747-100 has no fuel forward of the spanwise beam number 3, the proposed rule is superfluous. The FAA does not concur. The proposed rule would require inspection of the fuel barrier coating which, when properly applied, would prevent fuel or fuel vapors from entering the cargo or passenger compartments in the event of a primary fuel seal failure or a crack in the center section structure. The FAA has determined that, regardless of the specific model on which leaks had actually occurred, the rule must be applicable to all Model 747 series airplanes; because of design similarities, the potential exists for leaks to occur on all Models in the series. Although the Model 747-200 and 747-300 airplanes may have already accomplished the proposed inspections in accordance with Boeing Alert Service Bulletin 747-57-A2247, the FAA can only ensure that the inspection and necessary repairs are performed on all Model 747 series airplanes through issuance of an airworthiness directive.

This same commenter stated that there is no proof that the secondary fuel barrier coating works, since fuel leaks have occurred due to broken Stringer 38 bolts migrating through the coating and allowing fuel to spill through the bolt hole. The FAA does not concur. The condition described above was considered unacceptable by the FAA; thus, AD 88-11-11 (Amendment 39-5939, (53 FR 18834, May 25, 1988)) was issued to require installation of a sealed cap over the Stringer 38 bolt head. The sealed cap keeps a fractured Stringer 38 bolt from migrating through the barrier coating. FAA qualification testing of the secondary fuel barrier coating demonstrated that the coating would stay intact and provide a seal following nominal cracking of the fuel tank structure.

Another commenter stated that the Model 747 center fuel tank upper surface is not a crack-prone area due to its primary compressive loading during flight. In addition, the commenter stated that the secondary fuel barrier was not an original Model 747 certification requirement; thus, mandating its inspection after twenty years is not logical. The FAA does not concur. Federal Aviation Regulation (FAR) 25.967(e) states that "each fuel tank must be isolated from personnel compartments by a fumeproof and fuelproof enclosure." This requirement was part of the FAA certification basis for the original Model 747 airplane. Inspections on later Model 747 airplanes revealed that the secondary fuel barrier coating application may not completely cover all intended fuel tank external surfaces in accordance with the certified Model 747 type design. Because the coating application process in question was common to all Model 747 airplanes. inspections of the center fuel tank coating and, if necessary, an additional application of the coating is needed to minimize the potential of fuel or fuel vapors entering the cargo or passenger compartments following failure of the primary seal or a crack in the center wing box structure. For this reason, the FAA considers the fuel tank isolation requirement independent of the fuel tank structure's susceptibility to cracking.

Another commenter stated that the number of manhours quoted in the NPRM for the amount of time necessary to accomplish the requirements would be much higher, depending on the airplane model and configuration. The FAA concurs with this comment. Since issuance of this Notice, the manufacturer has verified that certain Model 747 airplanes may require up to 188 manhours to accomplish the proposed requirements. The FAA has revised the economic impact information paragraph, below, to reflect the maximum manpower required to accomplish this AD.

The same commenter also noted that the Boeing service bulletin called out in the proposal was twice listed incorrectly as "747-53-2253." The FAA concurs with this comment and has corrected the typographical error in the final rule to read "Boeing Service Bulletin 747-57-2253."

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

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

There are approximately 283 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 112 airplanes of U.S. registry will be affected by this AD, that it will take approximately 188 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $842,240.

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

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

this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Service Bulletin 747–57–2253, Revision 1, dated July 5, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To verify proper application of the center wing fuel tank secondary fuel barrier and prevent fuel or fuel vapors from entering the cargo or passenger compartments, accomplish the following:

A. Within the next 30 months after the effective date of this AD, inspect the center wing fuel tank secondary fuel barrier application, in accordance with Boeing Service Bulletin 747–57–2253, Revision 1, dated July 5, 1990. If the barrier has been improperly applied, as specified in the service bulletin, repair prior to further flight, in accordance with the service bulletin.

B. Within 30 days after accomplishing the inspection required by paragraph A. of this AD, submit a report of the complete findings of inspections from which it is determined that the secondary fuel barrier is not properly applied, to: Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055; rapid fax: (206) 227–1181; telex 756366.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective March 11, 1991.

Issued in Renton, Washington, on January 24, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–2418 Filed 1–31–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–17–AD; Amdt. 39–6883]

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all CASA Model C–212 series airplanes, which currently requires a revision to the Airplane Flight Manual to provide further warning against the use of reverse thrust and propeller pitch settings below the flight regime while in flight. This action requires modification of the propeller speed and pitch control system to prevent movement of the propeller speed and pitch control system into reverse thrust and adjustment of the propeller pitch settings below the flight regime while in flight. This amendment is prompted by reports of in-flight movement of the propeller speed and pitch control system into reverse thrust or propeller pitch settings intended for ground operation. This condition, if not corrected, could result in reduced controllability of the airplane.

EFFECTIVE DATE: March 11, 1991.

ADDRESSES: The applicable service information may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90–04–11, Amendment 39–6508 (55 FR 4831, February 12, 1990), applicable to all CASA Model C–212 series airplanes, to require modification of the propeller speed and pitch control system to prevent movement of the propeller speed and pitch control system into reverse thrust and adjustment of the propeller pitch settings below the flight regime while in flight, was published in the **Federal Register** on March 30, 1990 (55 FR 11953).

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

Two commenters suggested that, rather than issue an AD, the FAA should amend Federal Aviation Regulation (FAR) part 25, § 25.1155, to require modification of *all* transport category turbopropeller airplanes, since the propeller pitch control system on the Model C–212 is similar to most turbopropeller airplanes. These commenters further noted that the proposed AD would add additional requirements beyond those imposed by § 25.1155. The FAA does not concur with the commenters' suggestions. The FAA has determined, and service history has indicated, that an unsafe condition exists with respect to the propeller speed and pitch control system installed on CASA Model C–212 airplanes; therefore, this AD action is warranted to correct this unsafe condition. The FAA will review other turbopropeller airplanes, and, if the same unsafe condition is determined to exist, may take further rulemaking action on each individual model as warranted by the potentially hazardous condition. Furthermore, the authority for going beyond the specific requirements of FAR § 25.1155 lies in FAR section 39, which authorizes the issuance of airworthiness directives to correct an unsafe or potentially unsafe condition which has been determined likely to exist or develop in aircraft.

These same commenters noted that the proposal is unwarranted, since only one accident may have been attributed to the crew intentionally moving the propeller pitch control system into reverse thrust while on the landing approach; moreover, the Airplane Flight Manual (AFM) already prohibits the placement of the power lever aft of the flight idle stop position while in flight. Another commenter further stated that, since the proposed action addresses a pilot problem and not a design fault, the

proposal is unnecessary, especially in light of the current requirement of AD 90–04–11 which revises the AFM to prohibit the use of reverse thrust while in flight. The FAA does not concur with the commenters' suggestion that the proposal is unwarranted. Although only one accident may be attributed to this crew error, there have been at least two other incidents, that occurred subsequent to the adoption of the AFM prohibition, which entailed similar movement of the flight controls by the crew. The consequences of the unsafe condition presented are such that the FAA has determined that a modification to the propeller speed and pitch control system is warranted to prevent the movement of the control system into reverse thrust. Modification to the system, rather than reliance on human factors, will more adequately ensure the safety of the fleet.

Another commenter stated that the loss of controllability of the airplane would actually have been attributed to the movement of the flight controls into the flight idle position. The commenter contended that, in reality, one of the controls would actually go into the ground idle position, which would cause an asymmetric thrust configuration. In this situation, the pilot would attempt to correct the asymmetric configuration problem by applying full power, which would further exacerbate the asymmetric thrust by causing more severe yaw. The FAA concurs that this scenario is possible. However, the modification required by this AD will prevent this situation from occurring, since the modification positively prevents in-flight movement of the flight controls below flight idle.

Another commenter noted that, if a failure occurred with the controls in the flight idle position after installation of the modification, the landing distance would increase significantly. The FAA concurs with this scenario; however, the FAA has determined that the factored landing distances specified in the AFM would allow for considerable margin beyond the no-reverse-thrust landing (brakes only), which would adequately compensate for the flight idle thrust, thus avoiding a potentially unsafe condition.

This commenter also contended that the impact of the proposal would constitute a major economic impact on affected operators because of the escalating cost of several other recently issued AD's related to Model C–212 series airplanes, including the proposed action. The FAA does not concur. In determining whether a proposed regulatory action is considered to have a "major economic impact," the FAA is obligated to follow the criteria presented in Executive Order 12291 of February 21, 1981. That document states that a "major rule means any regulation that is likely to result in an annual effect on the economy of $100 million or more." Based on those figures and those associated with the total cost impact of this AD action, the FAA has determined that this AD is not considered a "major rule." Additionally, the FAA is obligated to consider the Regulatory Flexibility Act, which provides criteria for rulemaking officials to apply when determining if a proposed rule has a significant economic impact on a substantial number of small entities. The FAA's analysis indicates that the cost estimates established for this AD action do not constitute a significant economic impact on a substantial number of small entities. Further, the FAA considers that the cost of the required modification is reasonable in light of the fact that it will provide a permanent, improved level of safety and will ensure proper operation of critical flight systems.

Since issuance of the Notice, the FAA has conducted a further review of the available data and has determined that the economic impact anlaysis paragraph, below, must be revised to more accurately reflect the number of manhours required to accomplish the modification and to reflect the most recent cost estimate of required parts. Accordingly, the number of manhours required has been increased from 20 to 100; the cost of the modification parts has decreased from $3,000 to $2,500.

Since the issuance of the Notice, CASA has issued Service Bulletin 212–76–07, dated July 27, 1990, which describes procedures to modify the propeller speed and pitch control system so that the control cannot be moved into reverse thrust and so that the propeller pitch settings cannot be adjusted for ground operation while in flight. The Direction Générale de l'Aviation Civile (DGAC), the airworthiness authority of Spain, has classified this service bulletin as mandatory. The final rule has been revised to refer to this service bulletin as an approved means of performing the modification.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. These changes will neither significantly increase the economic burden on affected operators nor increase the scope of the rule.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for required parts is $2,500. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $286,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 90–04–11, Amendment 39–6508 (55 FR 4831, February 12, 1990), with the following new airworthiness directive:

CASA: Applies to Model C–212 series airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent reduced controllability of the airplane, accomplish the following:

A. Modify the propeller speed and pitch control system so that the control cannot be

moved into reverse thrust while in flight, and so that the propeller pitch settings cannot be adjusted for ground operation while in flight, in accordance with CASA Service Bulletin 212–76–07, dated July 27, 1990, or in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

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

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39–6508, AD 90–04–11.

This amendment becomes effective March 11, 1991.

Issued in Renton, Washington, on January 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–2417 Filed 1–31–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8334]

RIN 1545–A070

Definition of Highly Compensated Employee

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary rule.

SUMMARY: This document contains temporary regulations relating to the scope and meaning of the term "highly compensated employee" in section 414(q) of the Internal Revenue Code of 1986. They reflect changes made by the Tax Reform Act of 1986 (TRA '86) and conform the existing regulations to section 1114(a) of the Tax Reform Act of 1986, Public Law No. 99–514, 100 Stat. 2085, 2448. These temporary regulations provide guidance necessary to comply with the law and will affect sponsors of, and participants in, pension, profit-sharing and stock bonus plans, and certain other employee benefit plans. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking that appears in the Proposed Rules Section of this issue of the **Federal Register**. These temporary regulations are issued in conjunction with proposed regulations concerning qualified separate lines of business under section 414(r) that also appears in the Proposed Rules Section of this issue of the **Federal Register**.

EFFECTIVE DATE: These temporary regulations are effective for years beginning on or after January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas G. Schendt or Rhonda G. Migdail, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), at 202–633–0849 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) under section 414(q) of the Internal Revenue Code of 1986 (Code). These amendments conform the regulations to section 1114(a) of the Tax Reform Act of 1986 (TRA '86).

Amendment of Proposed and Temporary Regulations

Section 1.414(q)–1T, *Highly Compensated Employee,* was originally published, with § 1.414(s)–1T, *Compensation,* in the **Federal Register** on February 19, 1988, as temporary regulations as well as the text of proposed regulations to amend the Income Tax Regulations to conform to section 1114(a) of the Tax Reform Act of 1986 (the "prior regulations"). See 53 FR 4965, 4999. Comments were solicited and a hearing was held on December 4, 1989. The definition of highly compensated employee in section 414(q) and § 1.414(q)–1T has been partially revised in conjunction with the development of proposed regulations under section 414(r) relating to qualified separate lines of business. These revisions to § 1.414(q)–1T are now reissued as temporary regulations and the text of proposed regulations in order to clarify their use in applying the qualified separate line of business rules under section 414(r).

Highly Compensated Employees

Section 414(q) and § 1.414(q)–1T provide rules for determining which employees are "highly compensated employees." This term is used in various Code sections relating to qualified retirement plans, qualified cash or deferred arrangements, and certain other employee benefit plans for the purpose of determining whether these plans discriminate in favor of highly compensated employees.

One category of highly compensated employees are officers of the employer with compensation above a certain level. A second category are employees whose compensation from the employer exceeds $50,000 and who are among the top-paid group of employees (i.e., among the top 20 percent of employees when ranked by compensation from the employer).

The determination of which employees are in the officer category and the determination of the number of employees in the top-paid group are made by excluding certain employees. These excluded employees are enumerated in section 414(q) (8) and (11). Section 1.414(q)–1T, Q&A–9, implements these statutory exclusions. In general, an employee is an excluded employee for this purpose if the employee (1) has not completed 6 months of service, (2) works less than 17-½ hours per week, (3) works less than 6 months during the year, (4) has not attained age 21, (5) is covered under a collective bargaining agreement, or (6) is a nonresident alien with no U.S.-source earned income from the employer.

Qualified Separate Line of Business Rules

Section 414(r) provides rules for determining whether an employer is treated as operating qualified separate lines of business for certain purposes, including the minimum coverage and minimum participation requirements under sections 410(b) and 401(a)(26) for qualified retirement plans. Under section 414(r)(2)(A), a qualified separate line of business must have at least 50 employees on each day of the year. For this purpose, certain employees are excluded in determining whether the 50-employee requirement is satisfied.

Although generally the same, there are some differences under the regulations between the excludable employees for purposes of the 50-employee requirement under section 414(r) and the excludable employees for purposes of determining the officer group and the top-paid group of

employees under section 414(q). First, for purposes of the 50-employee requirement, the employer may not elect to apply minimum age or service requirements lower than those specified in section 414(q)(8) (A), (B), (C), and (D). Second, collectively bargained employees are not excluded for purposes of the 50-employee requirement. Finally, the applicable period for determining the exclusions for purposes the 50-employee requirement is not based on the determination year or look-back year under section 414(q), but rather on the testing year specified in the regulations under section 414(r).

Effective Date of These Temporary Regulations

These revised temporary regulations are effective for plan years beginning on or after January 1, 1987. However, for plan years beginning before January 1, 1991, compliance with either the provisions of these revised temporary regulations or the provisions of the prior regulations constitutes compliance with these revised temporary regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these temporary regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations is being submitted to the Chief Counsel on Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these temporary regulations are Thomas G. Schendt and Rhonda G. Migdail, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.401–0—1.425–1

Employee benefit plans, Employee stock ownership plans, Income taxes, Individual retirement accounts, Pensions Stock options.

Adoption of Amendments to the Regulations

Accordingly 26 CFR part 1 is amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 is amended by adding the following citation to read as follows:

Authority: 26 U.S.C. 7805. * * * section 1.414(q)–1T is also issued under 26 U.S.C. 414(q).

Par. 2. In § 1.414(q)–1T, Q–9 is republished and A–9 is amended by revising the introductory text of paragraph (b)(1), by revising paragraph (b)(2)(iii), and by adding a new paragraph (g), to read as follows:

§ 1.414(q)–1T Highly compensated employee (Temporary).

* * * * *

Q–9: How is the "top-paid group" determined?

A–9:

* * * * *

(b) *Number of employees in the top-paid ground*—(1) *Exclusions.* The number of employees who are in the top-paid group for a year is equal to 20 percent of the total number of active employees of the employer for such year. However, solely for purposes of determining the total number of active employees in the top-paid group for a year, the employees described in paragraph (b)(1) (i), (ii), and (iii) of this A–9 are disregarded. Paragraph (g) of this A–9 provides rules for determining those employees who are excluded for purposes of applying section 414(r)(2)(A), relating to the 50-employee requirement applicable to a qualified separate line of business.

* * * * *

(2) *Alternative exclusion provisions*

* * *

(iii) *Method of election.* The elections in this paragraph (b)(2) must be provided for in all plans of the employer and must be uniform and consistent with respect to all situations in which the section 414(q) definition is applicable to the employer. Thus, with respect to all plan years beginning in the same calendar year, the employer must apply the test uniformly for purposes of determining its top-paid group with respect to all its qualified plans and employee benefit plans. If either election is changed during the determination year, no recalculation of the look-back year based on the new election is required, provided the change in election does not result in discrimination in operation.

* * * * *

(g) *Excluded employees under section 414(r)(2)(A)*—(1) *In general.* This paragraph (g) provides the rules for determining which employees are excluded employees for purposes of applying section 414(r)(2)(A), relating to the 50-employee requirement applicable to a qualified separate line of business.

(2) *Excluded employees*—(i) *Age and service exclusion.* All employees are excluded who are described in paragraph (b)(1)(i) of this A–9 (relating to exclusions based on age or service). For this purpose, the rules in paragraphs (e) and (f) of this A–9 (relating respectively to the 17½ hour rule and the 6-month rule) apply. However, the election in paragraph (b)(2)(i) of this A–9 (permitting the employer to elect reduced minimum age or service requirements) does not apply.

(ii) *Nonresident alien exclusion.* All employees are excluded who are described in paragraph (b)(1)(ii) of this A–9 (relating to the exclusion of nonresident aliens with no U.S.-source income from the employer).

(iii) *Inclusion of employees covered under a collective bargaining agreement.* All employees are included who are described in paragraph (b)(1)(iii)(A) of this A–9 (relating to employees covered under a collective bargaining agreement), and who are not otherwise described in paragraph (g)(2) (i) or (ii) of this A–9. For this purpose, the exclusion in paragraph (b)(1)(iii)(B) of this A–9 and the related election in paragraph (b)(2)(ii) of this A–9 do not apply.

(3) *Applicable period.* The determination of which employees are excluded employees is made on the basis of the testing year specified in the regulations under section 414(r) and not on the basis of the determination year or the look-back year under section 414(q).

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. Section 414(q) is generally applicable to provisions that refer to it for years beginning on or after January 1, 1987. For this reason, it is therefore found impracticable and contrary to the public interest to issue this Treasury decision with notice and public procedure under section 553(b) of Title 5 of the United States Code or subject to the effective

date limitation of section 553(d) of that title.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: January 17, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–2319 Filed 1–31–91; 8:45 am]

BILLING CODE 4830–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1222

Creation and Maintenance of Records; Adequate and Proper Documentation

CFR Correction

In title 36 of the Code of Federal Regulations, parts 200 to End, revised as of July 1, 1990, the word "not" was inadvertently omitted from the third line of §1222.36(a)(3). Paragraph (a)(3) of § 1222.36 should read:

§ 1222.36 Identifying personal papers.

(a) * * *

* * * * *

(3) Diaries, journals, personal correspondence, or other personal notes that are not prepared or used for, or circulated or communicated in the course of, transacting Government business.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA/OSW-FRL-3901-2]

RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Hydrocarbon Recovery Operations

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: On October 5, 1990 (55 FR 40834), the Agency promulgated an interim final rule extending the compliance date of the Toxicity Characteristic until January 25, 1991 for groundwater that is reinjected or reinfiltrated during existing hydrocarbon recovery operations at petroleum refineries, marketing terminals, and bulk plants. Today's action further extends this compliance date until March 25, 1991, in order to allow the Agency sufficient time to fully evaluate comments received on this issue.

EFFECTIVE DATE: February 1, 1991.

ADDRESSES: The public docket for this rulemaking is located at Room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket number assigned to this notice is F–90–PRAS–FFFFF. The EPA RCRA docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475–9327. A maximum of 50 pages may be copied from any regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424–9346 toll free, or (202) 382–3000 in the Washington, DC metropolitan area. For information on specific aspects of this notice, contact Dave Topping, Waste Identification Branch, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7737.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1990 (55 FR 40834), the Agency promulgated an interim final rule extending the compliance date of the Toxicity Characteristic until January 25, 1991 for groundwater that is reinjected or reinfiltrated during existing hydrocarbon recovery operations at petroleum refineries, marketing terminals, and bulk plants. Subsequently, on November 7, 1990, the Agency proposed to further extend this compliance date until January 25, 1993 (55 FR 46829). The public comment period for that proposal ended on December 25, 1990. Today's action provides an additional short extension of the Toxicity Characteristics compliance date for the subject operations until March 25, 1991, in order to allow the Agency sufficient time to fully consider the comments received on the November 7 proposal.

II. Interim Final Rule

The Agency is invoking two authorities for this short extension of the interim final rule action. First, EPA is invoking the good cause exemption in section 553(b)(3) of the Administrative Procedure Act to immediately change the compliance date with requirements imposed by the TC for wastes involved in specific product recovery activities. Second EPA is invoking the authority in 5 U.S.C. 705. The groundwater will not be a Federal hazardous waste during the period of this limited additional extension. EPA has only recently received comments on these operations and believes that continued operations of these activities are important for environmental protection. Without the immediate change of the compliance date for these operations, such activities might cease prior to the Agency's evaluation of comments on its proposal to extend the compliance date for two years. Therefore, at petroleum refineries, marketing terminals, and bulk plants currently engaged in hydrocarbon recovery operations stemming from handling crude petroleum and immediate products of petroleum refining, the compliance date for the TC is extended until March 25, 1991. Facilities with existing contracts for construction of these operations are also included within the scope of today's notice.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: January 24, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by revising paragraph (b)(11) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(11) Ground water that exhibits the Toxicity Characteristic in § 261.24 of this part that is reinjected or infiltrated pursuant to existing hydrocarbon recovery operations undertaken at petroleum refineries, marketing terminals, and bulk plants handling crude petroleum and immediate products of petroleum refining until March 25, 1991.

* * * * *

[FR Doc. 91–2427 Filed 1–31–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 380

RIN 2133-AA88

Procedures; New Subpart B—Application for Designation of Vessels as American Great Lakes Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: Public Law 101-624, enacted November 28, 1990, directs the Secretary of Transportation (Secretary) to issue regulations establishing requirements for designation of vessels as "American Great Lakes vessels." Such designation would exempt certain U.S.-flag vessels from certain restrictions with respect to the carriage of preference cargoes otherwise imposed by section 901(b) of the Merchant Marine Act, 1936, as amended.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Edmund T. Sommer, Jr., Chief, Division of Regulations and Administrative Law, Maritime Administration, Department of Transportation, 400 Seventh Street SW., Room 7221, Washington, DC 20590, Telephone: (202) 366-5181.

SUPPLEMENTARY INFORMATION: Section 901(b) of the Merchant Marine Act, 1936, as amended (46 app. U.S.C. 1241(b)) requires that at least 50 per centum (75 per centum with respect to agricultural commodities pursuant to 46 app. U.S.C. 1241(f)) of the gross tonnage of equipment, materials or commodities procured or obtained by the United States for its own account or for the account of any foreign nation without reimbursement, which may be transported on ocean vessels, shall be transported on privately owned United States-flag commercial vessels. Section 901(b) specifies that the term "privately owned United States-flag commercial vessels" shall not include a vessel that has been (1) built outside the United States; (2) rebuilt outside the United States; or (3) documented under any foreign registry, until that vessel shall have been documented under the laws of the United States for three years. Subtitle B of Public Law 101-624 establishes the criteria for designating vessels "American Great Lakes vessels," exempt from the three year waiting restriction. These criteria are that: (1) The vessel is documented under the laws of the United States; (2) the Secretary receives an application for such designation in accordance with regulations to be issued by the Secretary; (3) the vessel owner enters into an agreement with the Secretary that, in the event of revocation of such designation for a vessel determined by the Secretary to be necessary to the defense of the United States, the United States shall have, during the 120 days after such revocation, the exclusive right to purchase the vessel for a price that is the greater of the vessel's world market value or vessel cost to the owner, less an amount for vessel depreciation; (4) the vessel is not more than 6 years old and not less than 1 year old on the date of designation, except that the vessel may be not more than 11 years old if the Secretary determines that suitable vessels are not available for providing the type of service for which the vessel will be used after designation; and (5) the vessel has not been previously designated as an American Great Lakes vessel. Subtitle B requires the Secretary, not later than 60 days after enactment of Public Law 101-624, to issue regulations establishing requirements for the submission of applications for designation of vessels as American Great Lakes vessels.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The Maritime Administrator has made a determination that this rulemaking meets none of the criteria in Executive Order 12291 for a major rule. This rulemaking will have minimal economic impact. The rule will affect only owners of vessels that are presently ineligible to carry preference cargoes. If those vessels qualify under the criteria in Public Law 101-624, those owners may apply for and enter into an agreement with the Secretary that will allow them to carry preference cargoes without their vessel having been documented under the laws of the United States for a period of three years. It prescribes application requirements for the vessel owner, and establishes a fee that is sufficient to cover the cost of processing the application. 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, under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) a determination has been made that this regulation is nonsignificant and that a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

This final rule will have minimal economic impact. The Maritime Administration certifies that it will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This final rule has been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Paperwork Reduction Act

This rule contains a new reporting requirement in § 380.12 which is within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), *i.e.*, an application procedure mandated by Pub. L. 101-624 that is under consideration by the Office of Management and Budget.

National Environmental Policy Act

This rule does not affect the environment, and does not require an environmental impact statement under the National Environmental Policy Act of 1969.

Exemption from Notice and Public Comment Procedure

This rule involves an agency procedure establishing an application required by statute, and is therefore exempted by 5 U.S.C. 553(b)(A) from the notice and public comment procedures otherwise required by 5 U.S.C. 553(c). Furthermore, Public Law 101-624 requires the Secretary to issue these regulations not later than 60 days after its enactment on November 28, 1990. Accordingly, the Maritime Administration finds, pursuant to 5 U.S.C. 553(d)(3), good cause to make this regulation effective immediately. (February 1, 1991).

List of Subjects in 46 CFR Part 380

Administrative practice and procedure, maritime carriers.

PART 380—[AMENDED]

For the reasons set forth in the preamble, a new subpart B to 46 CFR part 380 is added as follows—

1. In the Table of Contents, remove "[Reserved]" after "Subpart B —", and add the title, "Application for Designation of Vessels as American Great Lakes Vessels", followed by the contents, as follows—

Sec.
380.10 Purpose.
380.11 Designation of American Great Lakes vessels.
380.12 Application requirements.

2. Remove the designation "[Reserved]" in the subpart B title and add a title, Authority and text, to read as follows—

Subpart B—Application for Designation of Vessels as American Great Lakes Vessels

Authority: Sec. 204(b), Merchant Marine Act, 1936, as amended, (46 app. U.S.C. 1114(b)); Subtitle B, Pub. L. 101–624; 49 CFR 1.66.

§ 380.10 Purpose.

The purpose of this subpart is to prescribe the requirements for the submission of applications for designation of vessels as American Great Lakes vessels, subject to the conditions imposed by section 1522 of Public Law 101–624 (November 28, 1990).

§ 380.11 Designation of American Great Lakes Vessels.

The Secretary shall designate a vessel as an American Great Lakes vessel if—

(a) The vessel is documented under the laws of the United States;

(b)(1) The vessel is not more than 6 years old, and not less than 1 year old, on the effective date of the designation; or

(2) The vessel is not more than 11 years old, and not less than 1 year old, on the effective date of the designation, and the Secretary determines that suitable vessels are not available for providing the type of service for which the vessel will be used after designation;

(c) The vessel has not been previously designated as an American Great Lakes vessel; and

(d) The person who will be the owner of the vessel at the time of such designation agrees to enter into an agreement with the Secretary which provides that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government shall have, during the 120-day period following the date of any revocation of such designation an exclusive right to purchase the vessel for a price equal to—

(1) The approximate world market value of the vessel; or

(2) The cost of the vessel to the owner less an amount representing reasonable depreciation of the vessel, whichever is greater.

§ 380.12 Application requirements.

(a) *Submission.* An application for designation of one or more vessels as an American Great Lakes vessel shall be filed with the Secretary, Maritime Administration, Department of Transportation, 400 Seventh St. SW., Room 7300, Washington, DC 20590, at least 60 days prior to the date when the owner wishes to commence operation of one or more vessels with such designation. The application shall state with specificity that the vessel complies with the requirements of § 380.11.

(b) *Fee.* Each application shall be accompanied by a fee of $50 per vessel. Payment shall be made by cashier's check, certified check, or money order, payable to "Maritime Administration."

(c) *Unavailability of suitable vessels.* Where the owner requests that the Secretary make a determination that would allow the designation of one or more vessels that would be over 6 years of age, but less than 11 years of age, on the effective date of designation, the owner shall include with the application all relevant and material information from which the Secretary may determine that suitable vessels will not be available for the type of service in which the vessel(s) will be used after designation.

Dated: January 28, 1991.
By order of the Maritime Administration.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 91–2423 Filed 1–31–91; 8:45 am]
BILLING CODE 4910–81–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 900124–0127]

Atlantic Surf Clam and Ocean Quahog Fishery

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

ACTION: Notice of closure of the Georges Bank area to fishing for surf clams and ocean quahogs.

SUMMARY: This notice continues the closure of an area known as Georges Bank of fishing for surf clams and ocean quahogs due to high concentrations of paralytic shellfish poison (PSP) currently found in these species. The closure is specific to the fishing grounds east of 69° W. longitude, and south of 42'20' N. latitude. The area will remain closed until the Secretary determines that the adverse environmental conditions caused by the PSP toxin are no longer present. The intended effect is to prevent the harvest of surf clams and ocean quahogs which are rendered unhealthful by the PSP toxin.

EFFECTIVE DATES: January 28, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA, 01930, Telephone: 508–281–9252.

SUPPLEMENTARY INFORMATION: Under the emergency action authority of section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency interim rule effective on May 25, 1990 (55 FR 22336, June 1, 1990) closing that portion of the New England Area located east of 69° W. longitude to fishing for surf clams, ocean quahogs, blue mussels, and other mollusks. An extension of the emergency interim rule was published on August 30, 1990 (55 FR 35435), which extended the effective data until November 21, 1990.

The U.S. Food and Drug Administration has advised the NMFS that a problem still exists and has recommended that the area remain closed. Testing of surf clams harvested in October determined PSP levels of between 742 and 1502 micrograms/100 grams (μg/100g). August samples of ocean quahogs yielded PSP levels of between 360 and 406 μg/100g, while an October sample yielded 80 μg/100g. The maximum safe level for PSP toxin is 80 μg/100g. Ingestion of PSP toxin is known to cause severe illness or death in humans. For this reason, the PSP levels reported represent a severe adverse environmental condition that warrants the continued closure of the Georges Bank Area for surf clams and ocean quahogs.

Section 305(e) of the Magnuson Act allows the Secretary to take emergency action to close an area but such action is limited to a total of 180 days. This action was taken and expired on November 21, 1990. Section 652.23(a) of the final regulations governing the Atlantic Surf Clam and Ocean Quahog Fishery (55 FR 24184, June 14, 1990) provides that an area may be closed to fishing the surf clams and ocean quahogs because of adverse environmental conditions. Such closure will remain in effect until the Secretary determines that the adverse environmental conditions have been corrected. When it was determined that there was considerable likelihood that the PSP toxin would continue to be found in shellfish in the area beyond this data, the Secretary initiated action by notice published on September 12, 1990 (55 FR 37500). The notice proposed a continued closure of the area to fishing for surf clams and ocean quahogs and

specified a public hearing schedule and that public comments would be accepted until October 12, 1990.

Public hearings were held in September which presented the results of the most recent samples taken from the area. All public comments received, favored the continued closure as long as the PSP toxin was evident in the surf clams and ocean quahogs harvested there. There were no written comments submitted.

Based on the comments received and the continued presence of the PSP toxin, the Secretary has determined that a continued area closure is appropriate to protect public health. This action prohibits fishing for and landing surf clams or ocean quahogs in the area east of 69° W. longitude, and south of 42'20' N. latitude. The area will remain closed until the Secretary determines that the adverse environmental conditions caused by the PSP toxin are no longer present. If such a determination is made, notice will be provided in the **Federal Register** of the Secretary's proposed action to reopen the area. A comment period will be provided for, before any final action is taken.

Classification

This action is authorized by 50 CFR part 652, and is taken in compliance with E.O. 12291.

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

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: January 28, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-2370 Filed 1-28-91; 5:12 pm]

BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 900124-0127]

Atlantic Surf Clam and Ocean Quahog Fishery

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

ACTION: Notice of reopening of the Chincoteague surf clam closed area.

SUMMARY: NOAA issues this notice to reopen an area designated as the Chincoteague closed area that has been closed to surf clam fishing since 1980 due to the presence of small surf clams. This reopening will allow harvest of surf clams that were protected to allow them to produce greater yields.

DATES: This notice is effective January 28, 1991.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Resource Management Specialist, 508-281-9273.

SUPPLEMENTARY INFORMATION: A final rule implementing Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP) was published on June 14, 1990 (55 FR 24184). Section 652.23 (Closed areas) of the regulations was made effective on July 9, 1990. Section 652.23 specifies the actions the Secretary must take to close or reopen an area to surf clam or ocean quahog fishing. These actions include the publication of a notice in the **Federal Register** of proposed action to reopen an area previously closed to surf clam fishing, the holding of a public hearing, a request for comments, and the publication of final action after consideration of the comments received. A notice of proposed action was published on September 12, 1990 (55 FR 37500), requesting comments on the reopening of the Chincoteague closed area. Public hearings were held on September 19, 25, and 26, 1990, at locations in New York, Maryland, and New Jersey. All commenters favored opening the area.

The regulations provide that an area may be reopened by the Secretary if "the average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches." Recent survey information indicates that the average size class of the surf clams in the Chincoteague area is 5.0 inches. Consequently, the Secretary has determined that the reopening criteria for the Chincoteague area has been met. After reviewing the results of the hearings and comments received, the Secretary has decided to implement the Mid-Atlantic Fishery Management Council's recommendation to reopen the Chincoteague surf clam closed area. In keeping with the management philosophy adopted by Amendment 8, no effort restrictions are proposed for the reopened area.

Area

The area designated for reopening is defined as follows: Chincoteague Closed Area—located between 18 and 27 miles offshore between Chincoteague Inlet and Wachapreague Inlet.

Latitude	*Longitude*
37°43.2' N.	75°00.8' W.
37°42.5' N.	74°55.5' W.
37°27.7' N.	75°00.3' W.
37°28.3' N.	75°14.3' W.
37°43.2' N.	75°00.8' W.

Classification

This action is authorized by 50 CFR part 652, and is taken in compliance with E.O. 12291.

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

List of Subjects in 50 CFR part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: January 28, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-2371 Filed 1-28-91; 5:12 pm]

BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 900124-0127]

Atlantic Surf Clam and Ocean Quahog Fishery

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

ACTION: Notice of suspension of surf clam minimum size limit.

SUMMARY: NOAA issues this notice to inform the public that the minimum size limit of 4.75 inches (12.065 cm) for Atlantic surf clams is suspended. This action is taken under the authority of section 652.22(a)(1), which allows for the annual suspension of minimum size limit based upon set criteria. The intended effect is to reduce a regulatory burden and discard mortality while allowing for more selective harvest practices. This action is taken to remove a regulatory restraint, in accordance with Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP).

EFFECTIVE DATES: January 1, 1991, through December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA, 01930, (508-281-9252).

SUPPLEMENTARY INFORMATION: A final rule implementing Amendment 8 to the FMP was published on June 14, 1990 (55 FR 24184). Section 652.22 allows the Regional Director to suspend annually, by publication in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent of the clams are smaller than 4.75 inches (12.065 cm) and the overall reduced size is not attributable to beds where growth of the individual

clams has been reduced because of density dependent factors.

At its September 1990 meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Statistical and Scientific Committee and Surf Clam/Ocean Quahog Committee and voted to recommend that the Regional Director suspend the minimum size limit for 1991. The Council's action was taken after the most recent research vessel survey data indicated that 26.97 percent of the surf clams from the Mid-Atlantic area, 17.20 percent of the surf clams from the Southern New England area, and 15.64 percent of the surf clams from the Georges Bank area, were less than 4.75 inches (12.067 cm). Discard data derived from interviewed vessel operators that had conducted commercial trips reported an average discard rate of 12.5 percent as applied to the previous minimum size limit of 5 inches.

This same information was used as the basis for the Council's recommendation that the minimum size limit be suspended for the last quarter of 1990. The Council's recommendation was accepted by the National Marine Fisheries Service and notice was published in the **Federal Register** on October 5, 1990 (55 FR 40840).

Classification

This action is authorized by 50 CFR part 652, and is taken in compliance with E.O. 12291.

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

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: January 28, 1991.

Richard H. Schaefer,

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

[FR Doc. 91–2372 Filed 1–28–91; 5:12 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 22
Friday, February 1, 1991

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV-91-220]

Tomatoes Grown in Florida; Reopening and Extension of Comment Period on Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of the comment period.

SUMMARY: Notice is hereby given that the time period for filing comments is reopened and extended on the proposed rule published in the December 28, 1990, issue of the **Federal Register** (55 FR 53308) for Florida tomatoes. The comment period is reopened and extended until February 19, 1991.

DATES: Comments must be received by February 19, 1991.

ADDRESSES: Interested persons are invited to submit written comments in triplicate to: Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Such comments should reference the docket number and the date and page number of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-5331.

SUPPLEMENTARY INFORMATION: The proposed rule to change the handling regulation for Florida tomatoes was issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposed rule was issued on December 21, 1990, and published on December 28, 1990, in the **Federal Register** (55 FR 53308). It proposed to change the handling regulation to establish the same container and pack requirements for fresh market shipments of Florida tomatoes sold within the regulated area as are in effect for fresh market tomato shipments to destinations outside the regulated area. The proposal also provided a limited exemption from the handling regulation to handlers who are producers who sell tomatoes directly to consumers at roadside stands and u-pick operations.

The U.S. Department of Agriculture has received a request to reopen and extend the deadline to provide more time for interested persons to analyze the proposed rule and prepare comments. Reopening and extending the comment period will provide such interested persons more time to review this proposed rule and submit written views and information pertinent to the proposed changes. Accordingly, the comment period is reopened and extended to February 19, 1991.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

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

Dated: January 28, 1991.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 91-2367 Filed 1-31-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-293-AD]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which would require the installation of a reinforcing plate on Stringer 14 at Frame 25. This proposal is prompted by fatigue testing by the manufacturer which has identified fatigue damage in the landing gear bay area in line with Frame 25 and Stringer 15. This condition, if not corrected, could result in collapse of the main landing gear.

DATES: Comments must be received no later than March 21, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-293-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

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

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

concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–293–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. Results of fatigue testing by the manufacturer have identified fatigue damage in the landing gear bay area in line with Frame 25 and Stringer 15. This condition, if not corrected, could result in collapse of the main landing gear.

Aerospatiale has issued Service Bulletin ATR42–53–0043, Revision 3, dated October 30, 1990, which describes procedures to install a reinforcing plate on Stringer 14 at Frame 25. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90–163–031(B) addressing this subject.

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

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the installation of a reinforcing plate on Stringer 14 at Frame 25 in accordance with the service bulletin previously described.

It is estimated that 56 airplanes of U.S. registry would be affected by this AD, that it would take approximately 80 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied by the manufacturer to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $179,200.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Aerospatiale: Applies to Model ATR42–300 and ATR42–320 series airplanes, Serial Numbers 3 through 151, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear, accomplish the following:

A. Prior to the accumulation of 10,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, install a reinforcing plate on Stringer 14 at Frame 25, in accordance with Aerospatiale Service Bulletin ATR42–53–0043, Revision 3, dated October 30, 1990.

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

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on January 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–2397 Filed 1–31–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–287–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 (MD–80) Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, which currently requires inspection of passenger service unit (PSU) oxygen doors for proper seating, and readjustment, if necessary. This action would require installation of door stops as terminating action for the required repetitive inspections. This proposal is prompted by reports that PSU oxygen doors have been pushed up past the door seal, which has caused the door to jam. This condition, if not corrected, could result in passenger oxygen not being readily available for use in the event of a cabin decompression.

DATES: Comments must be received no later than March 21, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–287–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Douglas Aircraft Company, Post

Office Box 1771, Long Beach, California 90801, Attn: Business Unit Manager, Technical Publications, C1–HCW (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5355.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–287–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On October 10, 1990, the FAA issued AD 90–22–05, Amendment 39–6780 (55 FR 42358, October 19, 1990), to require inspection for proper closure of PSU oxygen doors. That action was prompted by reports that PSU oxygen doors have been pushed up past the door seal, which has caused the door to jam. This condition, if not corrected, could result in passenger oxygen not being readily available for use in the event of a cabin decompression.

The FAA issued AD 90–22–05 as an Immediate Adopted Rule, and noted that it was considered interim action. That AD contained a provision for an optional modification which, if installed, would constitute terminating action for the required repetitive inspections. The FAA has determined that installation of that modification must be required in order to assure the airworthiness of the affected airplanes.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A25–315, Revision 1, dated August 24, 1990, which describes procedures for inspection for proper seating of the PSU oxygen door, and readjustment, if necessary. This service bulletin also describes procedures for modification of the PSU panel door frame to add two door stops; this modification will ensure that the PSU oxygen doors drop open freely in service and, once installed, will eliminate the need for repetitive inspections for jammed PSU oxygen doors.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 90–22–05 with a new airworthiness directive that would require modification of the PSU oxygen door frame by adding two door stops, in accordance with the service bulletin previously described.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the PSU to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

There are approximately 732 Model DC–9–80 (MD–80) series and MD–88 airplanes of the affected design in the worldwide fleet. It is estimated that 374 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts to accomplish this modification is approximately $10 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $452,540.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 90–22–05, Amendment 39–6780 (55 FR 42358, October 19, 1990), with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–9–80 (MD–80) series and Model MD–88 airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent passenger service unit (PSU) oxygen doors from being jammed closed, accomplish the following:

A. Within 45 days after November 5, 1990 (the effective date of Amendment 39–6780, AD 90–22–05), and thereafter at intervals not to exceed 45 days, inspect all PSU oxygen doors for proper closure in accordance with McDonnell Douglas Alert Service Bulletin A25–315, Revision 1, dated August 24, 1990.

B. Any jammed PSU oxygen doors found during the inspection required by paragraph A. of this AD must be readjusted in accordance with Phase I of paragraph 2 of the

Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A25–315, Revision 1, dated August 24, 1990.

C. Within 12 months after the effective date of this AD install PSU oxygen door steps in accordance with Phase II of paragraph 2, Accomplishment Instructions, of McDonnell Douglas Alert Service Bulletin A25–315, Revision 1, dated August 24, 1990. Such installation constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

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

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognized FAA principal Inspector (PI). The PI will the forward comments or concurrence to the Los Angeles ACO.

Note: Previously granted approval for alternate means of compliance to AD 90–22–5 also constitutes approval for this AD.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, Post Office Box 1771, Long Beach, California 90801, Attn: Business Unit Manager, Technical Publications, C1–HCW (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on January 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–2398 Filed 1–31–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–288–AD]

Airworthiness Directives; McDonnell Douglas Models DC–9–80 (MD–80) Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to McDonnell Douglas Models DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, which currently requires inspection of the four bolts connecting the flight controls elevator variable load feel torque tube to the elevator variable load feel mechanism, and correction of all discrepancies. This action would require removal of the bolts and self-locking nuts and installation of the bolts with castellated nuts as terminating action for the repetitive inspection requirements of that AD. This proposal is prompted by reports of loss of load feel in the elevator control system due to missing or loose bolts. This condition, if not corrected, could result in degraded flight handling qualities of the airplane.

DATES: Comments must be received no later than March 21, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–288–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Services, Mail Code 73–30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Walter S. Eierman, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5336.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–288–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On September 10, 1990, the FAA issued AD 90–20–09, Amendment 39–6746 (55 FR 38543, September 19, 1990), to require inspection of the four bolts connecting the flight controls elevator variable load feel torque tube to the elevator variable load feel mechanism, and correction of all discrepancies. That action was prompted by reports of loss of load feel in the elevator control system due to missing or loose bolts. This condition, if not corrected, could result in degraded flight handling qualities of the airplane.

The FAA issued AD 90–20–09 as an Immediate Adopted Rule, and noted that it was considered interim action. That AD contained a provision for an optional modification which, if installed, would constitute terminating action for the required repetitive inspections. The FAA has determined that installation of that modification must be required in order to assure the airworthiness of the affected airplanes.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A27–313, dated August 3, 1990, which describes procedures for inspection and modification of the elevator variable load feel mechanism. This modification requires replacement of three bolts using self-locking nuts with three castellated nuts/bolts and requires replacement of the fourth bolt, without a locking feature, with a drilled head bolt secured by lockwire. This modification will ensure that the elevator load feel system bolts will not become loose in service and, once installed, will eliminate the need for repetitive inspections for loose or missing nuts and bolts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 90–20–09 with a new airworthiness directive that would require modification, in accordance with the service bulletin previously described.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airplane flight controls system to

remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

There are approximately 732 Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 374 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts to accomplish this modification is estimated to be less than $50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $93,500.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 90-20-09, Amendment 39-6746 (55 FR 38543, September 19, 1990), with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent degradation of airplane flight handling qualities, accomplish the following:

A. Within 14 days after October 5, 1990 (the effective date of Amendment 39-6746, AD 90-20-09), and thereafter at intervals not to exceed 60 days, inspect the four bolts of the flight controls which attach the elevator variable load feel torque tube to the elevator variable load feel mechanism for loose or missing bolts and nuts, in accordance with Phase 1 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27-313, dated August 3, 1990.

B. Any discrepancies found during the inspections required by paragraph A. of this AD must be corrected prior to further flight, in accordance with Phase 1 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27-313, dated August 3, 1990.

C. Within 6 months after the effective date of this AD, modify the flight controls elevator variable load feel torque tube attachment to the elevator variable load feel mechanism by replacing the three self-locking bolts/nuts and one non-locking bolt with three castellated nut/bolts and one bolt with a drilled head for safety wire, in accordance with Phase 2 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27-313, dated August 3, 1990. Such installation constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Services, Mail Code 73-30. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on January 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-2399 Filed 1-31-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend its regulations by revising the definition of "detoxification" to bring it into conformity with the current statutory definition for this term found under the Controlled Substances Act (21 U.S.C. 801 et seq.) The Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984 (Pub. L. 98-509) revised the definition of "detoxification treatment" as it applies to the treatment of heroin addiction. The amendment extends from 21 days to 180 days the maximum period a patient may participate in a detoxification program.

DATE: Written comments and objections must be received on or before April 2, 1991.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Deputy Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7297.

SUPPLEMENTARY INFORMATION: The proposed rule would amend the regulations that accompany the Controlled Substances Act (21 U.S.C. 801 et seq.), which was revised by the Alcohol Abuse, Drug Abuse, and Mental

Health Amendments of 1984. The proposed rule provides standards for long-term detoxification as mandated by Pub. L. 98–509, which revised the statutory definition for detoxification treatment from 21 days to 180 days. The revision permits short-term detoxification for 30 days and long-term detoxification for up to 180 days. In a **Federal Register** notice published on March 2, 1989 (54 FR 8954), the Food and Drug Administration amended its definition to bring it into conformity with the new statutory definition. The DEA intends to do the same with this proposed rule.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, this proposed rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C., et seq.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

List of Subjects in 21 CFR part 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security Measures.

For reasons set out above, it is proposed that 21 CFR part 1301 be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.02 is proposed to be amended by revising paragraph (e) as follows.

§ 1301.02 Definitions.

* * * * *

(e) The term *detoxification treatment* means the dispensing, for a period of time as specified below, of a narcotic drug or narcotic drugs in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period of time. There are two types of detoxification treatments: Short-term detoxification treatment and long-term detoxification treatment.

(1) *Short-term detoxification treatment* is for a period not in excess of 30 days.

(2) *Long-term detoxification treatment* is for a period more than 30 days but not in excess of 180 days.

* * * * *

Dated: December 4, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–2264 Filed 1–31–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–147–87]

RIN 1545–AL23

Qualified Separate Lines of Business

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under sections 414(r), 410(b)(5), and 401(a)(26)(G) of the Internal Revenue Code (Code) concerning qualified retirement plans maintained by an employer. The proposed regulations provide the exclusive rules for determining whether an employer operates qualified separate lines of business under section 414(r) for purposes of applying the minimum coverage requirements of section 410(b) and the minimum participation requirements of section 401(a)(26). This document also contains related proposed amendments to previously proposed regulations under sections 410(b) and 401(a)(26). Conforming amendments to the temporary regulations previously issued under section 414(q) are being promulgated in conjunction with these proposed regulations.

These proposed regulations reflect the enactment of section 414(r) by the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085 (TRA '86). The proposed regulations will provide the public with guidance necessary to comply with the law and will affect sponsors of and participants in tax-qualified retirement plans and certain other employee benefit plans.

DATES: Written comments and requests to appear at a public hearing scheduled for Thursday, May 16, 1991, at 10 a.m., and continued, if necessary, on Friday, May 17, 1991, must be received by April 2, 1991. Outlines of oral comments must be received by May 2, 1991. See notice of hearing published elsewhere in this **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (E–147–87), room 4429, Washington, DC 20224. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Thomas G. Schendt or Rhonda G. Migdail, at 202–633–0849 (not a toll-free number). Concerning the hearing, Robert Boyer, Regulations Unit, at 202–566–3935 (not a toll free number).

SUPPLEMENTARY INFORMATION:.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, attn: IRS Reports Clearance Officer T: FP, Washington, DC 20224.

The collections of information in this regulation are in §§ 1.414(r)–4 and 1.414(r)–6. This information is required by the Internal Revenue Service in order for taxpayers to provide notice to the Service that the employer is treating itself as operating qualified separate lines of business, and, if the taxpayer cannot satisfy any of the administrative scrutiny safe harbors provided in §1.414(r)–5, to request a determination from the Commissioner that such separate lines of business satisfy administrative scrutiny. The information will be used to inform the Service that the employer is treating itself as

operating qualified separate lines of business and, if applicable, to verify that the separate lines of business being operated by the employer satisfy the requirement of administrative scrutiny. The likely respondents are business or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for collections of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

1. Notice requirement

Estimated total annual reporting burden: 2,363 hours.

The estimated average annual burden per respondent is 3.5 hours.

Estimated number of respondents: 675.

Estimated annual frequency of responses: Annually.

2. Individual determinations

Estimated total annual reporting burden: 544 hours.

Estimated average annual burden per respondent is 8 hours.

Estimated number of respondents: 68.

Estimated average annual frequency of responses: Once every three years.

Statutory Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 414(r), 410(b), and 401(a)(26) of the Code. These amendments are proposed to reflect the enactment of sections 414(r) and 410(b)(5) by sections 1112(a) and 1115(a) of TRA '86 (100 Stat. 2440, 2452), the enactment of section 401(a)(26)(G) by section 1011(h)(3) of TAMRA (102 Stat. 3464), and subsequent statutory changes made by section 3021(b)(2)(A) of TAMRA (102 Stat. 3632) and sections 203 and 204 of PDLIA'89 (103 Stat. 830, 832). These regulations are to be issued under the authority of sections 414(r), 410(b)(6)(G), 401(a)(26)(G), and 7805 of the Code.

Overview

Pursuant to section 414 (b) and (c), all employees of corporations that are members of the same controlled group of corporations and all employees of trades or businesses that are under common control are treated as employed by a single employer for purposes of the employee benefit provisions of the Code generally. Similarly, all employees of members of an affiliated service group are treated as employed by a single employer pursuant to section 414(m). Accordingly, all employees of a single employer, determined after the application of these provisions, are taken into account for purposes of applying the minimum coverage requirements of section 410(b) and the minimum participation requirements of section 401(a)(26) to a qualified retirement plan maintained by an employer. See also section 414 (n) and (o).

Section 410(b)(5) provides an exception to this general rule for purposes of section 410(b) if the employer operates qualified separate lines of business under section 414(r). If an employer is treated as operating qualified separate lines of business under section 414(r), section 410(b)(5) generally permits the employer to apply the minimum coverage requirements separately with respect to the employees of each qualified separate line of business. A similar exception is provided for purposes of applying the minimum participation requirements of section 401(a)(26) and the 55-percent average benefits test of section 129(d)(8).

Legislative Background

Sections 410(b)(5) and 414(r) were added to the Code by sections 1112(a) and 1115(a) of TRA '86. During legislative consideration of TRA '86, Congress expressed dissatisfaction with the existing minimum coverage tests, particularly with the lack of objective criteria under the nondiscriminatory classification test of section 410(b)(1)(B) as in effect at that time. In order to clarify the application of the nondiscriminatory classification test, Congress directed the Internal Revenue Service to establish criteria for determining whether a nondiscriminatory classification exists. Congress also proposed conditioning future use of the test on satisfaction by the employer of a new average benefit percentage test. Under the proposed statutory changes, an employer would be permitted to test a plan for minimum coverage under the nondiscriminatory classification test only if the average employer-provided contributions or benefits of all its nonhighly compensated employees equaled at least 70 percent of the average employer-provided contributions or benefits of all its highly compensated employees. The new average benefit percentage test would be based on the benefits and contributions of all employees of the employer, regardless of what plan they were covered under or, indeed, whether they were covered under any plan of the employer at all.

Thus, under section 410(b), as modified by TRA '86, every plan of the employer must satisfy, on an employer-wide basis, either the percentage test as provided in section 410(b)(1)(A), the ratio test as provided in section 410(b)(1)(B), or the average benefit percentage test as provided in section 410(b)(2). To satisfy the average benefit percentage test of section 410(b)(2), an employer must satisfy the nondiscriminatory classification test of section 410(b)(2)(A)(i) and the average benefit percentage test of section 410(b)(2)(A)(ii).

During legislative consideration of TRA '86, concern was expressed that where an employer operates separate lines of business that compete in fundamentally different markets, the plans maintained by the employer might not satisfy the average benefit percentage test of section 410(b)(2)(A)(ii), even though the plans could satisfy the nondiscriminatory classification test of section 410(b)(2)(A)(i). The argument was made that it would be inappropriate to require the employer to satisfy the average benefit percentage test on an employer-wide basis if the level of benefits varied significantly among the employer's separate lines of business for competitive market reasons. Satisfying the test could require the employer either to increase benefits provided to employees in one line of business substantially above the level offered by its competitors in that line of business, or to decrease benefits in its other lines of business substantially below the level offered by its competitors in those lines of business. In either event, the employer could be placed at a competitive disadvantage.

Congress addressed these concerns by establishing the qualified-separate-line-of-business rules of sections 410(b)(5) and 414(r). If the employer is treated as operating qualified separate lines of business under section 414(r), the employer need not satisfy the percentage test, the ratio test, or the average benefit percentage test (of section 410(b)(2)) on an employer-wide basis. Rather, the employer is permitted to test its plans for minimum coverage on a qualified-separate-line-of-business basis (i.e., separately with respect to the employees of each qualified separate line of business). See section 410(b)(5)(A); H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–523 (1986). However, even if an employer is treated as operating qualified separate lines of business under section 414(r), Congress still required every plan of the employer to satisfy the nondiscriminatory classification test on an employer-wide basis. See section 410(b)(5)(B).

Development of the Proposed Regulations

Because the determination of qualified separate lines of business is based on business concepts, as well as tax and employee benefit principles, the Treasury and the Service have directed their efforts to ensure that the proposed regulations incorporate business considerations. Thus, particular care was taken in developing the proposed regulations to explore and evaluate relevant business and economic factors. On October 13, 1987, the Service held a public meeting at which interested taxpayers and practitioners were invited to provide their views. Many comments and suggestions were received during and following this meeting. These comments and suggestions have been considered and addressed in the proposed regulations.

In addition, in accordance with the customary regulatory development process, Code sections that use similar concepts were examined. For example, a line of business concept is applied under sections 132, 355, and 469 (pertaining respectively to certain fringe benefits, distribution of stock and securities of a controlled corporation, and passive activity losses and credits). Analogous concepts developed by other federal agencies and professional organizations were also examined and discussed with appropriate representatives of those agencies and organizations. These agencies and professional organizations include the Census Bureau, the Securities and Exchange Commission, the Federal Trade Commission, and the Financial Accounting Standards Board.

Conceptual Approach of the Proposed Regulations

Several possible approaches to implementing the qualified-separate-line-of-business rules were considered by the Treasury and the Service. The principal candidates among these approaches differed in the manner in which they dealt with the first conceptual issue faced in applying section 414(r)—identification of the lines of business operated by an employer.

Under one approach, the determination of a separate line of business would have been made by direct reference to the economic markets in which the employer competes. This approach would have required sophisticated economic analysis and would have resulted in a high degree of uncertainty, since delineating the relevant economic markets within which competition exists in individual cases is a difficult issue to resolve—even among experts. This approach was not adopted because of its complexity and the uncertainty resulting from the difficulty inherent in its administration.

Under another approach, an employer's lines of business would have been determined by reference to one of the existing systems for classifying the activities of American businesses. The principal example of this type of system is the Standard Industrial Classification (SIC) code system, developed for broad-based statistical data-gathering purposes by the Census Bureau of the United States Department of Commerce. Although the Census Bureau and other federal agencies have developed other similar systems, the SIC code system was the primary candidate because it is the most widely used and hence the most familiar to both employers and the government.

The Treasury and the Service carefully reviewed the effect of using the SIC code system to determine the lines of business operated by employers. In addition, numerous comments on its use were received from interested employers and practitioners. Following this review, it became apparent that the SIC code system, though well suited to its intended purpose of gathering broad-based economic data, would produce arbitrary results when applied for the unintended purpose of determining the lines of business operated by individual employers for employee benefit purposes.

For example, the following property and services fall within the same two-digit SIC code pertaining to chemicals and allied products: fertilizers, perfumes, cosmetics, soaps, detergents, explosives, vaccines, antibiotics, adhesives, and sealants. The inclusion of disparate property and services in a single category would not necessarily be avoided by looking at the more refined levels of distinction in the SIC code system. For example, the following property and services fall within the same four-digit SIC code: air-conditioning units, beer dispensing equipment, dehumidifiers, heat pumps, snow making machinery, and soda fountains. Many of the comments received from employers confirmed that use of the SIC code system for purposes of determining lines of business would result in many cases in dividing business activities into lines of business that would not conform with actual business operations and practices. In addition, a classification system, such as the SIC code system, is frequently uneven in the degrees with which property and service distinctions are drawn in one industry when compared to those drawn in different industries. This unevenness has the effect of producing varying results among similarly situated employers merely because they operate in different industries. Accordingly, the possible use of a predetermined classification system, such as the SIC code system, for the fundamental purpose of determining the lines of business operated by employers was rejected.

The final approach considered, and the approach that has been adopted in these proposed regulations, allows the employer the flexibility to determine its own lines of business. This approach shifts the determination of an employer's lines of business away from essentially unanswerable questions—such as where one economic market ends and another begins, or whether one product or service is sufficiently differentiated from another product or service. Instead, the approach leaves the determination to the employer itself. The one constraint, which is intended to address cases of obvious abuse, is that the manner in which the employer designates its lines of business must be reasonable and must comport with its bona fide business operations. Subject to this contraint, the employer essentially is free to designate its lines of business in any manner it chooses.

The effect of this approach is to de-emphasize the first requirement under the statute—that the employer operate two or more lines of business—and to place the emphasis on the second requirement under the statute—that those lines of business be operated separately from one another. This latter requirement of separateness would have applied regardless of which approach the proposed regulations adopted to determine an employer's lines of business.

Placing the emphasis on separateness has a number of advantages. This approach focuses on the degree to which the employer's lines of business are organized and operated separately from one another. The legislative history indicates that the manner in which the employer organizes itself is of primary relevance, and that a separate line of business will be a separate self-sustaining unit. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–523 to –524 (1986). For example, the sharing of workforce, management, or assets, or the failure separately to account for profits or losses between, lines of business of the same employer generally indicate that the lines are interdependent and therefore not separate from one another. If an employer fails to treat itself as comprised of separate lines of business, it is not appropriate to allow its

activities to be treated as separate lines of business under section 414(r).

In addition, by focusing the inquiry on separateness, objective tests can be provided that describe the requirements for determining whether a line of business is operated separately. These objective tests provide certainty to the employer and the Service and permit the regulations to be applied in a uniform manner. Furthermore, the information required to apply these tests is available to the employer and subject to verification by the Service.

Finally, the language of the statute and the legislative history supports the approach. As noted, the legislative history emphasizes that the determination of whether a separate line of business exists depends upon whether the employer treats itself as comprised of separate lines of business. See, *e.g.*, H.R. Cong. Rep. No. 841, 99th Cong., 2d Sess. II–523 to –525 (1986).

Approach Taken in Drafting

The proposed regulations have been drafted with the objective of providing guidance that is clear and administrable. As indicated above, the regulations base the fundamental determination of separateness on objective criteria. In addition, the Treasury and the Service have established a number of safe harbors under the proposed regulations and have provided alternative methods for satisfying certain other statutory requirements.

For example, the proposed regulations establish three alternative safe harbors for purposes of section 414(r)(2)(C) of the Code in addition to the statutory safe harbor already provided for that purpose under section 414(r)(3) of the Code. Similarly, the proposed regulations provide the employer with alternative methods of allocating employees whose services are shared among two or more qualified separate lines of business. Finally, to facilitate stability from year to year, the proposed regulations permit the employer to apply an averaging rule to determine whether it satisfies most key requirements under the statute and the proposed regulations.

Overview of the Proposed Regulations

Section 414(r) generally provides that an employer is treated as operating qualified separate lines of business during any year if the employer operates separate lines of business for bona fide business reasons and satisfies certain other conditions under the Code. The rules in the proposed regulations are the exclusive rules for determining whether an employer is treated as operating qualified separate lines of business.

The proposed regulations require that a qualified separate line of business satisfy the requirements in § 1.414(r)–1 in order to satisfy section 414(r). An employer is treated as operating qualified separate lines of business only if: (1) The employer identifies all the property and services it provides to customers and designates the property and services provided by each of its lines of business; (2) each line of business is organized and operated separately from the remainder of the employer and is therefore a separate line of business; and (3) each separate line of business meets the additional statutory requirements and thus constitutes a qualified separate line of business. The proposed regulations provide a flowchart illustrating the application of these requirements. See § 1.414(r)–0(c).

An employer is treated as operating qualified separate lines of business only if all the property and services provided by the employer to its customers are provided exclusively by qualified separate lines of business. Thus, if an employer is treated as operating qualified separate lines of business, no portion of the employer may remain that is not included in a qualified separate line of business.

I. Line of Business

Initially, in order to demonstrate that it maintains qualified separate lines of business, an employer must determine its lines of business. A line of business is a portion of an employer that is identified by the property or services it provides to customers of the employer. Section 1.414(r)–2 of the proposed regulations provides rules for determining the employer's lines of business.

In determining its lines of business, the employer first identifies all the property and services it provides to its customers and then designates the property and services provided by each of its lines of business. Thus, an employer may use its discretion to determine its lines of business in a manner that conforms to its business operations and that also satisfies the remaining requirements of section 414(r).

Generally, an employer has the flexibility to designate more than one type of property or service provided to customers as a single line of business. For example, it may be necessary or appropriate for an employer to designate dissimilar property or services as a single line of business in order to satisfy the separateness criteria contained in § 1.414(r)–3 or the requirement of administrative scrutiny in § 1.414(r)–5, or to permit use of the dominant line of business method for allocating employees in § 1.414(r)–7(c)(2). Similarly, where appropriate, the employer has the flexibility to separate related types or the same type of property or services into two or more lines of business. This approach accommodates the diverse organizational and operational characteristics of employers, and provides each employer with the flexibility to determine the lines of business it operates for purposes of section 414(r). The employer, howver, must be consistent in applying its designations for purposes of all requirements of the proposed regulations.

II. Separate Line of Business

In order to demonstrate that it maintains qualified separate lines of business, an employer must next show that its lines of business are organized and operated separately from one another, and therefore are separate lines of business. Whether a line of business is a separate line of business is determined by satisfying each of the objective criteria provided in § 1.414(r)–3. These objective criteria were developed from a combination of sources, including comments received from interested employers and practitioners, and criteria developed by other agencies and professional organizations for delineating business segments. These sources consistently identified the same, or similar, criteria as being indicative of separateness. The focus of these criteria is on the degree of organizational and operational independence of each line of business. A line of business that is not organized and operated in accordance with these criteria would seldom be truly economically separate and self-sustaining as contemplated by Congress.

a. Separate Organizational Unit

Each line of business must be formally organized by the employer as a separate organizational unit (or units) within the employer, i.e., a corporation, a partnership, a division, or other similar unit. The absence of discrete organization is generally indicative of a lack of independence from the remainder of the employer's operation.

b. Separate Financial Accountability

Each line of business must be a separate profit center (or centers) within the employer. For this purpose, the employer's books and records must indicate separate revenue and expense information for each profit center comprising the line of business. This

criteria indicates separate financial accountability by the line of business. The failure of the employer separately to account for profits and losses indicates that the employer does not consider the line of business to be separate.

c. Separate Workforce

Each line of business must have its own separate workforce. Satisfaction of this test will depend upon the degree to which each line shares personnel with other portions of the employer. A line of business has its own separate workforce if at least 90 percent of the employees of the employer who provide any services to the line of business provide their services exclusively to the line of business. This criterion is also consistent with the underlying principle of section 414(r), which permits an employer to operate in different businesses and to provide employees in each of those businesses with competitive compensation and benefit packages. Absence of a separate workforce means that a line of business cannot be operated separately from other portions of the employer.

d. Separate Management

Each line of business must have its own separate management. The proposed regulations provide that a line of business has its own separate management only if at least 90 percent of the top-paid workforce who provide services to the line of business provide their services exclusively to the line of business. The top-paid workforce is the top 10 percent, by compensation, of all employees who provide services to the line of business. The top-paid workforce may include employees who are not highly compensated employees. Because of the inherent difficulty in attempting to distinguish managers from other personnel on an objective basis, management is defined as the top-paid workforce. Without its own separate management, a line of business would not be a separate, self-sustaining economic unit within the overall employer.

e. Separate Tangible Assets

Each line of business must have its own separate tangible assets. Separate tangible assets exist if a least 90 percent of the assets used by the line of business are used exclusively by the line of business. Share use of tangible assets suggests a lack of economic independence and self-sufficiency.

The Treasury and the Service place a high priority on the development of the objective criteria for testing separateness. To some extent, the precise crafting of these criteria depends on empirical data that was not generally available during the drafting process and that the Treasury and the Service expect will be provided during the comment period. Therefore, to assist the Treasury and the Service in finalizing these proposed regulations, comments on the objective criteria are solicited, particularly regarding how the separate management test would be applied to specific employers, or how the separate tangible assets test would apply in situations where tangible assets are not a material income-producing factor.

III. Qualified Separate Line of Business

The third requirement an employer must satisfy to demonstrate that it maintains qualified separate lines of business is that it meets the three statutory requirements of section 414(r)(2). To satisfy these requirements, (1) each separate line of business must have at least 50 employees; (2) the employer must notify the Secretary that it treats itself as operating qualified separate lines of business; and (3) the line must satisfy administrative scrutiny.

Section 1.414(r)–4 of the proposed regulations provides rules for determining whether a separate line of business satisfies the 50-employee requirement and the notice requirement. A separate line of business satisfies administrative scrutiny if it satisfies either the statutory safe harbor, or one of the three alternative administrative safe harbors, or if the employer requests and receives an individual determination from the Commissioner. Section 1.414(r)–5 provides rules for determining whether a separate line of business satisfies either the statutory safe harbor or one of the three alternative administrative safe harbors. Section 1.414(r)–6 of the proposed regulations provides rules for requesting an individual determination from the Commissioner as to whether a separate line of business satisfies administrative scrutiny.

a. Fifty-Employee Requirement

The 50-employee requirement of section 414(r)(2)(A) must be satisfied on each day of the testing year. In satisfying this requirement, the employer is to take into account all employees who provide services exclusively to the separate line of business, including employees who are covered under a collective bargaining agreement. However, in accordance with section 414(r)(2)(A), employees are not taken into account who are excluded when determining the number of employees in the top-paid group for purposes of section 414(q), subject to certain modifications. See § 1.44(q)–1T, Q&A–9(g) (as amended by the temporary regulation published contemporaneously with this notice of proposed rulemaking). For example, employees who normally work less than 17½ hours per week, or who normally do not work more than six months a year, are not taken into account.

b. Notice Requirement

An employer satisfies the notice requirement of section 414(r)(2)(B) only if it notifies the Secretary that the employer treats itself as operating qualified separate lines of business under section 414(r). This notice must be made in the time and manner prescribed in these proposed regulations and in revenue procedures, notices and other guidance of general applicability.

The notice required by section 414(r) specifying each of the employer's qualified separate lines of business if given with respect to all the qualified separate lines of business of the employer. The notice is given with respect to all plans of that employer for plan years beginning in the testing year. Thus, the separate application of the requirements of section 410(b) or 401(a)(26) with respect to the employees of each separate line of business must be consistent for all plans of the employer with plan years beginning in the same testing year of the employer.

The present intent is to incorporate the required notice into the procedure for requesting a determination letter with respect to the qualified status of a plan of the employer (Form 5300). For an employer that does not wish to apply for a determination letter with respect to the qualified status of its plans, it is contemplated that notice will be given on Form 5310. In addition, once notice has been given for one testing year, it is anticipated that the notice will apply with respect to subsequent testing years unless the employer takes timely action to provide a new notice.

Notice 90–57, 1990–38 I.R.B. 28 (September 17, 1990) provided that notice under section 414(r)(2)(B) would not be required until further guidance is issued. It is anticipated that when these proposed regulations are made final further guidance will be issued describing these notice procedures.

c. Administrative Scrutiny

To satisfy the administrative scrutiny requirement of section 414(r)(2)(C), a separate line of business must meet either the statutory safe harbor test of § 1.414(r)–5(b) or one of the administrative safe harbors in § 1.414(r)–5 (c) through (e). A separate line of business that does not satisfy any

of these safe harbors nonetheless satisfies the requirement of administrative scrutiny if the employer requests and receives from the Commissioner, pursuant to § 1.414(r)–6, an individual determination that the separate line of business satisfies administrative scrutiny. Each separate line of business of an employer must satisfy the administrative scrutiny requirement, but need not satisfy this requirement in the same manner as the employer's other separate lines of business.

(i) *Statutory safe harbor.* A qualified separate line of business satisfies the safe harbor of section 414(r)(3) if the percentage of highly compensated employees of the separate line of business falls within a range that is at least 50 percent but no more than 200 percent of the highly compensated employee percentage of the employer as a whole. Section 1.414(r)–5(b) provides the requirements for the application of this safe harbor. This safe harbor is based on the premise that it is unlikely that the relevant employee benefits provided by the employer will unduly disadvantage the nonhighly compensated employees, or conversely, unduly advantage the highly compensated employees, if the concentration of highly compensated employees relative to nonhighly compensated employees in a line of business does not significantly differ from the concentration of highly compensated employees relative to nonhighly compensated employees on an employer-wide basis, i.e., within the 50-percent to 200-percent statutory range.

Additionally, under a special rule, if at least 10 percent of all highly compensated employees of the employer perform services exclusively for a particular separate line of business, that separate line of business will be deemed to satisfy the 50-percent requirement of the statutory safe harbor. However, a separate line of business that satisfies this special 10-percent rule still must satisfy the 200-percent requirement of the statutory safe harbor.

(ii) *Administrative safe harbors.* The legislative history of section 414(r) provides that the Secretary is to establish guidelines pursuant to section 414(r)(2)(C) of the Code identifying those circumstances that warrant additional scrutiny, e.g., if benefits provided to employees in a particular line of business are significantly better or worse than benefits provided in other lines, or if benefits provided to highly compensated employees are significantly better than benefits provided to nonhighly compensated employees. Where it is determined that special scrutiny is needed, the separate line of business will only satisfy administrative scrutiny if the employer receives an individual determination to this effect from the Commissioner.

Section 1.414(r)–5 (c) through (e) of the proposed regulations satisfies the statutory requirement of providing guidelines through the development of three administrative safe harbors. In keeping with the Congressional intent to permit the application of the minimum coverage and minimum participation standards on a qualified-separate-line-of-business basis, these administrative safe harbors delineate situations the Service has determined pass administrative scrutiny without the need for an individual determination.

(A) Industry category safe harbor. One administrative safe harbor is the industry category safe harbor. This safe harbor is satisfied only if the separate line of business is in a different industry or industries from every other separate line of business of the employer. The proposed regulations provide that the Commissioner will prescribe these industry categories by revenue procedure or other guidance of general applicability.

A proposed revenue procedure is contained in an appendix to this notice of proposed rulemaking which provides a list of industry categories for this purpose. The 12 industry categories were developed by the Treasury and the Service based on the SIC code system at the two-digit level, with modifications. Certain industry categories were eliminated because they were determined to be inappropriate for this purpose. For example, Business Services (two-digit SIC code 73) includes paralegal services while (two-digit SIC code 81) includes lawyers. Other industry categories were combined in an attempt to minimize overlap in the SIC codes of a particular property or service. The industry categories are to be provided through the revenue procedure in order to facilitate future modifications based on the experience of taxpayers and the Service with the categories.

The industry category safe harbor is based on the premise that there is no need to examine the relative level of benefits that are provided by a separate line of business that operates in an industry that is sufficiently dissimilar from the remainder of the employer's operations. Accordingly, although the use of the SIC code system was rejected for purposes of determining an employer's lines of business, use of certain SIC codes as the basis for an administrative safe harbor for satisfying administrative scrutiny is consistent with the legislative intent that differences in products or services are relevant considerations in validating whether an employer operates qualified separate lines of business. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–523 to –524 (1986).

(B) FAS 14 safe harbor. The second administrative safe harbor, the reportable business segments safe harbor, requires that a separate line of business be reported as one or more reportable industry segments in accordance with the Statement of Financial Accounting Standards No. 14, Financial Reporting for Segments of a Business Enterprise ("FAS 14"). This safe harbor is satisfied if the employer reports a separate line of business as a reportable industry segment on its annual report required to be filed in conformity with Form 10–K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. The premise underlying this safe harbor is similar to that underlying the industry category safe harbor because a separate line of business reported as a reportable industry segment under FAS 14 is likely to represent a significant portion of the employer's business and also is likely to reflect the employer's actual business operations.

(C) Minimum or maximum benefits safe harbor. The final administrative safe harbor is the minimum or maximum benefits safe harbor. This safe harbor is an extension of, and builds upon, the underlying rationale of the statutory safe harbor under section 414(r)(3). Much like the statutory safe harbor, this administrative safe harbor ensures that benefits provided by an employer in a separate line of business do not unduly disadvantage nonhighly compensated employees or unduly advantage highly compensated employees, regardless of the relative concentration of highly compensated employees in the separate line of business, and regardless of the relative similarity or dissimilarity of the separate line of business in business and accounting terms.

If the highly compensated employee percentage ratio of the separate line of business is less than 50 percent, then, under the minimum benefit requirement, at least 80 percent of the nonhighly compensated employees in that separate line of business must benefit under a plan, and each of these employees must receive at least a specified minimum benefit. For defined contribution plans, the minimum benefit is an allocation rate of at least three percent of an employee's compensation for the year.

For defined benefit plans, the minimum benefit is the employer-derived accrued benefit that would result from calculating a single life annuity at a normal accrual rate equal to 0.75 percent of compensation and a normal retirement age of 65. Compensation is generally determined on the basis of a five-year consecutive period during which the employee has the highest aggregate compensation. Because the annual accrual method is used to calculate the normal accrual rate, an employee is required to receive an annual accrual that takes into account two components. First, the employee receives an accrual of at least 0.75 percent of the current year's high-five compensation. Second, the employee receives an additional accrual based on the employee's prior years of service and the increase between the current and prior year's high-five compensation.

If the highly compensated employee percentage ratio of the separate line of business is more than 200 percent, then, under the maximum benefit requirements, each highly compensated employee who benefits under a plan in that separate line of business must receive no more than a specified maximum benefit. For defined contribution plans, the maximum benefit is an allocation rate of no more than 10 percent of an employee's compensation for the year. For defined benefit plans, the maximum benefit is calculated in the same manner as the minimum benefit except that it equals the employer-derived accrued benefit that would result from calculating a single life annuity at a normal accrual rate equal to 2.5 percent of compensation. The 2.5 percent is reduced for certain types of subsidies.

The employer may provide for the minimum benefit in a combination of defined benefit and defined contribution plans as long as the combined percentage of the minimum benefit provided to the employee in each plan equals at least 100 percent. Similarly, under the maximum benefit rules, if benefits are provided through a combination of defined benefit and defined contribution plans, the combined percentage of the benefits provided may not exceed 100 percent of the maximum.

Further, the minimum or maximum benefit limits require that a plan provide for specific benefit formulas that can be satisfied on a plan design basis. An employee's accrual or allocation rate under a plan, however, must be determined without regard to any plan provision the effect of which is to make the operation of the minimum or maximum benefits formula contingent on the failure of the separate line of business otherwise to satisfy the requirement of administrative scrutiny.

The Treasury and the Service welcome comments on the administrative safe harbors in the proposed regulations. More specifically, the Treasury and the Service solicit comments on either modifications to those administrative safe harbors developed in the proposed regulations or suggestions for additional administrative safe harbors. In addition, the Treasury and the Service welcome comments and any suggested modifications or additions to the industry categories set forth in the proposed revenue procedure.

(D) Individual determinations. A separate line of business that does not satisfy either the statutory safe harbor or any of the administrative safe harbors nonetheless satisfies the requirement of administrative scrutiny if the employer requests and receives from the Service an individual determination that the separate line of business satisfies administrative scrutiny. Section 1.414(r)–6 of the proposed regulations provides the rules and conditions that apply to an employer's request for that determination.

This determination process is limited to those situations in which the separate line of business does not satisfy any of the administrative scrutiny safe harbors, but provides benefits that are within a specified range of the minimum or maximum benefit safe harbor. The Service has determined that where the separate line of business does not satisfy any of the safe harbors, and the benefits provided fall outside this specified range, the separate line of business will not satisfy administrative scrutiny and, therefore, an employer may not request a determination that the separate line of business satisfies administrative scrutiny.

This determination process is limited to the determination of whether a separate line of business satisfies administrative scrutiny. It is not available to determine whether other requirements of these proposed regulations are satisfied. For example, the Service will not issue determination letters or rulings with respect to whether a designated line of business is separate, or whether a separate line of business satisfies administrative scrutiny under the statutory safe harbor or one of the alternative administrative safe harbors.

IV. Separate Operating Units

Section 414(r)(7) provides that the term "separate line of business" includes an operating unit in a separate geographic area separately operated for bona fide business reasons. As contemplated in the legislative history, the distinguishing characteristic between a line of business and an operating unit is that a line of business provides different property or services from other portions of the employer while an operating unit provides the same property or services as another portion of the employer but only if it operates in a separate geographic area. In all other respects, the statute and legislative history apply the same requirements to an operating unit as apply to a line of business (e.g., operation for bona fide business reasons, separateness, 50 employees, notice, and administrative scrutiny). See section 414(r)(7) (1), (2), and (7); H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–523 to –526 (1986).

Because the proposed regulations permit the employer to designate two or more lines of business that provide the same property or services, the concept of an operating unit has been subsumed within the concept of a line of business. Consistent with the statute and legislative history, the proposed regulations require an operating unit to satisfy the same requirements applicable to a line of business. Thus, an employer may designate an operating unit as a line of business and may treat it as a qualified separate line of business if it satisfies the requirements provided in the proposed regulations.

V. Determination of Employees of A Qualified Separate Line of Business

For purposes of testing plans benefiting employees of a qualified separate line of business under sections 410(b), 401(a)(4), and 401(a)(26), and for purposes of applying the statutory safe harbor and the minimum or maximum benefits safe harbor, an employer must determine which employees are treated as employees of each qualified separate line of business. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–524 (1986).

The proposed regulations provide the procedures for assigning employees among an employer's qualified separate lines of business. Consistent with the statute and the legislative history, the employees of a qualified separate line of business consist of all employees who provide substantial services to the qualified separate line of business, and all other employees who are allocated in accordance with the proposed regulations to the qualified separate line of business. For purposes of these proposed regulations, an employee provides substantial services to a

qualified separate line of business if at least 75 percent of the employee's services are provided to the qualified separate line of business, or if at least 50 percent of the employee's services are provided to the qualified separate line of business and the employee's regular place of work is at a facility that is used exclusively by the qualified separate line of business. The determination of whether the 75-percent and 50-percent thresholds are satisfied must be made in a manner that is reasonably reliable and uniform with respect to all employees.

The proposed regulations refer to employees who do not provide substantial services to any qualified separate line of business of the employer as "residual shared employees." All residual shared employees must be assigned under the same allocation method, and each residual shared employee must be allocated to only one qualified separate line of business.

a. Dominant Line of Business Method of Allocation

Under the first method for allocating residual shared employees, an employer is permitted to allocate all its residual shared employees to its dominant line of business. For this purpose, the dominant line of business is determined based on the number of substantial-service employees assigned to the qualified separate line of business. Generally, a dominant line of business is that qualified separate line of business that employs at least 55 percent of all substantial-service employees who provide their services to any qualified separate line of business. Under an alternative definition of dominant line, the 55-percent threshold is reduced to 45 percent if each qualified separate line of business of the employer satisfies the administrative scrutiny requirement under either the statutory safe harbor or the minimum or maximum benefits safe harbor.

b. Pro-rata Method of Allocation

The second method permits the employer to allocate residual shared employees among its qualified separate lines of business on a pro-rata basis. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–524 (1986). Under this method, all residual shared employees are allocated among the employer's qualified separate lines of business in proportion to the percentage of all substantial-service employees who provide their services to each qualified separate line of business.

c. HCE Percentage Ratio Method of Allocation

The third method of allocation permits the employer to allocate residual shared employees among its qualified separate lines of business in a manner consistent with the statutory safe harbor for satisfying administrative scrutiny. Under this method, a highly compensated residual shared employee must first be allocated to the qualified separate line of business with the lowest highly compensated employee percentage ratio less than 50 percent. Similarly, a nonhighly compensated residual shared employee must first be allocated to the qualified separate line of business with the highest highly compensated employee percentage ratio greater than 200 percent. This procedure is continued until all qualified separate lines of business of the employer have a highly compensated employee percentage ratio between 50 and 200 percent or, if sooner, until no residual shared employees remain to be allocated. Any remaining residual shared employees may be allocated to any qualified separate line of business as long as their allocation does not cause the qualified separate line of business to violate the statutory safe harbor. This method of allocation facilitates satisfaction of the statutory safe harbor through appropriate allocation of residual shared employees.

The legislative history provides that the assignment of employees is to be made in accordance with the performance of services by those employees. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–524 (1986). Accordingly, although the employer is permitted to determine the residual shared employees to be allocated to each qualified separate line of business under the last two methods described above, when possible, the employer must allocate a residual shared employee to a qualified separate line of business to which the residual shared employee provides at least some services.

The Treasury and the Service are aware of the complexity inherent in the process of assigning employees among an employer's qualified separate lines of business in a manner consistent with the statute and legislative history. The proposed regulations have been drafted to minimize this complexity to the extent possible. Comments are welcomed on possible modifications to the assignment and allocation rules in the proposed regulations as well as suggestions for additional alternatives.

In addition, because the pro-rata and HCE percentage ratio methods of allocation described above provide employers with flexibility to determine which individual residual shared employees are allocated to each qualified separate line of business under those methods, some employers may feel compelled to analyze the various permutations for allocating individual residual shared employees among their qualified separate lines of business. For this reason, the Treasury and the Service have considered, and invite comment on, one possible alternative for handling the allocation of residual shared employees.

Under this approach, the entire group of residual shared employees would be taken into account with respect to each qualified separate line of an employer. For purposes of those tests that compare relative numbers of highly and nonhighly compensated employees (e.g., the ratio percentage test under section 410(b) or the statutory safe harbor under section 414(r)(3)), each residual shared employee would be taken into account with respect to each qualified separate line of business in proportion to the percentage of all substantial-service employees assigned to the qualified separate line of business under § 1.414(r)–7(b)(2)(i) (i.e., the same percentage used under the pro-rata allocation method provided in the proposed regulations).

For purposes of those tests that compare average contributions or benefits of highly and nonhighly compensated employees (e.g., the average benefit percentage test under section 410(b)(2)(A)(ii) or the safe harbor for age- and service-weighted defined contribution plans under § 1.401(a)(4)–2(b)(3)), the contributions or benefits of each residual shared employee would be taken into account with respect to each qualified separate line of business in proportion to the same percentage described in the preceding paragraph. For purposes of those tests that compare individual contributions or benefits of highly and nonhighly compensated employees (e.g., the general test for nondiscrimination in the amount of benefits under § 1.401(a)(4)–3(c) or the minimum or maximum benefits safe harbor under § 1.414(r)–5(e)), the full contributions or benefits of each residual shared employee would be taken into account with respect to each qualified separate line of business.

As contemplated, this approach would replace the pro-rata and HCE percentage ratio methods of allocation provided in the proposed regulations and thus would become the sole alternative to the dominant line of

business method of allocation described above. The advantage of this approach is that it does not require the employer to identify individual residual shared employees as being allocated to individual qualified separate lines of business. Furthermore, because this approach does not involve individual assignment of residual shared employees for testing purposes, the application of sections 410(b), 401(a)(4), and 401(a)(26) on a qualified-separate-line-of-business basis would be mathematically predetermined and thus would not compel the employer to analyze the various permutations for allocating individual residual shared employees among its qualified separate lines of business.

VI. Vertical Integration

For purposes of testing separateness under the proposed regulations, a line of business must take into account all employees whose services contribute to the preparation of property for sale to customers or the provision of services to customers by that line of business. Similarly, a line of business must take into account all tangible assets that contribute to the preparation of property for sale to customers or the provision of services to customers by that line of business. A line of business that is vertically integrated with any other line of business of the employer generally will not satisfy the separateness criteria because too many employees or tangible assets presumably will be shared between the vertically integrated lines of business.

Consistent with the legislative history of section 414(r), an optional rule is provided to assist an employer in satisfying the separateness criteria in certain limited circumstances where one line of business (the "upstream line of business") provides a given type of property or service to another line of business (the "downstream line of buisness"), i.e., where the two lines of business are vertically integrated with one another. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–523 (1986); § 1.414(r)–3(c)(5). Before applying this optional rule, two requirements must be satisfied. First, the number of units of the property or service provided to customers of the employer by the upstream line of business must equal at least 50 percent of the total number of units of the property or service provided by the upstream line of business to all persons (including customers of the employer, the downstream line of business, and all other lines of business of the employer). Second, the downstream line of business must either substantially modify, use, or consume the property or service provided by the upstream line of business, or provide the same property or service to customers of the employer at a different level in the chain of commercial distribution than the upstream line of business.

If the requirements of this optional rule are satisfied, the downstream line of business is treated as if the relevant property or service had been provided to it by a person other than the employer (rather than by the upstream line of business). Accordingly, that portion of an employee's services that contributes solely to the provision of the property or service from the upstream line of buisness to the downstream line of business is not considered under this optional rule to be provided to the downstream line of business. Similar treatment is provided for tangible assets. This treatment applies for purposes of the separate employee workforce, separate management, and separate tangible assets requirements of § 1.414(r)–3, as well as the 50-employee requirement of § 1.414(r)–4(b), and the determination of the employees of a qualified separate line of business under § 1.414(r)–7.

VII. Separate Application of Statutory Requirements

a. Section 410(b)

Section 410(b)(5)(A) provides that if an employer is treated as operating qualified separate lines of business under section 414(r), then the employer is permitted to apply the requirements of section 410(b) separately with respect to the employees of each qualified separate line of business. If the employer chooses to apply the requirements of section 410(b) in this manner, it must do so with respect to all its plans, all its employees, and all its qualified separate lines of business.

The preamble to the proposed regulations under section 410(b) specifically provides that those proposed regulations do not address the rules for determining whether an employer is treated as comprising two or more qualified separate lines of business for purposes of section 410(b). See 54 FR 21440 (May 18, 1989). These proposed regulations contain the rules for applying the requirements of section 410(b) to an employer's qualified separate lines of business. In addition, conforming amendments have been made to the proposed regulations under section 410(b).

Under section 410(b)(5), a plan satisfies the requirements of section 410(b) only if (1) the plan satisfies the reasonable classification test under section 410(b)(5)(B) on an employer-wide basis, and (2) the plan satisfies section 410(b) on a qualified-separate-line-of-business basis. Section 1.414(r)–8 of the proposed regulations applies these statutory requirements.

(i) *Employer-wide application.* Section 410(b)(5)(B) provides that a plan must benefit a classification of employees found by the Secretary to be nondiscriminatory on an employer-wide basis. A plan benefiting employees of a separate line of business satisifies this requirement only if the plan satisfies either the ratio percentage test of § 1.410(b)–2(b)(2) or the nondiscriminatory classification test of § 1.410(b)–4 (without regard to the average benefit percentage test of § 1.410(b)–5) on an employer-wide basis. For this purpose, the nonexcludable employees of all the other qualified separate lines of business are taken into account.

In addition, although the nondiscriminatory classification test is applied in the same manner as it would be under § 1.410(b)–4, in the case of a plan that falls between the safe and unsafe harbors, an additional circumstance to be taken into account for purposes of satisfying § 1.410(b)–4(c)(3) is that the employer has satisfied the qualified-separate-line-of-business requirements set forth in these proposed regulations. Except in unusual circumstances, this fact will normally be determinative.

(ii) *Qualified-separate-line-of-business application.* A plan satisfies section 410(b) on a qualified-separate-line-of-business basis only if the plan satisfies either the ratio percentage test of § 1.410(b)–2(b)(2) or the average benefit test of § 1.410(b)–2(b)(3) (including the nondiscriminatory classification test of § 1.410(b)–4 and the average benefit percentage test of § 1.410(b)–5). In testing a plan on a qualified-separate-line-of-business basis, the employees of all other qualified separate lines of business are excluded. See § 1.410(b)–6(g).

(iii) *Definition of "plan".* For purposes of satisfying sections 410(b) and 401(a)(4), the term "plan" means a plan as determined under § 1.410(b)–7. Therefore, pursuant to § 1.410(b)–7(c)(5), the portion of the plan that benefits employees of one qualified separate line of business is treated as a separate plan from the other portions of the same plan that benefit employees of other qualified separate lines of business.

(iv) *Coordination with section 401(a)(4).* In addition, the proposed regulations provide that if section 401(a)(4) requires a group of employees under the plan to satisfy section 410(b),

the group of employees must satisfy section 410(b) in the same manner described above as if they were the only employees covered under the plan. See §§ 1.414(r)–8(c), 1.401(a)(4)–4(b), and 1.401(a)(4)–9(d).

(v) *Contributions and benefits.* For purposes of testing the plans of a qualified separate line of business for a plan year, all contributions and benefits provided to an employee must be treated as provided by the qualified separate line of business to which the employee is assigned. The proposed regulations do not address situations where employees are transferred from one separate line of business of the employer to another, or where the employer's designation of its lines of business changes. The Treasury and the Service request comments on these issues.

b. Section 401(a)(26)

Section 401(a)(26)(G) provides that, with the consent of the Secretary, the employer may choose to apply section 401(a)(26) on a separate line of business basis. If the employer chooses to apply the requirements of section 401(a)(26) in this manner, it must do so with respect to all its plans, all its employees, and all its qualified separate lines of business. The proposed regulations further provide that if an employer chooses to apply section 401(a)(26) on a qualified-separate-line-of-business basis, the consent of the Secretary will be granted only on the condition that the employer also applies section 410(b) on a qualified-separate-line-of-business basis. By way of contrast, if the employer chooses to apply section 410(b) on a qualified-separate-line-of-business basis, the employer need not apply section 401(a)(26) on a qualified-separate-line-of-business basis.

c. Section 129(d)(8)

The application of the separate line of business rules to section 129(d)(8) is reserved. Until guidance is issued relating to the application of section 414(r) for purposes of section 129(d)(8) of the Code, an employer shall be treated as operating qualified separate lines of business for purposes of section 129(d)(8) if it reasonably determines that it meets the requirements of section 414(r). See Public Debt Limit Increase Act, Public Law 101–140, § 204(b), 103 Stat. 830, 833 (1989). The Treasury and the Service welcome comments on the application of the separate line of business requirements set forth in the proposed regulation for purposes of section 129(d)(8).

d. Other Code Sections

Under no circumstances may the requirements of any section of the Code (other than those referred to above) be applied separately with respect to the employees of a qualified separate line of business unless the section specifically cross-references, or is specifically cross-referenced by, section 414(r). Thus, for example, the separate line of business rules do not apply (without limitation) to sections 79(d)(3), 105(h), 117(d)(3), 120(c)(2), 125(g)(3), 127(b)(2), 129(d)(3), 132(e)(2), 132(h)(1), 401(a)(3) (as in effect on September 1, 1974), 414(q)(4), 501(c)(17)(A)(ii), 501(c)(17)(B)(iii), 501(c)(18)(B), and 505(b)(1)(A).

VIII. Certain Governmental and Tax-Exempt Employers

The application of the qualified separate line of business rules to plans of governmental and tax-exempt employers that are subject to the requirements of sections 410(b) and 401(a)(26) is reserved. The Treasury and the Service welcome comments on the application of the qualified separate line of business requirements set forth in the proposed regulations to certain governmental and tax-exempt employers. Specifically, the Treasury and the Service solicit comments on either modifications to the existing requirements or suggestions for appropriate alternative requirements.

IX. Testing Year Basis of Application

For purposes of determining whether an employer operates qualified separate lines of business for bona fide business reasons, the employer must apply the requirements of §§ 1.414(r)–1 through 1.414(r)–7 of the proposed regulations on the basis of the testing year. The testing year is the calendar year. Similarly, an employer's plans are tested under sections 401(a)(4), 401(a)(26) and 410(b) separately with respect to the employees of each qualified separate line of business for all plan years that begin in the testing year.

X. Averaging Rules

For purposes of determining percentages for testing whether lines of business satisfy the requirements of these proposed regulations, the employer is permitted to use up to a three-year moving average, absent large fluctuations. In determining whether specific percentages have been satisfied, this rule permits the employer to average the results for the current testing year with the results for the preceding one or two testing years. The purpose of this rule is to provide stability from year to year in the application of the requirements under the proposed regulations.

XI. Failure to Comply

a. Line of Business Fails to Comply With the Proposed Regulations

If an employer applies sections 401(a)(26) and 410(b) to its plans on a qualified-separate-line-of-business basis and any of its lines of business fail to meet the requirements of these proposed regulations, then all its lines of business will fail to meet the requirements of section 414(r). In that event, each plan must satisfy the requirements of sections 401(a)(26) and 410(b) on an employer-wide basis in order to satisfy section 401(a).

b. Plan Failure to Comply With Section 410(b)

If an employer applies section 410(b) separately with respect to the employees of each qualified separate line of business and a plan fails to meet the requirements of section 410(b) or 401(a)(4) on that basis, that plan will fail to satisfy sections 401(a). Furthermore, the plan may not attempt to meet the requirements of sections 410(b) and 401(a)(4) on an employer-wide basis. However, this failure generally will not affect the employer's treatment under section 414(r) as operating qualified separate lines of business.

Additional Authority

The rules in the proposed regulations regarding section 414(r) are the exclusive rules for determining whether the requirements of that section are met. The regulations also provide, however, that the Commissioner may, in revenue rulings, notices, and other guidance of general applicability, provide any additional rules that may be necessary or appropriate in applying the definition of a separate line of business under section 414(r).

Reliance on These Proposed Regulations

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. These regulations will be generally effective for plan years and testing years beginning on or after January 1, 1992. If future regulations are more restrictive, such guidance will be applied without retroactive effect.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the

Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Because the Treasury Department expects to issue final regulations on this matter as soon as possible, a public hearing will be held beginning at 10 a.m. on Thursday May 16, 1991, and continued, if necessary on Friday May 17, 1991, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Comments and requests to appear at the public hearing must be received by April 2, 1991. Outlines of oral comments must be received by May 2, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal authors of these proposed regulations are Thomas G. Schendt and Rhonda G. Migdail of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.401–0 through 1.425–1

Employee benefit plans, Employee stock ownership plans, Income taxes, Individual retirement accounts, Pensions, Stock Options.

Proposed Amendments to the Regulations

The notices of proposed rulemaking (to amend 26 CFR part 1) that were published on May 18, 1989 (54 FR 21445, 54 FR 21448, 54 FR 21449), May 14, 1990 (55 FR 19940 and 55 FR 19942), and September 14, 1990 (55 FR 37901), are amended, and additional amendments of part 1 are proposed, as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * *. Sections 1.414(r)–0 through 1.414(r)–7 also issued under 26 U.S.C. 414(r). Section 1.414(r)–8 also issued under 26 U.S.C. 410(b) and 414(r). Section 1.414(r)–9 also issued under 26 U.S.C. 401(a)(26) and 414(r). Section 1.414(r)–10 also issued under 26 U.S.C. 129 and 414(r). Section 1.414(r)–11 also issued under 26 U.S.C. 414(r).

Par. 2. Section 1.401(a)(26)–2, as proposed on May 14, 1990 (55 FR 19940), is amended by adding a new paragraph (d)(6) to read as follows:

§ 1.401(a)(26)–2 Minimum participation rule.

* * * * *

(d) *Disaggregation of certain plans* * * *

(6) *Plans benefiting employees of qualified separate lines of business.* If an employer is treated as operating qualified separate lines of business for purposes of section 401(a)(26) in accordance with § 1.414(r)–1(b), the portion of a plan that benefits employees of one qualified separate lines of business is treated as a separate plan from the portions of the same plan that benefit employees of the other qualified separate lines of business of the employer. See §§ 1.414(r)–1(c)(3) and 1.414(r)–9 (separate application of section 401(a)(26) to the employees of a qualified separate line of business).

* * * * *

Par. 3. Section 1.401(a)(26)–6, as proposed on May 14, 1990 (55 FR 19942), is amended by adding a new paragraph (b)(8) to read as follows:

§ 1.401(a)(26)–6 Excludable employees.

* * * * *

(b) *Excludable employees* * * *

(8) *Employees of qualified separate lines of business.* If an employer is treated as operating qualified separate lines of business for purposes of section 401(a)(26) in accordance with § 1.414(r)–1(b), in testing a plan that benefits employees of one qualified separate lines of business, the employees of the other qualified separate lines of business of the employer are treated as excludable employees. See §§ 1.414(r)–1(c)(3) and 1.414(r)–9 (separate application of section 401(a)(26) to the employees of a qualified separate line of business).

* * * * *

Par. 4. Section 1.410(b)–6(g), as proposed on May 18, 1989 (54 FR 21445), is revised as follows:

§ 1.410(b)–6 Excludable employees.

* * * * *

(g) *Employees of qualified separate lines of business.* If an employer is treated as operating qualified separate lines of business for purposes of section 410(b) in accordance with § 1.414(r)–1(b), in testing a plan that benefits employees of one qualified separate lines of business the employees of the other qualified separate lines of business of the employer are treated as excludable employees. The rule in this paragraph (g) does not apply for purposes of satisfying the nondiscriminatory classification requirement of section 410(b)(5)(B). See §§ 1.414(r)–1(c)(2) and 1.414(r)–8 (separate application of section 410(b) to the employees of a qualified separate line of business).

* * * * *

Par. 5. Section 1.410(b)–7, as proposed on May 18, 1989 (54 FR 21448), and as amended on September 14, 1990 (55 FR 37901), is amended as follows:

1. Paragraph (c)(5) is revised as set forth below.

2. A new paragraph (d)(4) is added to read as set forth below.

§ 1.410(b)–7 Definition of plan and rules governing plan disaggregation and aggregation.

* * * * *

(c) *Mandatory disaggregation of certain plans* * * *

(5) *Plans benefiting employees of qualified separate lines of business.* If an employer is treated as operating qualified separate lines of business for purposes of section 410(b) in accordance with § 1.414(r)–1(b), the portion of a plan that benefits employees of one qualified separate lines of business is treated as a separate plan from the portions of the same plan that benefit employees of the other qualified separate lines of business of the employer. See §§ 1.414(r)–1(c)(2) and 1.414(r)–8 (separate application of section 410(b) to the employees of a qualified separate line of business). If a plan satisfies the reasonable classification requirement of § 1.410(b)–4(b) before the application of this paragraph (c)(5), then any portion of that plan that is treated as a separate plan as a result of the application of this paragraph (c)(5) is deemed to satisfy that requirement.

* * * * *

(d) *Permissive aggregation for ratio percentage and nondiscriminatory classification tests* * * *

(4) *Special rule for plans benefiting employees of a qualified separate line of business.* For purposes of paragraph (d)(1) of this section, an employer is

permitted, but not required, to aggregate the portions of two or more plans that benefit employees of the same qualified separate line of business, regardless of whether the employer elects to aggregate the portions of the same plans that benefit employees of the other qualified separate lines of business of the employer. Thus, the employer is permitted, but not required, to apply paragraph (d)(1) of this section with respect to two or more separate plans determined after the application of paragraphs (b) and (c)(5) of this section. In all other respects, the provisions of this paragraph (d) regarding permissive aggregation apply, including (but not limited to) the special aggregation rules applicable to plans subject to section 401 (k) or (m) under paragraph (d)(1) of this section, the disaggregation rules under paragraph (d)(2) of this section (including the mandatory disaggregation rule of paragraph (c)(5) of this section), and the prohibition on duplicative aggregation under paragraph (d)(3) of this section. This paragraph (d)(4) applies only in the case of an employer that is treated as operating qualified separate lines of business for purposes of section 410(b) in accordance with § 1.414(r)–1(b). See §§ 1.414(r)–1(c)(2) and 1.414(r)–8 (separate application of section 410(b) to the employees of a qualified separate line of business).

* * * * *

§1.410(b)-9 [Amended]

Par. 6. Section 1.410(b)–9(b), as proposed on May 18, 1989 (54 FR 21449), in amended as follows:

1. Paragraph (b)(2) is removed.

2. Paragraph (b)(1) is redesignated as paragraph (b) and is retitled "Employer".

* * * * *

Par. 7. The following new §§ 1.414(r)–0 through 1.414(r)–11 are added to read as follows:

§ 1.414(r)–0 Table of contents.

(a) *In general.* Sections 1.414(r)–1 through 1.414(r)–11 provide rules for determining whether an employer is treated as operating qualified separate lines of business under section 414(r) of the Internal Revenue Code of 1986 as added to the Code by section 1115(a) of the Tax Reform Act of 1986 (Pub. L. No. 99–514), as well as rules for applying the requirements of sections 410(b), 401(a)(26), and 129(d)(8) separately with respect to the employees of each qualified separate line of business of an employer. Paragraph (b) of this section contains a listing of the headings of §§ 1.414(r)–1 through 1.414(r)–11. Paragraph (c) of this section provides a flow-chart showing how the major provisions of §§ 1.414(r)–1 through 1.414(r)–6 are applied.

(b) *Table of contents.* The following is a listing of the headings of §§ 1.414(r)–1 through 1.414(r)–11.

§ 1.414(r)–1 Requirements applicable to qualified separate lines of business.

(a) In general.
(b) Conditions under which an employer is treated as operating qualified separate lines of business.
(1) In general.
(2) Qualified separate line of business.
(i) In general.
(ii) Line of business.
(iii) Separate line of business.
(iv) Qualified separate line of business.
(A) In general.
(B) Fifty-employee requirement.
(C) Notice requirement.
(D) Requirement of administrative scrutiny.
(3) Determining the employees of a qualified separate line of business.
(c) Separate application of certain Code requirements to employees of a qualified separate line of business.
(1) In general.
(2) Separate application of section 410(b).
(3) Separate application of section 401(a)(26).
(4) Separate application of section 129(d)(8). [Reserved]
(5) Separate application of other Code requirements.
(d) Application of requirements.
(1) In general.
(2) Interpretation.
(3) Separate operating units.
(4) Certain mergers and acquisitions.
(5) Governmental and tax-exempt employers. [Reserved]
(6) Testing year basis of application.
(i) Section 414(r).
(ii) Sections 410(b), 401(a)(26), and 129(d)(8).
(7) Averaging rules.
(8) Definitions.
(9) Effective dates.
(e) Additional rules.

§ 1.414(r)–2 Line of business.

(a) General rule.
(b) Employer determination of its lines of business.
(1) In general.
(2) Property and services provided to customers.
(3) Employer designation.
(i) In general.
(ii) Ability to combine unrelated types of property or services in a single line of business.
(iii) Ability to separate related types of property or services into two or more lines of business.
(iv) Affiliated service groups.
(c) Examples.
(1) In general.
(2) Examples illustrating employer designation.
(3) Examples illustrating property and services provided to customers.

§ 1.414(r)–3 Separate line of business.

(a) General rule.
(b) Separate organization and operation.
(1) In general.
(2) Separate organizational unit.
(3) Separate financial accountability.
(4) Separate employee workforce.
(5) Separate management.
(6) Separate tangible assets.
(c) Supplementary rules.
(1) In general.
(2) Determination of separate employee workforce.
(i) In general.
(ii) Employees who provide services to a line of business.
(iii) Employees who provide services exclusively to a line of business.
(iv) Employees taken into account.
(A) General rule.
(B) Exclusion of certain nonresident aliens.
(v) Services taken into account.
(vi) Examples.
(3) Determination of separate management.
(i) In general.
(ii) Top-paid employees who provide services to a line of business.
(iii) Top-paid employees who provide services exclusively to a line of business.
(iv) Determination of compensation.
(v) Employees and services taken into account.
(vi) Special rule.
(vii) Examples.
(4) Determination of separate tangible assets.
(i) In general.
(ii) Tangible assets used by a line of business.
(iii) Tangible assets used exclusively by a line of business.
(iv) Value of tangible assets.
(v) Tangible assets taken into account.
(vi) Special rule for certain shared buildings.
(vii) Use of tangible assets taken into account.
(5) Optional rule for vertically integrated lines of business.
(i) In general.
(ii) Requirements.
(iii) Optional rule.
(A) Treatment of employees.
(B) Treatment of tangible assets.
(C) Purposes for which optional rule applies.
(iv) Examples.

§ 1.414(r)–4 Qualified separate line of business—fifty-employee and notice requirements.

(a) In general.
(b) Fifty-employee requirement.
(c) Notice requirement.
(1) General rule.

(2) Effect of notice.

§ 1.414(r)–5 Qualified separate line of business—administrative scrutiny requirement—safe harbors.

(a) In general.
(b) Statutory safe harbor.
(1) General rule.
(2) Highly compensated employee percentage ratio.
(3) Employees taken into account.
(4) Ten-percent exception.
(5) Determination based on preceding testing year.
(6) Examples.
(c) Safe harbor for separate lines of business in different industries.
(1) In general.
(2) Establishment of industry categories.
(3) Examples.
(d) Safe harbor for separate lines of business reported as industry segments under FAS 14.
(1) In general.
(2) Reported as a reportable industry segment.
(3) Timely filing of Form 10–K.
(4) Examples.
(e) Safe harbor for separate lines of business that provide minimum or maximum benefits.
(1) In general.
(2) Minimum benefit required.
(i) Applicability.
(ii) Requirement.
(iii) Defined benefit minimum.
(A) In general.
(B) Normal form and equivalent benefits.
(C) Compensation.
(D) Adjustment factor for high 3-year compensation.
(E) Special rules.
(iv) Defined contribution minimum.
(A) In general.
(B) Special rules.
(3) Maximum benefit permitted.
(i) Applicability.
(ii) Requirement.
(iii) Defined benefit maximum.
(A) In general.
(B) Determination of defined benefit maximum.
(C) Adjustment for different compensation definitions.
(D) Adjustment for certain subsidies.
(iv) Defined contribution maximum.
(A) In general.
(B) Determination of defined contribution maximum.
(4) Duplication of benefits or contributions.
(i) Plans of the same type.
(ii) Plans of different types.
(iii) Special rule for floor-offset arrangements.
(5) Certain contingency provisions ignored.
(6) Employees taken into account.

§ 1.414(r)–6 Qualified separate line of business—administrative scrutiny requirement—individual determinations.

(a) In general.
(b) Circumstances under which an employer is permitted to request an individual determination.
(c) Factors taken into account in determining whether to grant an individual determination.
(1) In general.
(2) Differences in property or services.
(3) Separateness of organization and operation.
(4) Nature of business competition.
(5) Historical factors.
(6) Geographic factors.
(7) Safe harbors.
(8) Differences in benefit levels.
(9) Size.
(10) Allocation method.
(11) Other lines of business.
(12) Other relevant factors.

§ 1.414(r)–7 Determination of the employees of an employer's qualified separate lines of business.

(a) Introduction.
(1) In general.
(2) Purposes for which this section applies.
(b) Assignment procedure.
(1) In general.
(2) Assignment for the first testing day.
(3) Assignment of new employees for subsequent testing days.
(4) Substantial-service employees.
(5) Residual shared employees.
(c) Methods of allocating residual shared employees.
(1) In general.
(2) Dominant line of business method of allocation.
(i) In general.
(ii) Dominant line of business.
(iii) Option to apply reduced percentage.
(iv) Examples.
(3) Pro-rata method of allocation.
(i) In general.
(ii) Percentage of substantial-service employees assigned to a qualified separate line of business.
(iii) Allocation procedure.
(iv) Examples.
(4) HCE percentage ratio method of allocation.
(i) In general.
(ii) Highly compensated employee percentage ratio.
(iii) Allocation procedure.

§ 1.414(r)–8 Separate application of section 410(b).

(a) General rule.
(b) Rules of separate application.
(1) In general.
(2) Satisfaction of section 410(b)(5)(B) on an employer-wide basis.
(3) Satisfaction of section 410(b) on a qualified-separate-line-of-business basis.
(4) Examples.
(c) Coordination of section 401(a)(4) with section 410(b).
(1) General rule.
(2) Examples.
(d) Supplementary rules.
(1) In general.
(2) Definition of plan.
(3) Employees of a qualified separate line of business.
(4) Contributions and benefits attributable to a qualified separate line of business.
(5) Consequences of failure.

§ 1.414(r)–9 Separate application of section 401(a)(26).

(a) General rule.
(b) Rules of separate application.
(1) Precondition.
(2) Requirements applicable to plan.
(c) Supplementary rules.
(1) In general.
(2) Definition of plan.
(3) Employees of a qualified separate line of business.
(4) Consequences of failure.

§ 1.414(r)–10 Separate application of section 129(d)(8). [Reserved]

§ 1.414(r)–11 Definitions and special rules.

(a) In general.
(b) Definitions.
(1) In general.
(2) Testing year.
(3) Testing day.
(4) First testing day.
(5) Section 401(a)(26) testing day.
(c) Average rules.
(1) In general.
(2) Specified provisions.
(3) Averaging of large fluctuations not permitted.
(4) Consistency requirements.

(c) *Flowchart.* The following is a flowchart showing how the major provisions of §§ 1.414(r)–1 through 1.414(r)–6 are applied.

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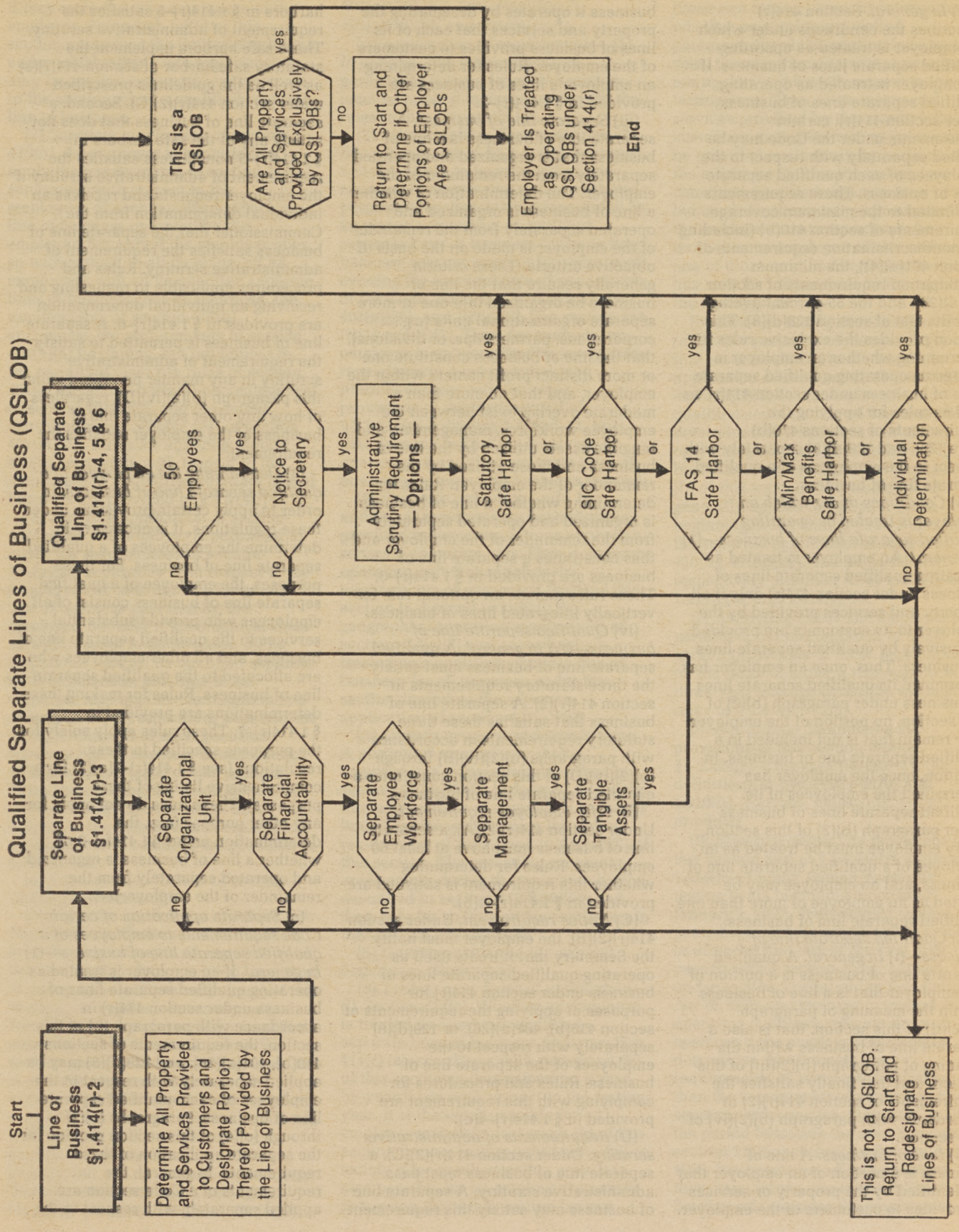

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§ 1.414(r)–1 Requirements applicable to qualified separate lines of business.

(a) *In general.* Section 414(r) prescribes the conditions under which an employer is treated as operating qualified separate lines of business. If an employer is treated as operating qualified separate lines of business under section 414(r), certain requirements under the Code may be applied separately with respect to the employees of each qualified separate lines of business. These requirements are limited to the minimum coverage requirements of section 410(b) (including the nondiscrimination requirements of section 401(a)(4)), the minimum participation requirements of section 401(a)(26), and the 55-percent average benefits test of section 129(d)(8). This section provides the exclusive rules for determining whether an employer is treated as operating qualified separate lines of business under section 414(r), as well as rules for applying the requirements of sections 410(b), 401(a)(26), and 129(d)(8) separately with respect to the employees of a qualified separate line of business.

(b) *Conditions under which an employer is treated as operating qualified separate lines of business*—(1) *In general.* An employer is treated as operating qualified separate lines of business under section 414(r) only if all property and services provided by the employer to its customers are provided exclusively by qualified separate lines of business. Thus, once an employer has determined its qualified separate lines of business under paragraph (b)(2) of this section, no portion of the employer may remain that is not included in a qualified separate line of business. In addition, once the employer has determined the employees of its qualified separate lines of business under paragraph (b)(3) of this section, every employee must be treated as an employee of a qualified separate line of business, and no employee may be treated as an employee of more than one qualified separate line of business.

(2) *Qualified separate line of business*—(i) *In general.* A qualified separate line of business is a portion of the employer that is a line of business within the meaning of paragraph (b)(2)(ii) of this section, that is also a separate line of business within the meaning of paragraph (b)(2)(iii) of this section, and that finally satisfies the requirements of section 414(r)(2) in accordance with paragraph (b)(2)(iv) of this section.

(ii) *Line of business.* A line of business is a portion of an employer that is identified by the property or services it provides to customers of the employer. For this purpose, the employer is permitted to determine the lines of business it operates by designating the property and services that each of its lines of business provides to customers of the employer. Rules for determining an employer's lines of business are provided in § 1.414(r)–2.

(iii) *Separate line of business.* A separate line of business is a line of business that is organized and operated separately from the remainder of the employer. The determination of whether a line of business is organized and operated separately from the remainder of the employer is made on the basis of objective criteria. These criteria generally require that the line of business be organized into one or more separate organizational units (e.g., corporations, partnerships, or divisions), that the line of business constitute one or more distinct profit centers within the employer, and that no more than a moderate overlap exist between the employee workforce, management, and tangible assets utilized by the line of business and those utilized by the remainder of the employer. Rules for determining whether a line of business is organized and operated separately from the remainder of the employer and thus constitutes a separate line of business are provided in § 1.414(r)–3. These rules include an optional rule for vertically integrated lines of business.

(iv) *Qualified separate line of business*—(A) *In general.* A qualified separate line of business must satisfy the three statutory requirements in section 414(r)(2). A separate line of business that satisfies these three statutory requirements in accordance with paragraphs (b)(2)(iv)(B) through (b)(2)(iv)(D) of this section constitutes a qualified separate line of business.

(B) *Fifty-employee requirement.* Under section 414(r)(2)(A), a separate line of business must have at least 50 employees. Rules for determining whether this requirement is satisfied are provided in § 1.414(r)–4(b).

(C) *Notice requirement.* Under section 414(r)(2)(B), the employer must notify the Secretary that it treats itself as operating qualified separate lines of business under section 414(r) for purposes of applying the requirements of section 410(b), 401(a)(26), or 129(d)(8) separately with respect to the employees of the separate line of business. Rules and procedures for complying with this requirement are provided in § 1.414(r)–4(c).

(D) *Requirements of administrative scrutiny.* Under section 414(r)(2)(C), a separate line of business must pass administrative scrutiny. A separate line of business may satisfy this requirement in one of two ways. First, a separate line of business that satisfies any of the safe harbors in § 1.414(r)–5 satisfies the requirement of administrative scrutiny. These safe harbors implement the statutory safe harbor of section 414(r)(3) as well as the guidelines prescribed under section 414(r)(2)(C). Second, a separate line of business that does not satisfy any of the safe harbors in § 1.414(r)–5 nonetheless satisfies the requirement of administrative scrutiny if the employer requests and receives an individual determination from the Commissioner that the separate line of business satisfies the requirement of administrative scrutiny. Rules and procedures applicable to requesting and receiving an individual determination are provided in § 1.414(r)–6. A separate line of business is permitted to satisfy the requirement of administrative scrutiny in any manner permitted under this paragraph (b)(2)(iv)(D), regardless of how any other separate line of business of the employer satisfies the requirement.

(3) *Determining the employees of a qualifed separate line of business.* In order to apply certain provisions under these regulations, it is necessary to determine the employees of a qualified separate line of business. For these purposes, the employee of a qualified separate line of business consist of all employees who provide substantial services to the qualified separate line of business, and all other employees who are allocated to the qualified separate line of business. Rules for making these determinations are provided in § 1.414(r)–7. These rules apply solely for the purposes specified in these regulations (see § 1.414(r)–7(a)(2) for a comprehensive listing of these purposes). These rules do not apply for any other purpose (e.g., the determination under § 1.414(r)–3 of whether a line of business is organized and operated separately from the remainder of the employer).

(c) *Separate application of certain Code requirements to employees of a qualified separate line of business*—(1) *In general.* If an employer is treated as operating qualified separate lines of business under section 414(r) in accordance with paragraph (b) of this section, the requirements of sections 410(b), 401(a)(26), and 129(d)(8) may be applied separately with respect to the employees of each qualified separate line of business. Paragraphs (c)(2) through (c)(4) of this section provide for the separate application of these requirements. In general, the requirements of a Code section are applied separately with respect to the

employees of a qualified separate line of business by treating those employees as if they were the only employees of the employer. Paragraph (c)(5) of this section prescribes the limited conditions under which other Code requirements may be applied separately with respect to the employees of a qualified separate line of business.

(2) *Separate application of section 410(b).* An employer is permitted to apply the requirements of section 410(b) separately with respect to the employees of each qualified separate line of business operated by the employer, but only if the employer does so with respect to all its plans, all its employees, and all its qualified separate lines of business. For this purpose, the requirements of section 410(b) encompass the requirements of section 401(a)(4) (including, but not limited to, the permitted disparity rules of section 401(l), the actual deferral percentage test of section 401(k)(3), and the actual contribution percentage test of section 401(m)(2)). Rules for applying section 410(b) separately with respect to the employees of a qualified separate line of business are provided in § 1.414(r)–8.

(3) *Separate application of section 401(a)(26).* An employer is permitted to apply the requirements of section 401(a)(26) separately with respect to the employees of each qualified separate line of business operated by the employer, but only if the employer does so with respect to all its plans, all its employees, and all its qualified separate lines of business, and only if the employer also applies the requirements of section 410(b) separately with respect to the employees of each qualified separate line of business in accordance with paragraph (c)(2) of this section. Rules for applying the requirements of section 401(a)(26) separately with respect to the employees of a qualified separate line of business are provided in § 1.414(r)–9.

(4) *Separate application of section 129(d)(8).* [Reserved]

(5) *Separate application of other Code requirements.* Under no circumstance may the requirements of any section of the Code (other than a section described in paragraphs (c)(2) through (c)(4) of this section) be applied separately with respect to the employees of a qualified separate line of business unless the section specifically cross-references, or is specifically cross-referenced by, section 414(r). The Code sections whose requirements may not applied separately with respect to the employees of a qualified separate line of business include, but are not limited to, sections 79(d)(3), 105(h), 117(d)(3), 120(c)(2), 125(g)(3), 127(b)(2), 129(d)(3), 132(e)(2), 132(h)(1), 401(a)(3), (as in effect on September 1, 1974), 414(q)(4), 501(c)17(A)(ii), 501(c)(17)(B)(iii), 501(c)(18)(B), and 505(b)(1)(A).

(d) *Application of requirements*—(1) *In general.* The requirements of paragraphs (b) and (c) of this section must be applied in accordance with the rules in this paragraph (d).

(2) *Interpretation.* The provisions of this section and of §§ 1.414(r)–2 through 1.414(r)–11 are to be interpreted in a reasonable manner consistent with the purpose of section 414(r) to recognize an employer's operation of qualified separate lines of business for bona fide business reasons and not for reasons of evading the requirements of any section of the Code, including sections 410(b), 401(a)(26), and 129(d)(8). See section 414 (r)(1) and (r)(7). Thus, for example, an employer is not permitted to apply these regulations in a manner that may literally comply with the other provisions of this section and of §§ 1.414(r)–2 through 1.414(r)–11, but that does not reflect the employer's operation of qualified separate lines of business for bona fide business reasons.

(3) *Separate operating units.* No additional requirements beyond those provided in these regulations apply to a separate operating unit. Thus, a separate operating unit that satisfies the requirements of paragraph (b)(2) of this section is deemed to satisfy the geographic separation requirement of section 414(r)(7) and accordingly is treated as a qualified separate line of business for all purposes under this section, including the separate application of section 401(a)(26).

(4) *Certain mergers and acquisitions.* A portion of an employer that is acquired in a transaction described in section 410(b)(6)(C) is deemed to satisfy the requirements of a qualified separate line of business other than the notice requirement of paragraph (b)(2)(iv)(C) of this section. The preceding sentence applies only during the transition period described in section 410(b)(6)(C), and then only for so long as the conditions in that section are satisfied.

(5) *Governmental and tax-exempt employers.* [Reserved]

(6) *Testing year basis of application*—(i) *Section 414(r).* Whether an employer is treated as operating qualified separate lines of business under section 414(r) in accordance with paragraph (b) of this section is determined on a year-by-year basis with respect to the testing year. It is therefore possible for an employer to satisfy paragraph (b) of this section for one testing year and to fail to satisfy it for another testing year. It is also possible for an employer to satisfy paragraph (b) of this section for two testing years but to have designated its lines of business differently in each of those two testing years. In determining whether an employer satisfied paragraph (b) of this section for a testing year, the requirements of that paragraph are applied solely with respect to the testing year. Thus, all property and services provided by the employer to its customers during the testing year must be provided exclusively by portions of the employer that for the testing year constitute qualified separate lines of business. Furthermore, each employee of the employer must respectively be treated as an employee of one and only one of those qualified separate lines of business for all purposes with respect to the testing year.

(ii) *Sections 410(b), 401(a)(26), and 129 (d)(8).* For purposes of paragraph (c) of this section relating to the separate application of sections 410(b), 401(a)(26), and 120(d)(8) to the employees of a qualified separate line of business, the determination whether the employer operates qualified separate lines of business in accordance with paragraph (b) of this section for a testing year generally applies for all plan years beginning in the testing year. Rules for the separate application of sections 410(b), 401(a)(26), and 129(d)(8) are respectively provided in §§ 1.414(r)–8, 1.414(r)–9, and 1.414(r)–10.

(7) *Averaging rules.* The employer is permitted, but not required, to apply certain provisions of these regulations on the basis of either a two-year or a three-year average under the averaging rules of § 1.414(r)–11(c).

(8) *Definitions.* In applying the provisions of this section and of §§ 1.414(r)–2 through 1.414(r)–11, the definitions in §§1.414(r)–11(b) and 1.410(b)–9 govern, unless otherwise provided.

(9) *Effective dates.* The provisions of this section and of §§ 1.414(r)–2 through 1.414(r)–11 apply to plan years and testing years beginning on or after January 1, 1992. With respect to plan years beginning before that date and on or after the first day of the first plan year to which section 414(r) applies under section 1112(a) of the Tax Reform Act of 1986, an employer is treated as operating qualified separate lines of business if the employer reasonably determines that it meets the requirements of section 414(r) (other than the requirement of administrative scrutiny under section 414(r)(2)(C)). For the period following the effective date of section 1112(a) of the Tax Reform Act of 1986, but before the effective date of these regulations, the Internal Revenue Service will consider the employer's

compliance with the terms of these proposed regulations (other than the requirement of administrative scrutiny under paragraph (b)(2)(iv)(D) of this section) to constitute a reasonable determination that the employer meets the requirements of section 414(r) (other than the requirement of administrative scrutiny under section 414(r)(2)(C)). Whether an employer reasonably determines that it meets the requirements of section 414(r) will generally be determined on the basis of all relevant facts and circumstances, including the extent to which the employer has resolved unclear issues in its favor.

(e) *Additional rules.* The Commissioner may, in revenue rulings, notices, and other guidance of general applicability, provide any additional rules that may be necessary or appropriate in applying the qualified separate line of business requirements of section 414(r).

§1.414(r)–2 Line of business.

(a) *General rule.* A line of business is a portion of an employer that is identified by the property or services it provides to customers of the employer. For this purpose, an employer is permitted to determine its line of business by designating the property or services that each of its lines of business provides to customers of the employer. Paragraph (b) of this section explains how an employer determines its lines of business for a testing year. Paragraph (c) of this section provides examples illustrating the application of this section.

(b) *Employer determination of its lines of business*—(1) *In general.* An employer determination of its lines of business for a testing year first by identifying all the property and services it provides to its customers during the testing year, and then by designating which portion of the property and services is provided by each of its lines of business.

(2) *Property and services provided to customers.* Property, whether real or personal, tangible or intangible, is provided by an employer to a customer during a testing year if the employer provides the property to or on behalf of the customer in one or more transactions during the testing year that constitute a sale, lease, license, loan, exchange, or other transfer of the property for consideration. Similarly, services are provided by an employer to a customer during the testing year if during the testing year the employer renders the services to or on behalf of the customer for consideration. An individual item of property or service is taken into account under this paragraph (b)(2) only if during the testing year the employer provides the item to a person other than the employer in the ordinary course of a trade or business conducted by the employer, and the person to whom the employer provides the item is acting in the capacity as a customer of the employer.

(3) *Employer designation*—(i) *In general.* Once the employer has identified all the property and services it provides to its customers during the testing year under paragraph (b)(2) of this section, the employer determines its lines of business for the testing year by designating which portion of those property and services is provided by each of its lines of business. For this purpose, the employer must apportion all the property and services identified under paragraph (b)(2) of this section among its lines of business. An employer generally is not required to designate its lines of business for the testing year in the same manner as it designates its lines of business for any other testing year.

(ii) *Ability to combine unrelated types of property or services in a single line of business.* For purposes of this paragraph (b)(3), there is no requirement that a line of business provide only one type of property or service, or only related types of property or services. Nor is there any requirement that a line of business provide solely property or solely services. Thus, the employer is permitted to combine in a single line of business dissimilar types of property or services that are otherwise unrelated to one another.

(iii) *Ability to separate related types of property or services into two or more lines of business.* For purposes of this paragraph (b)(3), there is no requirement that all property or services of related types or the same type be provided by a single line of business. Thus, the employer is permitted to designate two or more lines of business that provide related types of property or services, or the same type of property or service. An employer might designate two or more lines of business that provide property or services of related types or the same type, for example, where the lines of business manufacture, prepare, or provide the property or services in different geographic areas (e.g., in different regions of the country or the world), or at different levels in the chain of commercial distribution (e.g., wholesale versus retail), or in different types of transactions (e.g., sale versus lease), or for different types of customers (e.g., governmental versus private), or subject to different legal constraints (e.g., regulated versus unregulated), or if the lines of business have developed differently (e.g., one line of business was acquired while another line of business developed internally). Notwithstanding the foregoing, an employer is not permitted to designate two or more lines of business that provide property or services of related types or the same type, if the employer's designation is unreasonable. An employer's designation would be unreasonable, for example, if the designation separated two types of property or services in different lines of business, but the employer did not provide those types of property or services separately from one another to its customers. Similarly, an employer's designation would be unreasonable if it separated two types of property or services in different lines of business, but the provision of one type of property or service was merely ancillary or incidental to, or regularly associated with, the provision of the other type of property or service. See generally §1.414(r)–1(d)(2) (requiring an employer's operation of qualified separate lines of business to be for bona fide business reasons).

(iv) *Affiliated service groups.* An employer is not permitted to designate its lines of business in a manner that results in separating employees of an affiliated service group (within the meaning of section 414(m)) from other employees of the employer. See section 414(r)(8).

(c) *Examples*—(1) *In general.* Paragraphs (c)(2) and (c)(3) of this section provide examples that illustrate the application of this section.

(2) *Examples illustrating employer designation.* The following examples illustrate the application of paragraph (b)(3) of this section relating to an employer's designation of the property or services provided to customers by each of its lines of business.

Example 1. Employer A is a domestic conglomerate engaged in the manufacture and sale of consumer food and beverage products and the provision of data processing services to private industry. Employer A provides no other property or services to its customers. Pursuant to paragrpah (b)(3) of this section, Employer A apportions all the property and services it provides to its customers among three lines of business, one providing all its consumer food products, a second providing all its consumer beverage products, and a third providing all its data processing services. Employer A has three lines of business for purposes of this section.

Example 2. The facts are the same as in *Example 1,* except that Employer A determines that neither the consumer food products line of business nor the consumer beverage products line of business would

satisfy the separateness criteria of §1.414(r)–3 for recognition as a separate line of business. Accordingly, pursuant to paragraph (b)(3) of this section, Employer A apportions all the property and services it provides to its customers between only two lines of business, one providing all its consumer food and beverage products, and a second providing all its data processing services. Employer A has two lines of business for purposes of this section.

Example 3. The facts are the same as in *Example 2,* except that employer A also owns and operates a regional commuter airline, a professional basketball team, a pharmaceutical manufactuer, and a leather tanning company. Pursuant to paragraph (b)(3) of this section, Employer A apportions all the property and services it provides to its customers among three lines of business, one providing all its consumer food and beverage products, a second providing all its data processing services, and a third providing all the other property and services provided to customers through Employer A's regional commuter airline, professional basketball team, pharmaceutical manufacturer, and leather tanning company. Even though the third line of business includes dissimilar types of property and services that are otherwise unrelated to one another, paragraph (b)(3)(ii) of this section permits Employer A to combine these property and services in a single line of business. Employer A has three lines of business for purposes of this section.

Example 4. The facts are the same as in *Example 2,* except that employer A has recently acquired Corporation L, whose only product is a well-known brand of gourmet ice cream. Although Employer A manufactures and sells other ice cream products, it does not manufacture or market the newly acquired brand of gourmet ice cream except through Corporation L. Pursuant to paragraph (b)(3) of this section, Employer A apportions all the property and services it provides to its customers among three lines of business, one providing only the newly acquired brand of gourmet ice cream, a second providing all its other consumer food and beverage products (including the other ice cream products manufactured and sold by Employer A), and a third providing all its data processing services. Even though the gourmet ice cream line of business provides the same type of property as the consumer food and beverage line of business (i.e., ice cream), paragraph (b)(3)(iii) of this section permits Employer A to separate its ice cream products between two different lines of business. Employer A has three lines of business for purposes of this section.

Example 5. The facts are the same as in *Example 2,* except that employer A operates the data processing services portion of its business in two separate subsidiaries, one serving customers in the eastern half of the United States and the other serving customers in the western half of the United States. Pursuant to paragraph (b)(3) of this section, Employer A apportions all the property and services it provides to its customers among three lines of business, one providing all its consumer food and beverage products, a second providing data processing services to customers in eastern half of the United States, and a third providing data processing services to customers in the western half of the United States. Even though the second and third lines of business provide the same type of service (i.e., data processing services), paragraph (b)(3)(iii) of this section permits Employer A to separate its data processing services into two lines of business. Employer A has three lines of business for purposes of this section.

Example 6. Employer B is a diversified engineering firm offering civil, chemical, and aeronautical engineering services to government and private industry. Employer B provides no other property or services to its customers. Employer B operates the aeronautical engineerng services portion of its business as two separate divisions, one serving federal government customers and the other serving customers in private industry. Pursuant to paragraph (b)(3) of this section, Employer B apportions all the property and services it provides to its customers among four lines of business, one providing all its civil engineering services, a second providing all its chemical engineering services, a third providing aeronautical engineering services to federal government customers, and a fourth providing aeronautical engineering services to customers in private industry. Even though the third and fourth lines of business include the same type of service (i.e., aeronautical engineering services), paragraph (b)(3)(iii) of this section permits Employer B to separate its aeronautical engineering services into two lines of business. Employer B has four lines of business for purposes of this section.

Example 7. Among its other business activities, Employer C manufactures industrial diesel generators. At no additional cost to its buyers, Employers C warrants the proper functioning of its diesel generators for a one-year period following sale. Pursuant to its warranty, Employer C provides labor and parts to repair or replace any components that malfunction within the one-year warranty period. Because Employer C does not provide the industrial diesel generators, on the one hand, and the warranty repair services and replacement parts, on the other hand, separately from one another to its customers, under paragraph (b)(3)(iii) of this section it would be unreasonable for Employer C to separate these property and services in different lines of business.

Example 8. Among its other business activities, Employer D leases office photo-copying equipment. Employer D also provides photo-copying supplies and repair services to its lessees for a separate charge. Employer D generally does not provide such supplies and repair services to persons other than its lessees. Lessees of Employers D's equipment are permitted to use photo-copying supplies and repair services from suppliers other than Employer D. Because the provision of the photo-copying supplies and repair services are merely ancillary or incidental to the provision of the leased photo-copiers, under paragraph (b)(3)(iii) of this section it would be unreasonable for Employer D to separate these property and services in different lines of business.

Example 9. Employer E operates a medical clinic. The employees of the clinic include physicians, nurses, and laboratory technicians, all of whom participate in providing medical and related services to patients of the clinic. Under paragraph (b)(3)(iii) of this section, it would be unreasonable for Employer E to separate the services of the physicians, nurses, and laboratory technicians in different lines of business.

Example 10. Employer F is a law firm. The employees of the firm include lawyers, paralegals, and secretaries, all of whom participate in rendering legal and related services to clients of the firm. Under paragraph (b)(3)(iii) of this section, it would be unreasonable for Employer F to separate the services of the lawyers, paralegals, and secretaries in different lines of business.

Example 11. Employer G is a management consulting firm. The employees of the firm include management consultants, secretaries, and other support staff personnel, all of whom participate in rendering management consulting and related services to clients of the firm. Under paragraph (b)(3)(iii) of this section, it would be unreasonable for Employer G to separate the services of the management consultants, secretaries, and other support staff personnel in different lines of business.

(3) *Examples illustrating property and services provided to customers.* The following examples illustrate the application of paragraph (b)(2) of this section relating to property and services provided to customers of the employer.

Example 1. Employer H operates several dairy farms and dairy product processing plants. The dairy farms provide their entire output of milk and milk by-products to Employers H's dairy product processing plants. Under paragraph (b)(2), the dairy farm's provision of milk and milk by-products to the dairy product processing plants does not constitute the provision of property or services to customers of Employer H, because the milk and milk by-products are not provided to a person other than Employer H.

Example 2. The facts are the same as in *Example 1,* except that the dairy farms also sell milk and milk by-products to retail distributors unrelated to Employer H. Although the dairy farms' provision of milk and milk by-products to Employer H's dairy product processing plants does not constitute the provision of property or services to customers of Employer H, the dairy farms's provision of milk and milk by-products to independent retail distributors does constitute the provision of property or services to customers of Employer H under paragraph (b)(2) of this section.

Example 3. Among its other business activities, Employer J manufactures automobiles. Employer J operates a cafeteria at one of its automobile manufacturing facilities. The cafeteria is intended primarily for use by employees of Employer J, but non-employees are not prohibited from using the cafeteria. The cafeteria charges the same prices to employees and the non-employees. Under paragraph (b)(2) of this section, the provision of cafeteria services to employees of Employer J does not constitute the

provision of property or services to customers of Employer J, because the cafeteria services are provided to the employees in their capacity as employees of Employer J and not as customers of Employer J.

Example 4. Employee K sells books and periodicals to members of the public and provides telecommunications services to private industry. Employer K periodically acquires and disposes of businesses in both asset and stock transactions. In addition, for its own investment purposes, Employer K acquires and disposes of corporate and other securities. Under paragraph (b)(2) of this section, the sale by Employer K of businesses and investment securities does not constitute the provision of property or services to customers of Employer K, because the sales are not made in the ordinary course of a trade or business conducted by Employer K. However, the sale of published materials and the provision of telecommunications services to persons unrelated to Employer K does constitute the provision of property or services to customers of Employer K.

Example 5. Employer L is active in the financial services industry. Subsidiary 1 of Employer L is a brokerage firm that is regulated as a broker-dealer under applicable federal and state law. In its capacity as a dealer, Subsidiary 1 holds in its own inventory securities of unrelated corporations and regularly sells these securities to unrelated persons. Under paragraph (b)(2) of this section, the sale by Subsidiary 1 of the securities to unrelated persons constitues the provision of property or services to customers of Employer L, because the sales are made in the ordinary course of Subsidiary 1's trade or business as a broker-dealer.

Example 6. The facts are the same as in *Example 5.* Subsidiary 2 of Employer L is an insurance company that is regulated under applicable state insurance laws. In managing its investments, Subsidiary 2 regularly makes use of the brokerage services of Subsidiary 1 (which Subsidiary 1 regularly provides to unrelated persons as well). Under paragraph (b)(2) of this section, Subsidiary 1's provision of brokerage services to Subsidiary 2 does not constitute the provision of property or services to customers of Employer L, because the brokerage services are not provided to a person other than Employer L. However, Subsidiary 1's provision of brokerage services to unrelated persons does constitute the provison of property or services to customers of Employer L.

§ 1.414(r)–3 Separate line of business.

(a) *General rule.* A separate line of business is a line of business (as determined under § 1.414(r)–2) that is organized and operated separately from the remainder of the employer. Paragraph (b) of this section sets forth the rules for determining whether a line of business is organized and operated separately from the remainder of the employer. Paragraph (c) of this section provides certain supplementary rules necessary to apply the requirements of paragraph (b) of this section, as well as examples illustrating the application of those requirements.

(b) *Separate organization and operation*—(1) *In general.* A line of business is organized and operated separately from the remainder of the employer only if it satisfies all the requirements of paragraphs (b)(2) through (b)(6) of this section for the testing year.

(2) *Separate organizational unit.* The line of business must be formally organized as a separate organizational unit or group of separate organizational units within the employer. For this purpose, an organizational unit is a corporation, partnership, division, or other unit having a similar degree of organizational formality. This requirement must be satisfied on every day of the testing year.

(3) *Separate financial accountability.* The line of business must be a separate profit center or group of separate profit centers within the employer. This requirement must be satisfied on every day of the testing year. In addition, the employer must maintain books and records that provide separate revenue and expense information that is used for internal planning and control with respect to each profit center comprising the line of business.

(4) *Separate employee workforce.* The line of business must have its own separate employee workforce. A line of business has its own separate employee workforce only if at least 90 percent of the employee who provide service to the line of business provide their services exclusively to the line of business. See paragraph (c)(2) of this section to determine which employees are taken into account in calculating the percentage in the preceding sentence for the testing year.

(5) *Separate management.* The line of business must have its own separate management. A line of business has its own separate management only if at least 90 percent of the top-paid employees who provide services to the line of business provide their services exclusively to the line of business. See paragraph (c)(3) of this section to determine which employees are taken into account in calculating the percentage in the preceding sentence for the testing year.

(6) *Separate tangible assets.* The line of business must have its own separate tangible assets. A line of business has its own separate tangle assets only if at least 90 percent of the tangible assets used by the line of business are used exclusively to the line of business. See paragraph (c)(4) of this section to determine which assets are taken into account in calculating the percentage in the preceding sentence for the testing year.

(c) *Supplementary rules*—(1) *In general.* This paragraph (c) provides certain supplementary rules necessary to apply the requirements of paragraph (b) of this section, as well as examples illustrating the application of those requirements.

(2) *Determination of separate employee workforce*—(i) *In general.* The percentage in paragraph (b)(4) of this section is calculated by determing a fraction (expressed as a percentage), the numerator of which is the number of employees who provide services exclusively to the line of business, and the denominator of which is the number of employees who provide services (exclusively or otherwise) to the line of business.

(ii) *Employees who provide services to a line of business.* An employee provides services to a line of business if more than a negligible portion of the employee's services contributes to providing the property or services provided by the line of business to customers of the employer. An employee who does not provide services to any line of business within the meaning of the preceding sentence is deemed to provide services to every line of business of the employer.

(iii) *Employees who provide services exclusively to a line of business.* An employee provides services exclusively to a line of business if, within the meaning of paragraph (c)(2)(ii) of this section, the employee provides services to the line of business and does not provide services to any other line of business of the employer. Thus, for an employee to provide services exclusively to a line of business, no more than a negligible portion of the empoloyee's services may contribute to providing the property or services provided by any other line of business to customers of the employer.

(iv) *Employees taken into account*—(A) *General rule.* For purposes of this paragraph (c)(2), only employees who are employees of the employer on the first testing day are taken into account. For this purpose, there are no excludable employees (except as provided in paragraph (c)(2)(iv)(B) of this section). Consequently, all employees who are employees on the first testing day are taken into account, including employees covered under a collective bargaining agreement. For the definition of "first testing day," see § 1.414(r)–11(b)(4).

(B) *Exclusion of certain nonresident aliens.* For purposes of this paragraph (c)(2), the employer is permitted, but not required, to exclude all employees who are described in section 410(b)(3)(C)

(i.e., nonresident aliens who receive no earned income within the meaning of section 911(d)(2) from the employer that constitutes income from sources within the United States within the meaning of section 861(a)(3)). However, the preceding sentence does not permit the employer to exclude any nonresident alien who does not provide services exclusively to any line of business of the employer within the meaning of paragraph (c)(2)(ii) of this section.

(v) *Services taken into account.* For purposes of this paragraph (c)(2), only services performed by an employee during the testing year are taken into account. An employee's services during the testing year are considered to contribute to providing the property or services provided by a line of business to customers of the employer if:

(A) The employee's services during the testing year contribute to providing such property or services to customers of the employer during the testing year; or

(B) It is reasonably anticipated that the employee's service during the testing year will contribute to providing such property and services of customers of the employer after the close of the testing year.

(vi) *Examples.* The following examples illustrate the application of the requirement in paragraph (b)(4) of this section and the supplementary rules of this paragraph (c)(2). Unless otherwise specified, it is assumed that the employees and their services described in these examples are taken into account under this paragraph (c)(2) for the testing year.

Example 1. Employer A operates four lines of business as determined under § 1.414(r)–2. One of its lines of business is the operation of a chain of resort hotels. Of the 10,000 employees who provide services to the resort hotel line of business, 9,300 employees provide their services exclusively to that line of business. Because 9,300 is 93 percent of 10,000, at least 90 percent of the employees who provide services to the resort hotel line of business provide their services exclusively to that line of business. Employer A's resort hotel line of business therefore has its own separate employee workforce and thus satisfies the requirement of paragraph (b)(4) of this section.

Example 2. The facts are the same as in *Example 1.* Employer A's second line of business manufactures and sells tires and other automotive products. Employee M is a tire press operator in Employer A's tire factory. Employee N is the manager of the tire factory. Under these facts, the services of Employees M and N contribute to providing tires to customers of Employer A. Both employees therefore provide services to Employer A's tire and automotive products line of business.

Example 3. The facts are the same as in *Example 2.* In addition, the services of Employees M and N do not contribute to providing any property or service other than tires to customers of Employer A. Under these facts, Employees M and N provide their services exclusively to Employer A's tire and automotive products line of business.

Example 4. The facts are the same as in *Example 3.* Employer A's third line of business develops, manufactures, and sells pharmaceutical products and medical supplies. As part of this line of business, Employer A operates a surgical latex glove factory on the same site as the tire factory in *Example 2.* Employer A's facilities at the site include a health clinic and a cafeteria that serve the employees of both the tire factory and the surgical latex glove factory. Employee O is a nurse in the health clinic, and Employee P is a food server in the cafeteria. Under these facts, the services of Employees O and P contribute to providing tires and surgical latex gloves to customers of Employer A. Both employees therefore provide services not only to Employer A's tire and automotive products line of business, but also to Employer A's pharmaceutical products and medical supplies line of business. As a result, Employees O and P do not provide their services exclusively to any of Employer A's lines of business.

Example 5. The facts are the same as in *Example 4.* Employee Q is the president and chief executive officer of Employer A and is responsible for reviewing the performance of all Employer A's lines of business. Employee R is a file clerk in the accounting department located at headquarters. The accounting department is responsible, among its other dutries, for preparing monthly financial reports on all profit centers of Employer A. Employee R retrieves files needed by the accountants responsible for preparing these monthly reports. Under these facts, the services of Employees Q and R contribute to providing property and services to customers and Employer A in all of Employer A's lines of business. Both employees therefore provide services to all of Employer A's lines of business, and neither employees provides his services exclusively to any of Employer A's lines of business.

Example 6. The facts are the same as in *Example 5.* Employee S is a lawyer in the legal department located at headquarters, who devotes all her time to product liability suits filed against the pharmaceutical products and medical supplies line of business. Under these facts, the services of Employee S contribute to providing property and services to customers of Employer A in the pharmaceutical products and medical supplies line of business. In addition, because Employer S's services do not contribute to providing property or services in any other of Employer A's lines of business, Employee S provides her services exclusively to the pharmaceutical products and medical supplies line of business.

Example 7. The facts are the same in *Example 6,* except that the head of the legal department has recently assigned Employee S, in addition to her other duties, to defend a major employment discrimination suit filed against the tire and automotive products line of business. Under these facts, the services of Employee S contribute to providing property and services to customers of Employer A in the tire and automotive products line of business as well as in the pharmaceutical products and medical supplies line of business. Employee S therefore provides services to both lines of business and does not provide her services exclusively to either line of business.

Example 8. The facts are the same as in *Example 7.* Employer A also maintains a separate facility that houses a centralized procurement, marketing, and billing operation for all its lines of business. None of the procurement, marketing, or billing employees specializes in any particular line of business. Each of the procurement, marketing, and billing employees spends more than a negligible amount of time providing services to each of Employer A's lines of business. Under these facts, the services of the procurement, marketing, and billing employees contribute to providing property and services to customers of Employer A in all of Employer A's lines of business. These employees therefore provide services to all of Employer A's lines of business, and none of them provides services exclusively to any of Employer A's lines of business.

Example 9. The facts are the same as in *Example 8.* Employee T has worked exclusively for the resort hotel line of business for several years. During the testing year, he is temporarily detailed to the pharmaceutical products and medical supplies line of business. His temporary detail lasts for one week, after which he returns to his regular duties with the resort hotel line of business. Under these facts, Employee T does not provide more than a negligible portion of his services during the testing year to the pharmaceutical products and medical supplies line of business. Employee T therefore provides his services exclusively to the resort hotel line of business.

Example 10. The facts are the same as in *Example 9,* except that, under the testing year but before the first testing day, Employee T quits his employment with Employer A. Under paragraph (c)(2)(iv)(A) of this section, Employee T is not taken into account in determining whether Employer A's resort hotel line of business has its own separate employee workforce.

Example 11. Employer B is multinational controlled group of corporations that engages in the exploration, production, refining, and marketing of petrochemical products. Employer B operates two lines of business as determined under § 1.414(r)–2. The first line of business provides oil, gasoline, and other petrochemical products to wholesale customers of Employer B (the "exploration, production, and refining line of business"). The wholesale customers of Employer B include independent jobbers as well as chemical and plastics manufacturers. The second line of business provides oil and gasoline products to independent franchisees that operate retail filling stations under Employer B's trademark and tradename, as well as to retail customers of Employer B through filling stations owned and operated

by Employer B (the "retail marketing line of business"). All of the oil and gasoline products sold by the retail marketing line of business are provided to it by the exploration, production, and refining line of business. Employee U is an attendant at a filling station owned and operated by Employer B. Employee U performs no other services for Employer B. Under these facts, Employee U provides his services exclusively to Employer B's retail marketing line of business.

Example 12. The facts are the same as in *Example 11.* Employer B operates a refinery that produces oil, gasoline, and other petrochemical products. Employee V is an operating engineer at the refinery who is involved at a stage in the refining process before oil and gasoline products have been separated from other types of petrochemical products. Employee V performs no other services for Employer B. Under these facts, Employee V's services contribute to providing property and services to customers of Employer B in both the exploration, production, and refining line of business and the retail marketing line of business. Employee V therefore provides services to both lines of business and does not provide his services exclusively to either line of business.

Example 13. The facts are the same as in *Example 12.* Employee W is a petroleum engineer who conducts geological studies of potential future drilling sites. Although Employee W's services during the testing year will not contribute to providing oil, gasoline, and other petrochemical products to customers of Employer B during the testing year, it is reasonably anticipated (in accordance with paragraph (c)(2)(v) of this section) that her services during the testing year will contribute to providing such products to customers of Employer B after the close of the testing year. Under these facts, Employee W provides her services to both of Employer B's lines of business and does not provide her services exclusively to either line of business.

(3) *Determination of separate management*—(i) *In general.* The percentage in paragraph (b)(5) of this section is calculated by determining a fraction (expressed as a percentage), the numerator of which is the number of top-paid employees who provide services exclusively to the line of business, and the denominator of which is the number of top-paid employees who provide services (exclusively or otherwise) to the line of business.

(ii) *Top-paid employees who provide services to a line of business.* An employee is a top-paid employee who provides services to a line of business if the employee provides services to the line of business within the meaning of paragraph (c)(2)(ii) of this section, and is among the top 10 percent by compensation of all employees who provide services to the line of business.

(iii) *Top-paid employees who provide services exclusively to a line of business.* An employee is a top-paid employee who provides services exclusively to a line of business if the employee provides services exclusively to the line of business, within the meaning of paragraph (c)(2)(iii) of this section, and is among the top 10 percent by compensation of all employees who provide services to the line of business.

(iv) *Determination of compensation.* For purposes of this paragraph (c)(3), an employee's compensation is the compensation used to determine the employee's status as a highly or nonhighly compensated employee under section 414(q) for purposes of applying section 410(b) with respect to the first testing day. For this purpose, only compensation received during the determination year (within the meaning of § 1.414(q)–1T, Q&A–13) is taken into account. For the definition of "first testing day," see § 1.414(r)–11(b)(4).

(v) *Employees and services taken into account.* The same employees and services are taken into account in applying this paragraph (c)(3) as are taken into account in applying paragraph (c)(2) of this section.

(vi) *Special rule.* A line of business does not fail to satisfy paragraph (b)(5) of this section merely because there is one top-paid employee who provides services to the line of business (within the meaning of paragraph (c)(3)(ii) of this section), but who does not provide services exclusively to the line of business (within the meaning of paragraph (c)(3)(iii) of this section).

(vii) *Examples.* The following examples illustrate the application of the requirement in paragraph (b)(5) of this section and the supplementary rules of this paragraph (c)(3).

Example 1. Employer C operates three lines of business as determined under § 1.414(r)–2. One of its lines of business is the operation of a chain of fast food restaurants. Of Employer C's total workforce, 10,000 employees provide services to the fast food restaurant line of business. Of the 1,000 employees who constitute the top 10 percent by compensation of all employees who provide services to the line of business, 930 provide their services exclusively to the line of business. Because 930 is 93 percent of 1,000, at least 90 percent of the top-paid employees who provide services to the line of business provide their services exclusively to the line of business. Employer C's fast food restaurant line of business therefore has its own separate management and thus satisfies the requirement of paragraph (b)(5) of this section.

Example 2. Employer D operates four lines of business as determined under § 1.414(r)–2. One of its lines of business is a small machine tool shop. Sixty of Employer D's employees provide services to the machine tool shop line of business. Of the six employees who constitute the top 10 percent by compensation of all 60 employees who provide services to the machine tool shop line of business, five provide their services exclusively to the line of business and one does not provide services exclusively to the line of business. Because five is 83 percent of six, at least 90 percent of the top-paid employees who provide services to the line of business do not provide their services exclusively to the line of business. However, of the six top-paid employees who provide services to the line of business, only one top-paid employee does not provide his services exclusively to the line of business. Under the special rule of paragraph (c)(3)(vi) of this section, Employer D's machine tool shop line of business does not fail to have its own separate management and thus satisfies the requirement of paragraph (b)(5) of this section.

(4) *Determination of separate tangible assets*—(i) *In general.* The percentage in paragraph (b)(6) of this section is calculated by determining a fraction (expressed as a percentage), the numerator of which is the value of all tangible assets used exclusively by the line of business, and the denominator of which is the value of all tangible assets used (exclusively or otherwise) by the line of business.

(ii) *Tangible assets used by a line of business.* A tangible asset is used by a line of business if more than a negligible portion of the employer's use of the tangible asset contributes to providing the property or services provided by the line of business to customers of the employer. A tangible asset that is not used by any line of business within the meaning of the preceding sentence is deemed to be used by every line of business of the employer.

(iii) *Tangible assets used exclusively by a line of business.* A tangible asset is used exclusively by a line of business if, within the meaning of paragraph (c)(4)(ii) of this section, the tangible asset is used by the line of business and is not used by any other line of business of the employer. Thus, for a tangible asset to be used exclusively by a line of business, no more than a negligible portion of the employer's use of the tangible asset may contribute to providing the property or services provided by any other line of business to customers of the employer.

(iv) *Value of tangible assets.* In the case of an employer that maintains its financial accounting records in accordance with generally accepted accounting principles, the value of a tangible asset is deemed to be its adjusted book basis for financial accounting purposes as of the close of the employer's fiscal year that ends latest in the testing year. In the case of an employer that does not maintain its

financial accounting records in accordance with generally accepted accounting principles, the value of a tangible asset is deemed to be its adjusted basis for federal income tax purposes as of the close of the employer's taxable year that ends latest in the testing year.

(v) *Tangible assets taken into account.* All tangible assets of the employer are taken into account whose value (as determined under paragraph (c)(4)(iv) of this section) is greater than zero. For this purpose, tangible assets include (without limitation) all real property, plant, and equipment, and all inventories. Notwithstanding the preceding sentence, an employer is permitted, but not required, to exclude all tangible assets that constitute nondepreciable land. In addition, the employer is required to take into account all tangible assets that are leased to the employer by persons other than the employer, and that otherwise would not be taken into account under this paragraph (c)(4). For this latter purpose, each tangible asset described in the preceding sentence is treated as having a value equal to eight times its annual rental cost to the employer.

(vi) *Special rule for certain shared buildings.* If only a portion of a building is used exclusively by a line of business, the employer is permitted, but not required, to treat the portion so used as if it were a separate tangible asset that is used exclusively by the line of business. For this purpose, the portion is treated as having a value equal to its allocated share (on a square-footage basis) of the value of the entire building (as otherwise determined under paragraph (c)(4)(iv) of this section).

(vii) *Use of tangible assets taken into account.* For purposes of this paragraph (c)(4), only the employer's use of a tangible asset during the applicable fiscal or taxable year described in paragraph (c)(4)(iv) of this section is taken into account. This use is considered to contribute to providing the property or services provided by the line of business to customers of the employer for the testing year if the use contributes to providing such property or services to customers of the employer during the applicable fiscal or taxable year or if it is reasonably anticipated that the use will contribute to providing such property and services to customers of the employer after the close of the applicable fiscal or taxable year.

(5) *Optional rule for vertically integrated lines of business*—(i) *In general.* If two lines of business satisfy the requirements of this paragraph (c)(5) with respect to a type of property or service, the employer is permitted, but not required, to apply the optional rule in this paragraph (c)(5).

(ii) *Requirements.* Two lines of business satisfy the requirements of this paragraph (c)(5) with respect to a type of property or service only if:

(A) One of the lines of business (the "upstream line of business") provides the property or service to the other line of business (the "downstream line of business");

(B) The upstream line of business provides the same type of property or service to customers of the employer (in accordance with the employer's designation for the testing year under § 1.414(r)–2);

(C) During the testing year, the number of units of the property or service provided to customers of the employer by the upstream line of business equals at least 50 percent of the total number of units of the property or service provided by the upstream line of business to all persons (including customers of the employer, the downstream line of business, and all other lines of business of the employer), when measured on a uniform basis; and

(D) The downstream line of business uses, consumes, or substantially modifies the property or service in the course of itself providing property or services to customers of the employer or, alternatively, provides the property or service to customers of the employer at a different level in the chain of commercial distribution than the upstream line of business (e.g., retail versus wholesale).

(iii) *Optional rule*—(A) *Treatment of employees.* For purposes of determining the lines of business to which an employee provides services under paragraph (c)(2)(ii) of this section, an employee is not treated as providing services to the downstream line of business if:

(*1*) The employee is considered to provide services to the downstream line of business under paragraph (c)(2)(ii) of this section (applied without regard to the optional rule in this paragraph (c)(5)); and

(*2*) The employee is so considered solely because the employee's services contribute to providing the property or service from the downstream line of business to the downstream line of business.

(B) *Treatment of tangible assets.* For purposes of determining the lines of business that use a tangible asset under paragraphs (c)(4)(ii) of this section, a tangible asset is not treated as being used by the downstream line of business if:

(*1*) The tangible asset is considered to be used by the downstream line of business under paragraph (c)(4)(ii) of this section (applied without regard to the optional rule in this paragraph (c)(5)); and

(*2*) The tangible asset is so considered solely because the employer's use of the tangible asset contributes to providing the property or service from the upstream line of business to the downstream line of business.

(C) *Purpose for which optional rule applies.* If an employer applies the optional rule in this paragraph (c)(5), the treatment specified in paragraphs (c)(5)(iii) (A) and (B) of this section applies for all the following purposes and only for the following purposes:

(*1*) The separate employee workforce, separate management, and separate tangible assets requirements of paragraphs (b)(4) through (b)(6) of this section;

(*2*) The 50-employee requirement of § 1.414(r)–4(b); and

(*3*) The determination of the employees of a qualified separate line of business under § 1.414(r)–7.

(iv) *Examples.* The following examples illustrate the application of the optional rule in this paragraph (c)(5).

Example 1. Employer E operates two lines of business as determined under § 1.414(r)–2, one engaged in upholstery textile manufacturing and the other in furniture manufacturing. During the testing year, the upholstery textile line of business provides 300,000 yards of upholstery textiles to customers of Employer E and 100,000 yards of upholstery textiles to Employer E's furniture line of business. The furniture line of business uses the upholstery textiles provided to it by the upholstery textile line of business in the manufacture of upholstered furniture for sale to customers of Employer E. Thus, the upholstery textile line of business provides 75 percent of its total output of upholstery textiles during the testing year to customers of Employer E. In addition, the furniture line of business substantially modifies the upholstery textiles provided to it by the upholstery textile line of business in providing upholstered furniture products to customers of Employer E. Under these facts, Employer E's two lines of business satisfy the requirements of this paragraph (c)(5) with respect to upholstery textiles for the testing year.

Example 2. Employer B is a multinational controlled group of corporations that engages in the exploration, production, refining, and marketing or petrochemical products. Employer B operates two lines of business as determined under § 1.414(r)–2. The first line of business provides oil, gasoline, and other petrochemical products to wholesale customers of Employer B (the "exploration, production, and refining line of business"). The wholesale customers of Employer B include independent jobbers as well as chemical and plastics manufacturers. The second line of business provides oil and gasoline products to independent franchises

that operate retail filling stations under Employer B's trademark and tradename, as well as to retail customers of Employer B through filling stations owned and operated by Employer B (the "retail marketing line of business"). All of the oil and gasoline products sold by the retail marketing line of business are provided to it by the exploration, production, and refining line of business. During the testing year, the exploration, production, and refining line of business provides 25,000 gallons of oil and 350,000 gallons of gasoline to the retail marketing line of business, and 75,000 gallons of oil and 650,000 gallons of gasoline to wholesale customers of Employer B. Thus, the exploration, production, and refining line of business provides 75 percent of its output of oil products and 65 percent of its total output of gasoline products during the testing year to customers of Employer B. In addition, the retail line of business provides oil and gasoline products to customers of Employer B at different levels in the chain of commercial distribution than the exploration, production, and refining line of business. Under these facts, Employer B's two lines of business satsify the requirements of this paragraph (c)(5) with respect to both oil products and gasoline products for the testing year.

Example 3. The facts are the same as in *Example 2.* Employer B operates a refinery that produces oil, gasoline, and other petrochemical products. Employee V is an operating engineer at the refinery who is involved at a stage in the refining process before oil and gasoline products have been separated from other types of petrochemical products. Employee V performs no other services for Employer B. Absent application of the optional rule in this paragraph (c)(5), Employee V would be considered to provide services to both of Employer B's lines of business. See *Example 12* under paragraph (c)(2)(vi) of this section. However, because Employee V's services to the retail marketing line of business contribute solely to providing oil and gasoline products from the exploration, production, and refining line of business to the retail marketing line of business, under the optional rule in paragraph (c)(5)(iii)(A) of this section Employee V is not treated as providing services to the retail marketing line of business.

Example 4. The facts are the same as in *Example 3.* Employee W is a petroleum engineer who conducts geological studies of potential future drilling sites. Employee W performs no other services for Employer B. Absent application of the optional rule in this paragraph (c)(5), Employee W would be considered to provide services to both of Employer B's lines of business. See *Example 13* under paragraph (c)(2)(vi) of this section. However, because Employee W's services to the retail marketing line of business contribute solely to providing oil and gasoline products from the exploration, production, and refining line of business to the retail marketing line of business, under the optional rule in paragraph (c)(5)(iii)(A) of this section Employee W is not treated as providing services to the retail marketing line of business.

Example 5. The facts are the same as in *Example 4.* Employee X is a vice president in Employer B's home office. As part of his senior management responsibilities, Employee X helps to set the rate of production at Employer B's refineries in the United States and also helps to set the price charged at the pump at the retail filling stations owned and operated by Employer B in this country. Absent application of the optional rule in this paragraph (c)(5), Employee X would be considered to provide services to both of Employer B's lines of business. Because Employee X helps to set the price charged at the pump by Employer B's retail marketing line of business, Employee X's services to the retail marketing line of business are not limited to contributing solely to providing oil and gasoline products from the exploration, production, and refining line of business to the retail marketing line of business, as required under paragraph (c)(5)(iii)(A)(*2*) of this section. Accordingly, even though Employer B's two lines of business satisfy the requirements of this paragraph (c)(5) with respect to both oil products and gasoline products for the testing year, and even though Employer B applies the optional rule in this paragraph (c)(5), Employee X is still considered to provide services to both of Employer B's lines of business.

§ 1.414(r)–4 Qualified separate line of business—fifty-employee and notice requirements.

(a) *In general.* This section sets forth the rules for determining whether a separate line of business (as determined under § 1.414(r)–3) satisfies the 50-employee and notice requirements of § 1.414(r)–1(b)(2)(iv) (B) and (C), respectively.

(b) *Fifty-employee requirement.* A separate line of business satisfies the 50-employee requirement of § 1.414(r)–1(b)(2)(iv)(B) only if on each day of the testing year there are at least 50 employees who provide their services exclusively to the separate line of business (within the meaning of § 1.414(r)–3(c)(2)(iii)). For this purpose, all employees of the employer are taken into account (including employees covered under a collective bargaining agreement), except employees described in § 1.414(q)–1T, Q&A–9(g) (i.e., the same employees, subject to certain modifications, who are excluded in determining the number of employees in the top-paid group under section 414(q)(4)).

(c) *Notice requirement*—(1) *General rule.* A separate line of business satisfies the notice requirement of § 1.414(r)–1(b)(2)(iv)(C) only if the employer notifies the Secretary that it treats itself as operating qualified separate lines of business for the testing year in accordance with § 1.414(r)–1(b). The employer's notice for the testing year must specify each of the qualified separate lines of business operated by the employer and the section or sections of the Code whose requirements are to be applied separately with respect to the employees of each qualified separate line of business. See § 1.414(r)–1(c). The employer's notice must take the form, must be filed at the time and the place, and must contain any additional information prescribed by the Commissioner in revenue procedures, notices, or other guidance of general applicability. No other notice, whether actual or constructive, satisfies the requirement of this paragraph (c).

(2) *Effect of notice.* Once an employer has provided the notice prescribed in this paragraph (c) for a testing year and the time for filing the notice for the testing year has expired without its being modified, withdrawn, or revoked, the employer is deemed to have irrevocably elected to apply the requirements of the section or sections of the Code specified in the notice separately with respect to the employees of each qualified separate line of business specified in the notice for all plan years that begin in the testing year. The Commissioner may, in revenue procedures, notices, or other guidance of general applicability, provide for exceptions to the rule in this paragraph (c)(2) as well as for the effect that will be given to the employer's notice for purposes of any future testing year.

§ 1.414(r)–5 Qualified separate line of business—administrative scrutiny requirement—safe harbors.

(a) *In general.* A separate line of business (as determined under § 1.414(r)–3) satisfies the administrative scrutiny requirement of § 1.414(r)–1(b)(2)(iv)(D) if the separate line of business satisfies any of the safe harbors in paragraphs (b) through (e) of this section. The safe harbor in paragraph (b) of this section implements the statutory safe harbor of section 414(r)(3). The safe harbors in paragraphs (c) through (e) of this section constitute the guidelines provided for under section 414(r)(2)(C). A separate line of business that does not satisfy any of the safe harbors in this section nonetheless satisfies the requirement of administrative scrutiny if the employer requests and receives an individual determination from the Commissioner under § 1.414(r)–6 that the separate line of business satisfies the requirement of administrative scrutiny.

(b) *Statutory safe harbor*—(1) *General rule.* A separate line of business satisfies the safe harbor in this paragraph (b) for the testing year only if the highly compensated employee

percentage ratio of the separate line of business is:

(i) at least 50 percent; and

(ii) no more than 200 percent.

(2) *Highly compensated employee percentage ratio.* For purposes of this paragraph (b), the highly compensated employee percentage ratio of a separate line of business is calculated by determining a fraction (expressed as a percentage), the numerator of which is the percentage of the employees of the separate line of business who are highly compensated employees, and the denominator of which is the percentage of all employees of the employer who are highly compensated employees.

(3) *Employees taken into account.* For purposes of this paragraph (b), the employees taken into account are the same employees who are taken into account for purposes of applying section 410(b) with respect to the first testing day. For this purpose, employees described in section 410 (b)(3) and (b)(4) are excluded. However, section 410(b)(4) is applied with reference to the lowest minimum age requirement applicable under any plan of the employer and with reference to the lowest service requirement applicable under any plan of the employer. The employees of the separate line of business are determined by applying § 1.414(r)–7 to the employees taken into account under this paragraph (b)(3). An employee is treated as a highly compensated employee for purposes of this paragraph (b) if the employee is treated as a highly compensated employee for purposes of applying section 410(b) with respect to the first testing day. For the definition of "first testing day," see § 1.414(r)–11(b)(4).

(4) *Ten-percent exception.* Paragraph (b)(1)(i) of this section is deemed satisfied if at least 10 percent of all highly compensated employees of the employer provide their services exclusively to the separate line of business (within the meaning of § 1.414(r)–3(c)(2)(iii)).

(5) *Determination based on preceding testing year.* A separate line of business that satisfied this safe harbor for the immediately preceding testing year (without taking into account the special rule in this paragraph (b)(5)) is deemed to satisfy the safe harbor for the current testing year. The preceding sentence applies to a separate line of business only if the employer designated the same line of business in the immediately preceding testing year as in the current testing year and either:

(i) The highly compensated employee percentage ratio of the separate line of business for the current testing year does not deviate by more than 10 percent (not 10 percentage points) from the highly compensated employee percentage ratio of the separate line of business for the immediately preceding testing year; or

(ii) At least 95 percent of the employees of the separate line of business for the current testing year were also employees of the separate line of business for the immediately preceding testing year, and no more than 5 percent of the employees of the separate line of business for the immediately preceding testing year are not employees of the separate line of business for the current testing year.

(6) *Examples.* The following examples illustrate the application of the safe harbor in this paragraph (b).

Example 1. Employer A operates three separate lines of business as determined under § 1.414(r)–3, that respectively consist of a railroad, an insurance company, and a newspaper. Employer A employs a total of 400 employees, 100 of whom are highly compensated employees. Thus, the percentage of all employees of Employer A who are highly compensated employees is 25 percent. After applying § 1.414(r)–7, the distribution of highly and nonhighly compensated employees among Employer A's separate lines of business is as follows:

	Employerwide	Railroad	Insurance Company	Newspaper
Number of employees	400	100	150	150
Number of HCEs	100	20	50	30
Number of non-HCEs	300	80	100	120
HCE percentage	25	20	33	20
HCE percentage ratio	(100/400)	(20/100)	(50/150)	(30/150)
	N/A	80	133	80
		(20/25)	(33/25)	20/25)

Because the highly compensated employee percentage ratio of each separate line of business is at least 50 percent and no more than 200 percent, each of Employer A's separate lines of business satisfies the requirements of the safe harbor in this paragraph (b).

Example 2. Employer B operates three separate lines of business as determined under § 1.414(r)–3, that respectively consist of a dairy products manufacturer, a candy manufacturer, and a chain of houseware stores. Employer B employs a total of 1,000 employees, 100 of whom are highly compensated employees. Thus, the percentage of all employees of Employer B who are highly compensated employees is 10 percent. After applying § 1.414(r)–7, the distribution of highly and nonhighly compensated employees among Employer B's separate lines of business is as follows:

	Employerwide	Dairy Products	Candy	Houseware Stores
Number of employees	1,000	200	500	300
Number of HCEs	100	5	50	45
Number of non-HCEs	900	195	450	255
HCE percentage	10	2.5	10	15
HCE percentage ratio	(100/1,000)	(5/200)	(50/500)	(45/300)
	N/A	25	100	150
		(2.5/10)	(10/10)	15/10)

Because the highly compensated employee percentage ratio for the dairy products line of business is less than 50 percent, it does not satisfy the requirements of the statutory safe harbor in this paragraph (b). However, because Employer B's other two separate lines of business (candy manufacturing and houseware stores) each has a highly compensated employee percentage ratio that

is no greater than 200 percent, they each satisfy the statutory safe harbor in this paragraph (b).

Example 3. The facts are the same as in *Example 2,* except that Employer B operates only two separate lines of business as determined under § 1.414(r)–3, one consisting of the dairy products manufacturer and candy manufacturer, and the other consisting of the chain of housewares stores. After applying § 1.414(r)–7, the distribution of highly and nonhighly compensated employees among Employer B's separate lines of business is as follows:

	Employer-wide	Candy/Dairy Products	Houseware Stores
Number of employees	1,000	700	300
Number of HCEs	100	55	45
Number of non-HCEs	900	645	255
HCE percentage	10	7.8	15
	(100/1,000)	(55/700)	(45/300)
HCE percentage ratio	N/A	78	150
		(7.8/10)	(15/10)

Because the highly compensated employee percentage ratio for both of Employer B's separate lines of business is at least 50 percent and no more than 200 percent, they each satisfy the requirements of the statutory safe harbor in this paragraph (b).

(c) *Safe harbor for separate lines of business in different industries*—(1) *In general.* A separate line of business satisfies the safe harbor in this paragraph (c) for the testing year if it is in a different industry or industries from every other separate line of business of the employer. For this purpose, a separate line of business is in a different industry or industries from every other separate line of business of the employer only if:

(i) The property or services provided to customers of the employer by the separate line of business (as designated by the employer for the testing year under § 1.414(r)–2) fall exclusively within one or more industry categories established by the Commissioner for purposes of this paragraph (c); and

(ii) None of the property or services provided to customers of the employer by any of the employer's other separate lines of business (as designated by the employer for the testing year under § 1.414(r)–2) fall within the same industry category or categories.

(2) *Establishment of industry categories.* The Commissioner shall, by revenue procedure or other guidance of general applicability, establish industry categories for purposes of this paragraph (c).

(3) *Examples.* The following examples illustrate the application of the safe harbor in this paragraph (c). For purposes of these examples, it is assumed that, pursuant to paragraph (c)(2) of this section, the Commissioner has established the following industry categories (among others): transportation equipment and services; banking, insurance, and finance; and entertainment, sports, and hotels.

Example 1. Among its other business activities, Employer C operates a commercial airline that constitutes a separate line of business under § 1.414(r)–3. In addition, no other separate line of business of Employer C provides to customers of Employer C any property or services in the transportation equipment and services industry category. Under these facts, the separate line of business described in this example satisfies the safe harbor in this paragraph (c).

Example 2. The facts are the same as in *Example 1,* except that Employer C also operates a trucking company that constitutes another separate line of business of Employer C under § 1.414(r)–3. Because the commercial airline and the trucking company both provide to customers of Employer C services in the transportation equipment and services industry category, neither separate line of business satisfies the safe harbor in this paragraph (c).

Example 3. Among its other business activities, Employer D operates a commercial bank and a luxury hotel that together constitute a single separate line of business under § 1.414(r)–3. No other separate line of business of Employer D provides to customers of Employer D property or services in either the banking, insurance, or financial industry category, or the entertainment, sports, or hotel industry category. Under these facts, the separate line of business described in this example satisfies the safe harbor in this paragraph (c).

(d) *Safe harbor for separate lines of business reported as industry segments under FAS 14*—(1) *In general.* A separate line of business satisfies the safe harbor in this paragraph (d) for the testing year if, for the employer's fiscal year ending latest in the testing year, the employer is required to report the separate line of business as one or more reportable industry segments on its annual report required to be filed in conformity with Form 10–K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 ("Form 10–K"), and the employer timely files the report with the Securities and Exchange Commission ("SEC").

(2) *Reported as a reportable industry segment.* For purposes of this paragraph (d), a separate line of business is reported as one or more reportable industry segments only if:

(i) The separate line of business consists of one or more industry segments that are reportable industry segments within the meaning of paragraphs 10(b), 11(c), and 15 through 21 of the Statement of Financial Accounting Standards No. 14, Financial Reporting for Segments of a Business Enterprise ("FAS 14"); and

(ii) The property or services provided to customers of the employer by the separate line of business (as designated by the employer for the testing year under § 1.414(r)–2) is identical to the group of products or services provided to customers of the employer by the reportable industry segment or segments (as determined under paragraphs 10(a), 11(b), and 12 of FAS 14).

(3) *Timely filing of Form 10–K.* A Form 10–K is timely filed with the SEC if it is filed within the required period as provided under 17 CFR 240.12b–25(b)(2)(ii) (the 90-day period after the end of the fiscal year covered by the annual report including the 15-day extension) without regard to any further extensions or amendments.

(4) *Examples.* The following examples illustrate the application of the safe harbor in this paragraph (d).

Example 1. Among its other business activities, Employer E operates a bearing manufacturing firm that constitutes a separate line of business under § 1.414(r)–3. Employer E is required to file an annual Form 10–K with the SEC. On its timely filed Form 10–K, Employer E reports its bearing manufacturing operations as a reportable industry segment in accordance of FAS 14 (as determined under paragraphs 10(b), 11(c), 15 through 21 of FAS 14). The group of bearing products provided by the separate line of business (as designated by Employer E under § 1.414(r)–2) is identical to the group of bearing products provided by the industry segment (as determined under paragraphs 10(a), 11(b), and 12 of FAS 14). Under these facts, the separate line of business described

in this example satisfies the safe harbor in this paragraph (d).

Example 2. The facts are the same as in *Example 1*, except that Employer E has apportioned its bearing manufacturing operations between two separate lines of business as determined under § 1.414(r)–3, one engaged in the manufacture of bearings for use in the automotive industry, and a second engaged in the manufacture of bearings for use in the aerospace industry. Because neither separate line of business provides a group of property or services to customers of Employer E that is identical to the group of bearing products provided by the reportable industry segment reported on Employer E's annual Form 10–K, neither separate line of business described in this example satisfies the safe harbor in this paragraph (d).

(e) *Safe harbor for separate lines of business that provide minimum or maximum benefits*—(1) *In general.* A separate line of business satisfies the safe harbor in this paragraph (e) for the testing year only if the level of benefits provided to employees of the separate line of business satisfies paragraph (e)(2) or (e)(3) of this section, whichever is applicable. For this purpose, the level of benefits is determined with respect to all plans of the employer that benefit employees of the separate line of business for plan years that begin in the testing year.

(2) *Minimum benefit required*—(i) *Applicability.* This paragraph (e)(2) applies to a separate line of business that for the testing year has a highly compensated employee percentage ratio of less than 50 percent (as determined under paragraph (b)(2) of this section).

(ii) *Requirement.* A separate line of business satisfies this paragraph (e)(2) only if:

(A) At least 80 percent of all nonhighly compensated employees of the separate line of business benefit under a plan of the employer; and

(B) Each nonhighly compensated employee of the separate line of business who benefits under a plan accrues a benefit for the plan year that equals or exceeds either the defined benefit minimum in paragraph (e)(2)(iii) of this section, or the defined contribution minimum in paragraph (e)(2)(iv) of this section, or the combined plan minimum in pragraph (e)(4) of this section. The defined benefit minimum must be provided in a defined benefit plan, and the defined contribution minimum must be provided in a defined contribution plan.

(iii) *Defined benefit minimum*—(A) *In general.* The defined benefit minimum is the employer-derived accured benefit that would result from calculating a normal accrual rate equal to 0.75 percent of compensation. The normal accrual rate is determined under § 1.401(a)(4)–3(c)(2)(ii) and the annual accrual method described in § 1.401(a)(4)–3(c)(3)(ii) as modified herein. Under the rules for determining accrual rates, accrued benefits attributable to employee contributions are ignored and are determined under the rules in § 1.401(a)(4)–6. The normal accrual rate is determined without regard to permitted disparity under section 401(l) or imputed disparity under § 1.401(a)(4)–7.

(B) *Normal form and equivalent benefits.* The normal form of benefit for purposes of the defined benefit minimum is a single life annuity beginning at a normal retirement age of 65. The defined benefit minimum may be provided in an optional benefit form that is the actuarial equivalent of the normal form of benefit. For this purpose, optional benefit forms are qualified joint and survivor annuities or commencement of normal retirement benefits at a normal retirement age other than 65. Actuarial equivalence is determined in the same manner that accrual rates are determined under § 1.401(a)(4)–3(c)(2) using only the mortality tables and interest rates that are deemed to be reasonable under that section. No adjustment is permitted for early retirement benefits or for any ancillary benefit, including disability benefits.

(C) *Compensation.* For purposes of this paragraph (e)(2)(iii), the definition of compensation used for both the prior and current plan year must satisfy section 415(c)(3) (see § 1.415–2(d)) and must be averaged over the 5-consecutive-year period in which the employee has the greatest aggregate compensation. The years to be taken into account are all years beginning with the first year in which the employee benefits under the plan and ending with the last plan year in which the employee participates in the plan. However, a plan may disregard in a reasonable and consistent manner years before 1992 and years for which the employer does not use this paragraph (e)(2) to satisfy this safe harbor with respect to the separate line of business.

(D) *Adjustment factor for high 3-year compensation.* If a plan provides a defined benefit minimum that uses 3 consecutive years (in lieu of 5) for calculating average annual compensation, the 0.75 percent annual accrual rate in paragraph (e)(2)(iii)(A) of this section is multiplied by 93.3 percent, resulting in a normal accrual rate equal to 0.70 percent.

(E) *Special rules.* Except when inconsistent with the rules of this paragraph (e), the defined benefit minimum for a plan year is calculated in a manner consistent with the rules for determining whether the amount of benefits satisfy § 1.401(a)(4)–3 for the plan year. For example, compensation may be determined on other than a plan year basis as permitted by § 1.401(a)(4)–3(f)(7). A plan described in section 412(i) may be used to provide the defined benefit minimum described in this paragraph (e)(2). In such case, the rules in § 1.416–1, M–17, apply to such a plan.

(iv) *Defined contribution minimum*—(A) *In general.* The defined contribution minimum is an allocation rate equal to 3 percent of an employee's compensation for the plan year. The allocations that are taken into account are the employer contributions and forfeitures that are treated as allocated to the account of the employee for the plan year under § 1.401(a)(4)–2(c) (applied without regard to § 1.401(a)(4)–2(c)(4)). Thus, allocations that are taken into account do not include matching contributions described in § 1.401(m)–1(f)(8), elective contributions described in § 1.401(k)–1(g)(4), or any adjustment in allocation rates permitted under section 401(l) or imputed disparity under § 1.401(a)(4)–7. Compensation means compensation that satisfies section 415(c)(3). See § 1.415–2(d).

(B) *Special rules.* except where inconsistent with the rules of this paragraph (e), allocation ratres for a plan year are calculated in a manner consistent with the rules for determining whether the amount of contributions satisfies § 1.401(a) (4)–2 for the plan year. For example, the period for determining compensation with respect to the plan year may be determined under the rules in § 1.401(a)(4)–2(f).

(3) *Maximum benefit permitted*—(i) *Applicability.* This paragraph (e)(3) applies to a separate line of business that for the testing year has a highly compensated employee percentage ratio that exceeds 200 percent (as determined under paragraph (b)(2) of this section).

(ii) *Requirement.* A separate line of business satisfies this paragraph (e)(3) only if no highly compensated employee of the separate line of business accrues a benefit for the plan year that exceeds the defined benefit maximum in paragraph (e)(3)(iii), or the defined contribution maximum in paragraph (e)(3)(iv), or the combined plan maximum in paragraph (e)(4) of this section. All benefits provided by defined benefit plans are subject to the defined benefit maximum, and all benefits provided by defined contribution plans are subject to the defined contribution maximum.

(iii) *Defined benefit maximum*—(A) *In general.* The defined benefit maximum is the employer-derived accrued benefit that would result from calculating a normal accrual rate equal to 2.5 percent of compensation.

(B) *Determination of defined benefit maximum.*—The normal accrual rate used for the defined benefit maximum is determined in the same manner as the normal accrual rate used for the defined benefit minimum is determined under paragraph (e)(2)(iii) of this section, except as provided below. Thus, a defined benefit plan may provide, in addition to the defined benefit maximum, any benefit the value of which is not taken into account under paragraph (e)(2)(iii). For example, a plan may provide disability benefits described in § 1.401(a)(4)–3(d) or ancillary benefits described in § 1.401.(a)(4)–4(e).

(C) *Adjustment for different compensation definitions.*—If a plan provides benefits that are computed using 3 consecutive years of service in the compensation definition, the maximum normal accrual rate is multiplied by 93.3 percent, resulting in a maximum accrual rate of 2.33 percent. Compensation may be less than the compensation described in section 415(c)(3). However, no adjustment is made to the maximum normal accural rate because of the use of a definition of compensation that is less than the compensation described in section 415(c)(3).

(D) *Adjustment for certain subsidies.*—If the plan provides early retirement benefits that are greater in value than the normal retirement benefit, or provides a qualified joint and survivor benefit that is more valuable than the single life annuity, the maximum normal accrual rate must be adjusted. The maximum normal accrual rate is adjusted by multiplying it by a fraction, the numerator of which is the normal accrual rate, and the denominator of which is the most valuable accrual rate (as defined in § 1.401.(a)(4)–3(c)(2)(iii) and as determined in a manner parallel to the determination of the normal accrual rate).

(iv) *Defined contribution maximum.*—(A) *In general.* The defined contribution maximum is an allocation rate equal to 10 percent of an employee's compensation for the plan year.

(B) *Determination of defined contribution maximum.*—The defined contribution maximum is determined in the same manner as the defined contribution minimum is determined under paragraph (e)(2)(iv) of this section except as provided below. Compensation may be less than the compensation described in section 415(c)(3). However, no adjustment is made to the defined contribution maximum because of the use of a definition of compensation that is less than the compensation described in section 415(c)(3). Allocations that are taken into account include matching contributions described in § 1.401(m)–1(f)(8) (including forfeitures allocated on the basis of employee or elective contributions). However, allocations that are taken into account do not include elective contributions described in § 1.401(k)–1(g)(4) or employee contributions described in § 1.401(m)–1(f)(7).

(4) *Duplication of benefits or contributions*—(i) *Plans of the same type.* In the case of an employee who benefits under more than one defined benefit plan, the defined benefit minimum required or the defined benefit maximum permitted under this paragraph (e) is determined by reference to the employee's aggregate employer-provided benefit under all defined benefit plans of the employer. In the case of an employee who benefits under more than one defined contribution plan, the defined contribution minimum required or the defined contribution maximum permitted under this paragraph (e) is determined by reference to the employee's aggregate employer-provided benefits under all defined contribution plans of the employer.

(ii) *Plans of different types.*—In the case of an employee who benefits under both a defined benefit plan and a defined contribution plan, a percentage of the minimum benefit required or the maximum benefit permitted under this paragraph (e) may be provided in each type of plan as long as the combined percentage equals at least 100 percent in the case of the minimum benefit required and does not exceed 100 percent in the case of the maximum benefit permitted. Thus, for example, if a highly compensated employee benefits under both types of plans and accrues an aggregate adjusted normal accrual rate equal to 1.25 percent of compensation under all defined benefit plans of the employer (i.e., 50 percent of the defined benefit maximum described in paragraph (e)(3)(iii) of this section), in order to comply with the maximum benefit safe harbor, the employee may not receive an aggregate allocation under all defined contribution plans of the employer in excess of 5 percent (i.e., 50 percent of the defined contribution maximum described in paragraph (e)(3)(iv) of this section).

(iii) *Special rule for floor-offset arrangements.*—In the case of a floor-offset arrangement (as described in § 1.401(a)(4)–8(d)), the minimum or maximum benefit rules are applied to each plan as if the other plan did not exist. Thus, the defined benefit plan must provide at least 100 percent of the defined benefit minimum (or no more than 100 percent of the defined benefit maximum) based on the gross benefit prior to offset, and the defined contribution plan must provide at least 100 percent of the defined contribution minimum (or no more than 100 percent of the defined contribution maximum).

(5) *Certain contingency provisions ignored.*—For purposes of this paragraph (e), an employee's accrual or allocation rate under a plan is determined without regard to any plan provision the effect of which is to make the operation of the minimum or maximum benefit formula contingent on the failure of the separate line of business otherwise to satisfy the requirement of administrative scrutiny.

(6) *Employees taken into account.*—For purposes of this paragraph (e), an employee is taken into account if the employee is taken into account for purposes of applying section 410(b) with respect to any testing day for the testing year. For this purpose, employees described in section 410 (b)(3) and (b)(4) are excluded. However, section 410(b)(4) is applied with reference to the lowest minimum age requirement applicable under any plan of the employer and with reference to the lowest service requirement applicable under any plan of the employer. The employees of the separate line of business are determined by applying § 1.414(r)–7 to the employees taken into account under this paragraph (e)(6). An employee is treated as a highly compensated employee for purposes of this paragraph (e) if the employee is treated as a highly compensated employee for purposes of applying section 410(b) on any testing day for the testing year. For the definition of "testing day," see § 1.414(r)–11(b)(3).

§ 1.414(r)–6 Qualified separate line of business—administrative scrutiny requirement—individual determinations.

(a) *In general.* A separate line of business (as determined under § 1.414(r)–3) that does not satisfy any of the safe harbors in § 1.414(r)–5 nonetheless satisfies the administrative scrutiny requirement of § 1.414(r)–1(b)(2)(iv)(D) if the employer requests and receives from the Commissioner an individual determination under this section that the separate line of business satisfies the requirement of administrative scrutiny for the testing

year. This section implements the individual determinations provided for under section 414(r)(2)(C). Paragraph (b) of this section prescribes the circumstances under which an employer is permitted to request an individual determination under this section. Paragraph (c) of this section describes the factors the Commissioner will take into account in determining whether to grant an individual determination under this section.

(b) *Circumstances under which an employer is permitted to request an individual determination.* An employer is permitted to request an individual determination under this section with respect to a separate line of business for a testing year only if:

(1) The employer follows the procedures prescribed by the Commissioner in revenue procedures, notices, or other guidance of general applicability for requesting an individual determination under this section; and

(2) The separate line of business would satisfy the minimum or maximum benefits safe harbor of § 1.414(r)–5(e) for the testing year if the minimum benefit required under the safe harbor were reduced by one-third or the maximum benefit permitted under the safe harbor were increased by one-third, whichever is applicable.

(c) *Factors taken into account in determining whether to grant an individual determination*—(1) *In general.* Paragraphs (c)(2) through (c)(12) of this section list the factors the Commissioner will take into account in determining whether to grant an individual determination under this section. No one factor is necessarily determinative.

(2) *Differences in property or services.* The degree to which the property or services provided by the separate line of business differ from the property or services provided by the employer's other lines of business.

(3) *Separateness of organization and operation.* The degree to which the separate line of business is organized and operated separately from the remainder of the employer, including the degree of vertical integration of the separate line of business with any other line of business of the employer.

(4) *Nature of business competition.* The nature of the business competition faced by the separate line of business, the degree to which competitors of the separate line of business are organized as independent stand-alone companies that do not engage in other lines of business, and the type and level of benefits provided by competitors of the separate line of business to their employees.

(5) *Historical factors.* Whether the separate line of business was acquired from another employer, whether it developed separately within the employer, and whether it was operated separately before the enactment of the Tax Reform Act of 1986.

(6) *Geographic factors.* The degree to which the separate line of business is operated in a distinct geographic area from the employer's other lines of business, and the impact geographic factors have on the employer's compensation and benefit policies.

(7) *Safe harbors.* The degree to which the separate line of business fails to satisfy the safe harbors of § 1.414(r)–5, in particular, the minimum or maximum benefits safe harbor of § 1.414(r)–5(e).

(8) *Differences in benefit levels.* The degree to which the level of benefits provided to employees of the separate line of business differs from the level of benefits provided to employees of each of the employer's other lines of business.

(9) *Size.* The size of the separate line of business relative to the remainder of the employer.

(10) *Allocation method.* Which allocation method for residual shared employees the employer applies under § 1.414(r)–7(c), and the impact the allocation method will have on the composition of the groups of employees who are treated as employees of each of the employer's lines of business.

(11) *Other lines of business.* The degree to which the employer's other lines of business satisfy the requirements of a qualified separate line of business for the testing year under § 1.414(r)–1(b)(2).

(12) *Other relevant factors.* Any other factor or special circumstance the Commissioner deems relevant in determining whether to grant an individual determination under this section with respect to the separate line of business.

§ 1.414(r)–7 Determination of the employees of an employer's qualified separate lines of business.

(a) *Introduction*—(1) *In general.* This section provides the rules for determining the employees of each qualified separate line of business operated by an employer. These rules apply solely for purposes of the provisions of the regulations that specifically refer to this section (as listed in paragraph (a)(2) of this section). Paragraph (b) of this section provides the procedure for assigning employees among the qualified separate lines of business of the employer. Under this procedure, each employee is assigned to a single qualified separate line of business for all purposes listed in paragraph (a)(2) of this section with respect to the testing year. Employees are assigned to a qualified separate line of business if they provide substantial services to the qualified separate line of business. All other employees are assigned to a qualified separate line of business under one of the allocation methods in paragraph (c) of this section.

(2) *Purposes for which this section applies.* This section applies solely for purposes of determining whether:

(i) A separate line of business satisfies the statutory safe harbor of § 1.414(r)–5(b) for the testing year (see § 1.414(r)–5(b)(3));.

(ii) A separate line of business satisfies the minimum or maximum benefits safe harbor of § 1.414(r)–5(e) for the testing year (see § 1.414(r)–5(e)(6));

(iii) A plan of the employer satisfies sections 410(b) and 401(a)(4) with respect to a testing day for a plan year that begins in the testing year (see § 1.414(r)–8(d)(3)); or

(iv) A plan of the employer satisfies section 401(a)(26) with respect to a section 401(a)(26) testing day for a plan year that begins in the testing year (§ 1.414(r)–9(c)(3)).

(b) *Assignment procedure*—(1) *In general.* Each provision of the regulations listed in paragraph (a)(2) of this section describes the employees who are to be taken into account for purposes of applying that provision with respect to a specific day. To apply the provision with respect to that day, it is necessary to assign each of the employees taken into account under the provision for that day to a qualified separate line of business of the employer. Each of the provisions listed in paragraph (a)(2) of this section refers to this section to perform that assignment. The first day for a testing year for which this assignment procedure is required will be the first testing day. See § 1.414(r)–11(b) (4) and (5) (definitions of "first testing day" and "section 401(a)(26) testing day"). Section 1.414(4)–8 may require that the assignment procedure be repeated for testing days with respect to the testing year that fall after the first testing day (and indeed that may fall after the close of the testing year). Accordingly, new employees may be taken into account for the first time on these later testing days who were not taken into account on the first testing day. Section § 1.414(r)–9 may have the same effect with respect to section 401(a)(26) testing days with respect to the testing year that fall after the first testing day. The purpose of this paragraph (b) is to provide an orderly assignment procedure that maintains consistency in

the qualified separate line of business to which an employee is assigned for all purposes listed in paragraph (a)(2) of this section with respect to the testing year.

(2) *Assisnment for the first testing day.* The employees taken into account under a provision of the regulations with respect to the first testing day for a testing year are assigned among the employers' qualified separate lines of business by applying the following procedure to each of those employees:

(i) If the employee provides substantial services to a qualified separate line of business, the employee must be assigned to the qualified separate line of business the employee must be assigned to the qualified separate line of business to which the employee provides substantial services (see paragraph (b)(4) of this section);

(ii) If the employee does not provide substantial services to a qualified separate line of business, the employee must be assigned to a qualified separate line of business under one of the allocation methods in paragraph (c) of this section.

Each employee assigned to a qualified separate line of business under paragraph (b)(2)(i) or (ii) of this section remains assigned to the same qualified separate line of business for all purposes with respect to the testing year listed in paragraph (a)(2) of this section for which the employee is taken into account.

(3) *Assignment of new employees for subsequent testing days.* After the first testing day for the testing year, the employees taken into account under a provision of the regualtions with respect to a subsequent testing day (or a section 401(a)(26) testing day) for the testing year may include one or more employees who previously have not been assigned to a qualified separate line of business for any purpose listed in paragraph (a)(2) of this section with respect to the testing year. An employee may not previously have been assigned to a qualified separate line of business for any purpose with respect to the testing year, for example, if the employee has just been hired or has just become a nonecxludable employee. Previously unassigned employees are assigned among the employer's qualified separate lines of business by applying the procedure in paragraph (b)(2) of this section to those employees.

(4) *Substantial-service employees.* An employee provides substantial services to a qualified separate line of business if:

(i) The employee provides services exclusively to the qualified separate line of business within the meaning of § 1.414(r)–3(c)(2)(iii); or

(ii) At least 75 percent of the employee's services contribute to providing the property or services provided by the qualified separate line of business to customers of the employer;

(iii) At least 50 percent of the employee's services contribute to providing the property or services provided by the qualified separate line of business to customers of the employer, and the employee performs substantially all his services for the employer at a facility of the employer that is used exclusively by the qualified separate line of business (as determined under § 1.414(r)–3(c)(4)(iii), (v), and (vii), without regard to the special rule for shared buildings in § 1.414(r)–3(c)(4)(vi)).

For purposes of this paragraph (b)(4), only services of the employee described in § 1.414(r)–3(c)(2)(v) are taken into account. In the case of an employee who is not employed by the employer during the testing year, § 1.414(r)–3(c)(2)(v) is applied with reference to services performed by the employee during a period in the immediately succeeding testing year that is reasonably representative of the employee's services for the employer. The determination of the percentages in paragraphs (b)(4)(ii) and (iii) must be made in a manner that is reasonably reliable and uniform with respect to all employees. For purposes of this section, the term "substantial-service employee" means an employee who provides substantial services to a qualified separate line of business within the meaning of this paragraph (b)(4).

(5) *Residual shared employees.* For purposes of this section, the term "residual shared employee" means an employee who is not an a substantial-service employee.

(c) *Methods of allocating residual shared employees*—(1) *In general.* All residual shared employees must be allocated among an employer's qualified separate lines of business under one of the methods provided in paragraphs (c)(2) through (c)(4) of this section. The employer is permitted to select which method of allocation to apply for the testing year. However, the same allocation method must be used for all residual shared employees and for all purposes listed in paragraph (a)(2) of this section with respect to the testing year.

(2) *Dominant line of business method of allocation*—(1) *In general.* Under the method of allocation in this paragraph (c)(2), all residual shared employees are allocated to the employer's dominant line of business. This method does not apply unless the employer has a dominant line of business within the meaning of paragraph (c)(2)(ii) or (iii) of this section.

(ii) *Dominant line of business.* An employer's dominant line of business is that qualified separate line of business to which at least 55 percent of all substantial-service employees are assigned under this section. The percentage of substantial-service employees who are assigned to a qualified separate line of business under this section is determined in the same manner as provided in paragraph (c)(3)(ii) of this section. This percentage is calculated only once for all purposes with respect to a testing year.

(iii) *Option to apply reduced percentage.* An employer is permitted, but not required, to determine whether it has a dominant line of business by sutstituting "45 percent" for "55 percent" in paragraph (c)(2)(ii) of this section. This option is available for a testing year only if each qualified separate line of business of the employer satisfies either the statutory safe harbor of § 1.414(r)–5(b) or the minimum or maximum benefits safe harbor of § 1.414(r)–5(e). Whether a qualified separate line of business satisfies either of these safe harbors is determined after the application of this section, including the allocation of a residual shared employees under this paragraph (c)(2)(iii). If an employer has more than one dominant line of business under this paragraph (c)(2)(iii), the employer must select which of the two qualified separate lines of business is its dominant line of business.

(iv) *Examples.* The following examples illustrate the application of the method of allocation in this paragraph (c)(2).

Example 1. Employer A operates four qualified separate lines of business as determined under § 1.414(r)–1(b) for the testing year, consisting respectively of a software developer, a health food products supplier, a real estate developer, and a ski equipment manufacturer. In applying this section with respect to employees taken into account for the first testing day with respect to the testing year, Employer A determines that it has a total of 11,000 employees, of whom 10,000 are substantial-service employees. Pursuant to paragraph (b) of this section, these 8,000 employees are assigned among Employer A's qualified separate lines of business as follows:

	Software Developer	Health Food	Real Estate	Ski Equipment
Substantial-Service Employees	2,500	1,000	2,500	4,000
Percentage Assigned to QSLOB	25	10	25	40

Under these facts, Employer A is not permitted to apply the method of allocation in this paragraph (c)(2), because none of its qualified separate lines of business satisfies the percentage requirement in either paragraph (c)(2)(ii) or (iii) of this section.

Example 2. The facts are the same as in *Example 1*, except that Employer A has combined the real estate developer and ski equipment manufacturer into a single line of business. Assume that, as a result, Employer A has three qualified separate lines of business as determined under § 1.414(r)–1(b). Also assume that Employer A still has 10,000 substantial-service employees who, pursuant to paragraph (b) of this section, are assigned among Employer A's qualified separate lines of business as follows:

	Software Developer	Health Food	Real Estate/ Ski Equipment
Substantial-Service Employees	2,500	1,000	6,500
Percentage Assigned to QSLOB	25	10	65

Under these facts, Employer A is permitted to apply the method of allocation in this paragraph (c)(2) to allocate all its residual shared employees to the combined real estate development and ski equipment manufacturing line of business, because 65 percent of Employer A's substantial-service employees taken into account for the first testing day are assigned to that qualified separate line of business.

Example 3. The facts are the same as in *Example 1*, except that, pursuant to paragraph (b) of this section, the 10,000 substantial-service employees are assigned among Employer A's qualified separate lines of business as follows:

	Software Developer	Health Food	Real Estate	Ski Equipment
Substantial-Service Employees	2,500	1,000	1,500	5,000
Percentage Assigned to QSLOB	25	10	15	50

Thus, the ski equipment manufacturing line of business satisfies the 45-percent threshold in paragraph (c)(2)(iii) of this section. In addition, assume after allocating all residual shared employees to the ski equipment manufacturing line of business, the software development and health food supplier lines of business each would satisfy the statutory safe harbor of § 1.414(r)–5(b), and that the real estate development line of business would satisfy the minimum or maximum benefits safe harbor of § 1.414(r)–5(e). Under these facts, Employer A is permitted to apply the method of allocation in this paragraph (c)(2) to allocate all its residual shared employees to the ski equpment manufacturing line of business.

(3) *Pro-rata method of allocation*—(i) *In general.* Under the method of allocation in this paragraph (c)(3), all residual shared employees are allocated among an employer's qualified separate lines of business in proportion to the percentage of substantial-service employees who are assigned to each qualified separate line of business.

(ii) *Percentage of substantial-service employees assigned to a qualified separate line of business.* The percentage of substantial-service employees who are assigned to a qualified separate line of business is calculated by determining a fraction (expressed as a percentage), the numerator of which is the number of substantial-service employees who are assigned to the qualified separate line of business under this section, and the denominator of which is the total number of substantial-service employees who are assigned to all qualified separate lines of business of the employer under this section. The percentage in the preceding sentence is calculated solely with respect to substantial-service employees who are taken into account for purposes of satisfying section 410(b) with respect to he first testing day. Thus, the percentage described in this paragraph (c)(3)(ii) is calculated only once for all purposes with respect to a testing year and does not change thereafter.

(iii) *Allocation procedure.* The procedure for allocating all residual shared employees under the method in this paragraph (c)(3) is as follows:

(A) The number of highly compensated residual shared employees who are allocated to each qualified separate line of business is equal to the product determined by multiplying the total number of highly compensated residual shared employees of the employer by the percentage determined with respect to the qualified separate line of business under paragraph (c)(3)(ii) of this section;

(B) The number of nonhighly compensated residual shared employees who are allocated to each qualified separate line of business is equal to the product determined by multiplying the total number of nonhighly compensated residual shared employees of the employer by the percentage determined with respect to the qualified separate line of business under paragraph (c)(3)(ii) of this section;

(C) For purposes of this procedure, the employer is permitted to determine which highly compensated residual shared employees and which nonhighly compensated residual shared employees are allocated to each qualified separate line of business, provided that the required number of highly and nonhighly compensated residual shared employees are allocated to each qualified separate line of business, and that, if possible, the employer allocates each residual shared employee to a qualified separate line of business to which the residual shared employee provides at least some services.

(iv) *Examples.* The following example illustrates the application of the method of allocation in this paragraph (c)(3).

Example 1. The facts are the same as in *Example 1* under paragraph (c)(2)(iv) of this section. Of Employer A's 1,000 residual

shared employees, 800 are highly compensated employees and 200 are nonhighly compensated employees. Employer A applies the pro-rata method of allocation in this paragraph (c)(3). Under these facts, the 1,000 residual shared employees are allocated among Employer A's qualified separate lines of business as follows:

	Software Developer	Health Food	Real Estate	Ski Equipment
Substantial-Service Employees	2,500	1,000	2,500	4,000
Percentage Assigned to QSLOB	25	10	25	40
Residual Shared HCEs Allocated to QSLOB	200 (25%×800)	80 (10%×800)	200 (25%×800)	320 (40%×800)
Residual Shared NHCEs Allocated to QSLOB	50 (25%×200)	20 (10%×200)	50 (25%×200)	80 (40%×200)

(4) *HCE percentage ratio method of allocation*—(i) *In general.* Under the method of allocation in this paragraph (c)(4), all residual shared employees are allocated among an employer's qualified separate lines of business according to the highly compensated employee percentage ratio of each qualified separate line of business.

(ii) *Highly compensated employee percentage ratio.* For purposes of this paragraph (c)(4), the highly compensated employee percentage ratio of a qualified separate line of business is calculated by determining a fraction (expressed as a percentage), the numerator of which is the percentage of all employees who have previously been assigned to the qualified separate line of business under this section for any purpose with respect to the testing year who are highly compensated employees, and the denominator of which is the percentage of all employees who have previously been assigned to any qualified separate line of business under this section for any purpose with respect to the testing year who are highly compensated employees. Thus, the highly compensated employee percentage ratio of each of the employer's qualified separate lines of business is recalculated each time a residual shared employee is allocated to a qualified separate line of business under this paragraph (c)(4).

(iii) *Allocation procedure.* The procedure for allocating all residual shared employees under the method in this paragraph (c)(4) is as follows:

(A) If there is any qualified separate line of business with a highly compensated employee percentage ratio less than 50 percent, a highly compensated residual shared employee must be allocated to the qualified separate line of business with the lowest highly compensated employee percentage ratio less than 50 percent (as determined immediately before the employee is allocated to the qualified separate line of business);

(B) If there is any qualified separate line of business with a highly compensated employee percentage ratio greater than 200 percent, a nonhighly compensated residual shared employee must be allocated to the qualified separate line of business with the highest highly compensated employee percentage ratio greater than 200 percent (as determined immediately before the employee is allocated to the qualified separate line of business);

(C) If there is no qualified separate line of business with a highly compensated employee percentage ratio less than 50 percent, a highly compensated residual shared employee may be allocated to any qualified separate line of business with a highly compensated employee percentage ratio of no more than 200 percent, provided that the employee's allocation to the qualified separate line of business does not cause its highly compensated employee percentage ratio to exceed 200 percent (as determined immediately after the employee is allocated to the qualified separate line of business);

(D) If there is no qualified separate line of business with a highly compensated employee percentage ratio greater than 200 percent, nonhighly compensated residual shared employee may be allocated to any qualified separate line of business with a highly compensated employee percentage ratio of no less than 50 percent, provided that the employee's allocation to the qualified separate line of business does not cause its highly compensated employee percentage ratio to fall below 50 percent (as determined immediately after the employee is allocated to the qualified separate line of business);

(E) For purposes of this procedure, the employer is permitted to determine which highly compensated residual shared employees and which nonhighly compensated residual shared employees are allocated to each qualified separate line of business, provided that the requirements of this paragraph (c)(4)(iii) are satisfied, and that, if possible, the employer allocates each residual shared employee to a qualified separate line of business to which the residual shared employee provides at least some services.

§ 1.414(r)–8 Separate application of section 410(b).

(a) *General rule.* If an employer is treated as operating qualified separate lines of business for purposes of section 410(b) in accordance with § 1.414(r)–1(b) for a testing year, the requirements of section 410(b) must be applied in accordance with this section separately with respect to the employees of each qualified separate line of business for purposes of testing all plans of the employer for plan years that begin in the testing year. Conversely, if an employer is not treated as operating qualified separate lines of business for purposes of section 410(b) in accordance with § 1.414(r)–1(b) for a testing year, the requirements of section 410(b) must be applied on an employer-wide basis for purposes of testing all plans of the employer for plan years that begin in the testing year. See § 1.414(r)–1 (c)(2) and (d)(6). Paragraph (b) of this section explains how the requirements of section 410(b) are applied separately with respect to the employees of a qualified separate line of business for purposes of testing a plan. Paragraph (c) of this section explains the coordination between sections 410(b) and 401(a)(4). Paragraph (d) of this section provides certain supplementary rules necessary for the application of this section.

(b) *Rules of separate application*—(1) *In general.* If the requirements of section 410(b) are applied separately with respect to the employees of each qualified separate line of business operated by the employer for a testing year, a plan satisfies the requirements of section 410(b) only if:

(i) The plan satisfies section 410(b)(5)(B) on an employer-wide basis; and

(ii) The plan satisfies section 410(b) on a qualified-separate-line-of-business basis.

(2) *Satisfaction of section 410(b)(5)(B) on an employer-wide basis.* Section 410(b)(5)(B) provides that a plan is not

permitted to be tested separately with respect to the employees of a qualified separate line of business unless the plan benefits a classification of employees found by the Secretary to be nondiscriminatory. A plan satisfies this requirement only if the plan satisfies either the ratio percentage test of § 1.410(b)–2(b)(2) or the nondiscriminatory classification test of § 1.410(b)–4 (without regard to the average benefit percentage test of § 1.410(b)–5), taking into account the other applicable provisions of §§ 1.410(b)–1 through 1.410(b)–10. For this purpose, the nonexcludable employees of the employer taken into account in testing the plan under section 410(b) are determined under § 1.410(b)–6, without regard to the exclusion in § 1.410(b)–6(g) for employees of other qualified separate lines of business of the employer. Thus, in testing a plan separately with respect to the employees of one qualified separate line of business under this paragraph (b)(2), the otherwise nonexcludable employees of the employer's other qualified separate lines of business are not treated as excludable employees. However, under the definition of "plan" in paragraph (d)(2) of this section, only employees of the qualified separate line of business are treated as benefiting under the plan for purposes of applying this paragraph (b)(2).

(3) *Satisfication of section 410(b) on a qualified-separate-line-of-business basis.* A plan satisfies section 410(b) on a qualified-separate-line-of-business basis only if the plan satisfies either the ratio percentage test of § 1.410(b)–2(b)(2) or the average benefit test of § 1.410(b)–2(b)(3) (including the nondiscriminatory classification test of § 1.410(b)–4 and the average benefit percentage test of § 1.410(b)–5), taking into account the other applicable provisions of §§ 1.410(b)–1 through 1.410(b)–10. For this purpose, the nonexcludable employees of the employer taken into account in testing the plan under section 410(b) are determined under § 1.410(b)–6, taking into account the exclusion in § 1.410(b)–6(g) for employees of other qualified separate lines of business of the employer. Thus, in testing a plan separately with respect to the employees of one qualified separate line of business under this paragraph (b)(3), all employees of the employer's other qualified separate lines of business are treated as excludable employees.

(4) *Examples.* The following examples illustrate the application of this paragraph (b).

Example 1. Employer A is treated as operating qualified separate lines of business for purposes of section 410(b) in accordance with § 1.414(r)–1(b) for the 1992 testing year. Employer A operates two qualified separate lines of business as determined under § 1.414(r)–1(b)(2), Line 1 and Line 2. Employer A maintains only two plans, Plan X which benefits solely employees of Line 1, and Plan Y which benefits solely employees of Line 2. For the plan year of Plan X beginning in the 1992 testing year, Plan X could satisfy section 410(b) if that section were applied on an employer-wide basis without regard to the provisions of this paragraph (b). Under paragraph (a) of this section, however, the requirements of section 410(b) must be applied separately with respect to the employees of each qualified separate line of business operated by Employer A for all plans of Employer A for plan years that begin in the 1992 testing year. As a result, for the plan year of Plan X beginning in the 1992 testing year, Plan X is not permitted to satisfy section 410(b) on an employer-wide basis and, instead, is only permitted to satisfy section 410(b) separately with respect to the employees of each qualified separate line of business operated by Employer A, in accordance with paragraphs (b)(2) and (b)(3) of this section.

Example 2. The facts are the same as in *Example 1.* In testing Plan Y under section 410(b) with respect to the first testing day for the plan year of Plan Y beginning in the 1992 testing year, it is determined that Employer A has 2,100 nonexcludable employees, of whom 100 are highly compensated employees and 2,000 are nonhighly compensated employees. After applying § 1.414(r)–7 to these employees, 50 of the highly compensated employees and 100 of the nonhighly compensated employees are treated as employees of Line 2, and the remaining 50 highly compensated employees and the remaining 1,900 nonhighly compensated employees are treated as employees of Line 1. All the employees treated as employees of Line 2 benefit under Plan Y, and none of the employees treated as employees of Line 1 benefit under Plan Y. Thus, on an employer-wide basis, Plan Y benefits 50 percent of all Employer A's highly compensated employees (50 out of 100) and only 5 percent of all Employer A's nonhighly compensated employees (100 out of 2,000). Plan Y consequently has a nonhighly compensated employee benefiting percentage that is only 10 percent of its highly compensated employee benefiting percentage (5% ÷ 50%). See § 1.410(b)–4(c)(4) (i) and (ii). Because 10 percent is less than 20 percent (the unsafe harbor percentage applicable to Employer A under § 1.410(b)–4(c)(4)(iv)), Plan Y does not satisfy the nondiscriminatory classification test of § 1.410(b)–4 on an employer-wide basis. Nor does Plan Y satisfy the ratio percentage test of § 1.410(b)–1(b)(2) on an employer-wide basis, since 10 percent is less than 70 percent. Under these facts, Plan Y does not satisfy section 410(b)(5)(B) on an employer-wide basis in accordance with paragraph (b)(2) of this section for the plan year of Plan Y beginning in the 1992 testing year, and therefore fails to satisfy section 410(b) for that year. This is true even though Plan Y satisfies section 410(b) on a qualified-separate-line-of-business basis in accordance with paragraph (b)(3) of this section.

Example 3. The facts are the same as in *Example 2*, except that, prior to the 1992 testing year, Employer A merges Plan X and Plan Y so that they form a single plan within the meaning of section 414(1). Under the definition of "plan" in paragraph (d)(2) of this section, however, the portion of the newly merged plan that benefits employees of Line 2 (former Plan Y) is still treated as a separate plan from the portion of the newly merged plan that benefits employees of Line 1 (former Plan X). The portion of the newly merged plan that benefits employees of Line 2 (former Plan Y) fails to satisfy section 410(b) for the reasons stated in *Example 2.* Under these facts, because the portion of the newly merged plan that benefits employees of Line 2 fails to satisfy section 410(b), the entire newly merged plan fails to satisfy section 410(b) for the plan year of the newly merged plan that begins in the 1992 testing year. See paragraph (d)(5) of this section.

(c) *Coordination of section 401(a)(4) with section 410(b)*—(1) *General rule.* For purposes of these regulations, the requirements of section 410(b) encompass the requirements of section 401(a)(4) (including, but not limited to, the permitted disparity rules of section 401(l), the actual deferral percentage test of section 401(k)(3), and the actual contribution percentage test of section 401(m)(2)). Therefore, if the requirements of section 410(b) are applied separately with respect to the employees of each qualified separate line of business of an employer for purposes of testing all plans of the employer for plan years that begin in a testing year, the requirements of section 401(a)(4) must also be applied separately with respect to the employees of the same qualified separate lines of business for purposes of testing the same plans for the same plan years. Furthermore, if section 401(a)(4) requires that a group of employees under the plan satisfy section 410(b) for purposes of satisfying section 401(a)(4), section 410(b) must be applied for this purpose in the same manner provided in paragraph (b) of this section. See § 1.401(a)(4)–4(b) (requiring the group of employees to whom each benefit, right, or feature is currently available under a plan to satisfy section 410(b)); § 1.410(a)(4)–9(d)(4) (requiring the group of employees included in each component plan into which a plan is restructured to satisfy section 410(b)). Thus, the group of employees must satisfy section 410(b)(5)(B) on an employer-wide basis in accordance with paragraph (b)(2) of this section and also must satisfy section 410(b) on a qualified-separate-line-of-business basis in accordance with paragraph (b)(3) of this section, in both cases as if the group

of employees were the only employees benefiting under the plan.

(2) *Examples.* The following examples illustrate the application of the rule in this paragraph (c).

Example 1. Employer B is treated as operating qualified separate lines of business for purposes of section 410(b) in accordance with § 1.414(r)–1(b) for the 1992 testing year. Employer B operates two qualified separate lines of business as determined under § 1.414(r)–1(b)(2), Line 1 and Line 2. Employer B maintains Plan Z, which benefits employees in both Line 1 and Line 2. Under the definition of "plan" in paragraph (d)(2) of this section, the portion of Plan Z that benefits employees of Line 1 is treated as a separate plan from the portion of Plan Z that benefits employees of Line 2. Under this paragraph (c), this result applies for purposes of both section 410(b) and section 401(a)(4).

Example 2. The facts are the same as in *Example 1*, except that Plan Z benefits solely employees of Line 1. In testing Plan Z under section 401(a)(4) for the plan year of Plan Z beginning in the 1992 testing year, Employer B restructures Plan Z into several component plans (within the meaning of § 1.401(a)(4)–9(d)). Under § 1.401(a)(4)–9(d)(4), each of these component plans is required to satisfy section 410(b). This paragraph (c) requires that each of the component plans be tested separately with respect to the employees of each qualified separate line of business operated by Employer B. This testing must be done in accordance with paragraph (b) of this section. Consequently, each component plan must satisfy section 410(b)(5)(B) on an employer-wide basis in accordance with paragraph (b)(2) of this section and must also satisfy section 410(b) on a qualified-separate-line-of-business basis in accordance with paragraph (b)(3) of this section.

(d) *Supplementary rules*—(1) *In general.* This paragraph (d) provides certain supplementary rules necessary for the application of this section.

(2) *Definition of plan.* For purposes of this section, the term "plan" means a plan within the meaning of § 1.410(b)–7 (a) through (f), including the mandatory disaggregation rule of § 1.410(b)–7(c)(5) for portions of a plan that benefit employees of different qualified separate lines of business. Thus, for purposes of this section, the portion of a plan that benefits employees of one qualified separate line of business is treated as a separate plan from the other portions of the same plan that benefit employees of other qualified separate lines of business of the employer.

(3) *Employees of a qualified separate line of business.* For purposes of applying paragraph (b) of this section with respect to a testing day, the employees of each qualified separate line of business of the employer are determined by applying § 1.414(r)–7 to the employees of the employer otherwise taken into account under section 410(b) for the testing day. For purposes of applying paragraph (c) of this section with respect to a testing day, the employees of each qualified separate line of business of the employer are determined by applying § 1.414(r)–7 to the employees of the employer otherwise taken into account under section 401(a)(4) for the testing day. For the definition of "testing day," see § 1.414(r)–11(b)(3).

(4) *Contributions and benefits attributable to a qualified separate line of business.* For purposes of this section, all allocations to an employee's account, all benefits accrued by an employee, and all other benefits, rights, and features applicable to an employee under any plan of the employer are treated as if they had been provided under a plan maintained by the qualified separate line of business to which the employee is assigned under § 1.414(r)–7 for the testing year.

(5) *Consequences of failure.* If a plan fails to satisfy either paragraph (b)(2), (b)(3), or (c)(1) of this section, the plan (and any plan of which it constitutes a portion) fails to satisfy the requirements of section 401(a). However, this failure alone would not cause the employer to fail to be treated as operating qualified separate lines of business in accordance with § 1.414(r)–1(b), unless the employer is relying on benefits provided under the plan to satisfy the minimum benefit portion of the safe harbor in § 1.414(r)–5(e)(2) with respect to at least one of its qualified separate lines of business.

§ 1.414(r)–9 Separate application of section 401(a)(26).

(a) *General rule.* If an employer is treated as operating qualified separate lines of business for purposes of section 401(a)(26) in accordance with § 1.414(r)–1(b) for a testing year, the requirements of section 401(a)(26) must be applied separately with respect to the employees of each qualified separate line of business for purposes of testing all plans of the employer for plan years that begin in the testing year. Conversely, if an employer is not treated as operating qualified separate lines of business for purposes of section 401(a)(26) in accordance with § 1.414(r)–1(b) for a testing year, the requirements of section 401(a)(26) must be applied on an employer-wide basis for purposes of testing all plans of the employer for plan years that begin in the testing year. See § 1.414(r)–1(c)(3) and (d)(6). Paragraph (b) of this section explains how the requirements of section 401(a)(26) are applied separately with respect to the employees of a qualified separate line of business for purposes of testing a plan. Paragraph (c) of this section provides certain supplementary rules necessary for the application of this section.

(b) *Rules of separate application*—(1) *Precondition.* It is a precondition to the application of this paragraph (b) that the employer also apply the requirements of section 410(b) separately with respect to the employees of each qualified separate line of business of the employer for purposes of testing all plans of the employer for all plan years that begin in the testing year, in accordance with § 1.414(r)–8.

(2) *Requirements applicable to plan.* If the requirements of section 401(a)(26) are applied separately with respect to the employees of a qualified separate line of business for a testing year, a plan satisfies section 401(a)(26) only if it satisfies the requirements of §§ 1.401(a)(26)–1 through 1.401(a)(26)–9. For this purpose, the nonexcludable employees of the employer taken into account in testing the plan under section 401(a)(26) are determined under § 1.401(a)(26)–6(b), taking into account the exclusion in § 1.401(a)(26)–6(b)(8) for employees of other qualified separate lines of business of the employer. Thus, in testing a plan separately with respect to the employees of one qualified separate line of business under this paragraph (b)(2), all employees of the employer's other qualified separate lines of business are treated as excludable employees.

(c) *Supplementary rules*—(1) *In general.* This paragraph (c) provides certain supplementary rules necessary for the application of this section.

(2) *Definition of plan.* For purposes of this section, the term "plan" means a plan within the meaning of § 1.401(a)(26)–2 (c) and (d), including the mandatory disaggregation rule of § 1.401(a)(26)–2(d)(6) for portions of a plan that benefit employees of different qualified separate lines of business. Thus, for purposes of this section, the portion of a plan that benefits employees of one qualified separate line of business is treated as a separate plan from the other portions of the same plan that benefit employees of other qualified separate lines of business of the employer.

(3) *Employees of a qualified separate line of business.* For purposes of applying paragraph (b)(2) of this section with respect to a section 401(a)(26) testing day, the employees of each qualified separate line of business of the employer are determined by applying § 1.414(r)–7 to the employees of the employer otherwise taken into account under section 401(a)(26) for the section 401(a)(26) testing day. For the definition

of "section 401(a)(26) testing day," see § 1.414(r)–11(b)(5).

(4) *Consequences of failure.* If a plan fails to satisfy paragraph (b)(2) of this section, the plan (and any plan of which it constitutes a portion) fails to satisfy the requirements of section 401(a). However, this failure alone would not cause the employer to fail to be treated as operating qualified separate lines of business in accordance with § 1.414(r)–1(b), unless the employer is relying on benefits provided under the plan to satisfy the minimum benefit portion of the safe harbor in § 1.414(r)–5(e)(2) with respect to at least one of its qualified separate lines of business.

§ 1.414(r)–10 Separate application of section 129(d)(8). [Reserved]

§ 1.414(r)–11 Definitions and special rules.

(a) *In general.* This section contains certain definitions and special rules applicable under these regulations. Paragraph (b) of this section provides certain definitions that apply for purposes of these regulations. Paragraph (c) of this section provides averaging rules under which certain provisions of these regulations may be applied on the basis of a two-year or a three-year average.

(b) *Definitions*—(1) *In general.* In applying the provisions of this section and of §§ 1.414(r)–1 through 1.414(r)–10, unless otherwise provided, the definitions in this paragraph (b) govern in addition to the definitions in § 1.410(b)–9.

(2) *Testing year.* The term "testing year" means the calendar year.

(3) *Testing day.* The term "testing day" means any day on which § 1.410(b)–8(a)(1) requires any plan of the employer actually to satisfy section 410(b) with respect to a plan year that begins in the testing year. Thus, if a plan is permitted to satisfy section 410(b) on one day within each quarter of the plan year, each of those four days is a testing day. Similarly, if a plan is not permitted to satisfy section 410(b) on one day within each quarter of the plan year, every day of the plan year is a testing day. For purposes of this paragraph (b)(3), the term "plan" has the same meaning as in § 1.414(r)–8(d)(2).

(4) *First testing day.* The term "first testing day" means the testing day that occurs earliest in time of all the testing days under all plans of the employer with respect to the testing year. The first testing day with respect to a testing year must fall within that testing year.

(5) *Section 401(a)(26) testing day.* The term "section 401(a)(26) testing day" means any day on which § 1.401(a)(26)–7(a) or (b) requires any plan of the employer actually to satisfy section 401(a)(26) with respect to a plan year that begins in the testing year. In no event may a section 401(a)(26) testing day with respect to a testing year fall before the first testing day for that testing year. For purposes of this paragraph (b)(5), the term "plan" has the same meaning as in § 1.414(r)–9(c)(2).

(c) *Averaging rules*—(1) *In general.* The provisions specified in this paragraph (c) are permitted, but not required, to be applied based on the average of the percentages for the current testing year and the testing year immediately preceding the current testing year or, alternatively, based on the average of the percentages for the current testing year and each of the two testing years immediately preceding the current testing year.

(2) *Specified provisions.* The provisions specified in this paragraph (c) are:

(i) The 90-percent separate employee workforce requirement of § 1.414(r)–3(b)(4);

(ii) The 90-percent separate management requirement of § 1.414(r)–3(b)(5);

(iii) The 90-percent separate tangible assets requirement of § 1.414(r)–3(b)(6);

(iv) The 50-percent provision-to-customers requirement of § 1.414(r)–3(c)(5)(ii)(C);

(v) The minimum and maximum highly compensated employee percentage ratios under the statutory safe harbor of § 1.414(r)–5(b)(1)(i) and (ii) (50 percent and 200 percent, respectively), but not the 10-percent exception in § 1.414(r)–5(b)(4);

(vi) The dominant line of business method of allocating residual shared employees under § 1.414(r)–7(c)(2) (55 or 45 percent); and

(vii) The percentage of substantial-service employees who are assigned to a qualified separate line of business for purposes of applying the pro-rata method for allocating residual shared employees under § 1.414(r)–7(c)(3).

(3) *Averaging of large fluctuations not permitted.* A provision is not permitted to be applied based on an average determined under this paragraph (c) if the percentage for any testing year taken into account in calculating the average falls below a minimum percentage, or exceeds a maximum percentage, by more than 10 percent (not 10 percentage points) of the respective minimum or maximum percentage. Thus, for example, the statutory safe harbor of § 1.414(r)–5(b) is not permitted to be applied based on an average determined under this paragraph (c) if the percentage for any testing year taken into account in calculating the average falls below 45 percent (which is 10 percent below the 50-percent minimum) or exceeds 220 percent (which is 10 percent above the 200-percent maximum).

(4) *Consistency requirements.* A provision is permitted to be applied on an averaging basis under this paragraph (c) regardless of how any other provision is applied, except in the case of the separate employee workforce and separate management requirements of § 1.414(r)–3(b)(4) and (5), which each must be applied on the same basis as the other. A provision is also permitted to be applied on an averaging basis under this paragraph (c) for a testing year, regardless of how the provision is applied for any other testing year. However, once a provision is applied on an averaging basis under this paragraph (c) for a testing year, it must be applied on the same basis to all the employer's lines of business to which the provision is applied for the testing year. The percentage for a preceding testing year may be taken into account under this paragraph (c) only if:

(i) The employer calculates the percentage for the preceding testing year in the same manner as the employer calculates the percentage for the current testing year;

(ii) The preceding testing year begins on or after the effective date of these regulations;

(iii) The employer is treated as operating qualified separate lines of business in accordance with § 1.414(r)–1(b) for the preceding testing year; and

(iv) The employer designated the same lines of business in the preceding testing year as in the current testing year.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Appendix—Proposed Revenue Procedure

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

Section 1. Purpose.

.01 This revenue procedure sets forth the industry categories prescribed under § 1.414(r)–5(c)(2) of the Regulations. This revenue procedure is promulgated pursuant to authority granted in section 7805 of the Internal Revenue Code, section 414(r) of the Code, and § 1.414(r)–5(c)(2) of the Regulations.

Sec. 2. Background.

.01 Section 414(r) of the Code sets forth the rules for determining whether an employer is treated as operating qualified separate lines of business for purposes of certain employee benefit provisions under the Code. If an employer is treated as operating qualified separate lines of business under

section 414(r), certain requirements under those provisions are applied separately with respect to the employees of each qualified separate line of business operated by the employer. These requirements include the minimum coverage requirements of section 410(b), the minimum participation requirements of section 401(a)(26), and the 55-percent average benefits test of section 129(d)(8).

.02 Pursuant to section 414(r)(2)(C) of the Code and § 1.414(r)-1(b)(vi)(D) of the Regulations, an employer is not treated as operating qualified separate lines of business under section 414(r), unless each separate line of business operated by the employer passes administrative scrutiny. The Regulations provide two general methods for satisfying this requirement. Under the first method, a separate line of business that satisfies any of the safe harbors in § 1.414(r)-5 satisfies the requirement of administrative scrutiny. Under the second method, a separate line of business that does not satisfy any of the safe harbors in § 1.414(r)-5 nonetheless satisfies the requirement of administrative scrutiny if the employer requests and receives and individual determination from the Commissioner that the separate line of business satisfies the requirement of administrative scrutiny.

.03 Among the safe harbors provided in § 1.414(r)-5 is the safe harbor of § 1.414(r)-5(c) for separate lines of business in different industries. Under this safe harbor, a separate line of business satisfies the requirement of administrative scrutiny if it is the only separate line of business of the employer that falls within an industry category or categories established by the Commissioner.

.04 Section 4 of this revenue procedure sets forth the industry categories established by the Commissioner for purposes of the safe harbor in § 1.414(r)-5(c) of the Regulations.

.05 The industry categories listed in section 5 of this revenue procedure are derived from the Standard Industrial Classification codes (the "SIC" codes) set forth in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987). The SIC codes are arranged by one-digit divisions, two-digit major groups of industries, three-digit industry groups, and four-digit industries. The industry categories listed in section 5 of this revenue procedure are based on SIC codes at the two-digit level corresponding to major groups of industries. The Service anticipates that these industry categories may be modified from time to time to reflect technological, institutional, and other changes in the economy, taxpayers' and the Service's experiences in working with the industry categories, and changes in the SIC codes from which they are derived.

Sec. 3. Scope.

This revenue procedure applies to all persons to whom the safe harbor in section 1.414(r)-5(c) of the Regulations applies.

Sec. 4. Application.

The industry categories for purposes of applying section 1.414(r)-5(c) of the Regulations are set forth below. The SIC code or codes to which a particular industry category corresponds are set forth in parentheses following the name of the industry category. Except as otherwise indicated, each industry category is intended to have the same content as the SIC code or codes from which it is derived. Although each industry category describes an industry in general terms, the category includes all property and services that are provided to customers by businesses in that industry. Thus, for example, agricultural entomological services (SIC code 0721) are included in the food and agriculture industry category listed below.

Section 1.414(r)-5(c)(1) of the Regulations requires that the property or services provided to customers of the employer by a separate line of business must fall exclusively within one or more of the industry categories listed below, and that none of the property or services provided to customers of the employer by any of the employer's other separate lines of business may fall within the same industry category or categories. In determining whether this requirement is satisfied, the SIC code or codes (if any) assigned to the employer's establishments by the Census Bureau are not determinative, because they look to the activities conducted at each of the employer's establishments rather than to the ultimate property or services provided by the separate line of business to customers of the employer. Thus, the employer must look directly to the property or services provided by the separate line of business to customers of the employer to determine whether the requirements of the safe harbor are satisfied.

Sec. 5. Industry Categories.

1. *Food and Agriculture.* Food, beverages, tobacco, food stores and restaurants (Groups 1, 2, 7, 8, 9, 20, 21, 54 & 58).

2. *Textiles and Clothing.* Textile mill products, apparel and other finished products made from fabrics and other similar materials (including leather and leather products) and general merchandise stores (Groups 22, 23, 31, 53, 56 & 57).

3. *Forest Products.* Pulp, paper, lumber and wood products (including furniture) (Groups 24, 25, 26).

4. *Transportation.* Transportation equipment and services (Groups 37, 40, 41, 42, 44, 45, 47, & 75).

5. *Finance.* Banking, insurance, and financial industries (Groups 60, 61, 62, 63, 64, & 67).

6. Utilities. Public utilities and other regulated industries and communications (Groups 48 and 49).

7. *Coal and Metals.* Metal industries and coal mining and production (Groups 10, 12, 14, 33 and 34).

8. *Machinery and Electronics.* Industrial and commercial machinery—computers and other electronic and electrical equipment and components (Groups 35, 36 & 38).

9. *Petroleum and Chemicals.* Oil and gas extraction, production and distribution (including gasoline service stations)—petroleum refining and related industries—chemicals and allied products—rubber and miscellaneous plastic products (Groups 13, 28, 29, 30, 46 & 55).

10. *Construction and Real Estate.* Construction industry real estate, stone, clay and glass products (Groups 15, 16, 17, 32 & 65).

11. *Leisure.* Entertainment, sports, hotels (Groups 70, 78, 79, & 84).

12. *Printing and publishing.* Printing, publishing and allied industries (Group 27).

[FR Doc. 91-2316 Filed 1-31-91; 8:45 am]

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26 CFR Part 1

[EE-147-87; EE-129-86]

RIN 1545-AL23; 1545-A050

Qualified Separate Lines of Business; Definition of Highly Compensated Employee

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations under sections 414(r), 410(b)(5), and 401(a)(26)(G) of the Internal Revenue Code (Code); and, proposed regulations relating to the scope and meaning of the term "highly compensated employee" in section 414(q) of the Code.

DATE: The public hearing will be held on Thursday, May 16, 1991, beginning at 10 a.m., and continue, if necessary, at the same time, on Friday, May 17, 1991. Requests to speak and outlines of oral comments must be received by Thursday, May 2, 1991.

ADDRESS: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (EE-147-87; and/or EE-129-86), room 4429, Washington, DC. 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that provide the exclusive rules for determining whether an employee operates qualified separate lines of business under section 414(r) for purposes of applying the minimum coverage requirements of section 410(b), and the minimum participation requirements of section 401(a)(26); and, proposed regulations which amend 26 CFR by amending § 1.414(q)-1T to

provide guidance with respect to the definition of a highly compensated employee within the meaning of section 414(q) of the Code. These proposed regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, May 2, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

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

[FR Doc. 91–2317 Filed 1–31–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[EE–129–86]

RIN 1545–A066

Definition of Highly Compensated Employee

AGENCY: Internal Revenue Service, Teasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the scope and meaning of the term "highly compensated employee" in section 414(q) of the Internal Revenue Code of 1986. They reflect changes made by the Tax Reform Act of 1986 (TRA '86). The text of those temporary regulations also serves as the text for this Notice of Proposed Rulemaking. These regulations will provide the public with guidance necessary to comply with the law and will affect sponsors of, and participants in, pension, profit-sharing and stock bonus plans, and certain other employee benefit plans.

DATES: Written comments must be received by April 2, 1991. Requests to speak (with outlines or oral comments) at a public hearing scheduled for Thursday, May 16, 1991, at 10 a.m., and continued, if necessary, on Friday, May 17, 1991, must be received by May 2, 1991. See the notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments and requests to speak (with outlines of oral comments) at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (EE–129–86), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, Thomas G. Schendt or Rhonda G. Migdail, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), at 202–633–0849 (not a toll-free number). Concerning the hearing, Robert Boyer, Regulations Unit, at 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend 26 CFR by amending § 1.414(q)-1T to provide guidance with respect to the definition of a highly compensated employee within the meaning of section 414(q) of the Internal Revenue Code (Code). The regulations are proposed to be issued under the authority contained in sections 414(q) and 7805 of the Code of 100 Stat. 2448, 68A Stat. 917; 26 U.S.C. 414(q), 7805). For the text of the temporary regulations, see T.D. 8334 published in the Rules and Regulations portion of this issue of the **Federal Register.**

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C chapter 6) do not apply to these regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations are being sent to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying in their entirety. Because the Treasury Department expects to issue final regulations on this matter as soon as possible, a public hearing will be held at 10 a.m. on May 16, 1991, and continued, if necessary, on Friday, May 17, 1991, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC 20224.

List of Subjects in 26 CFR 1.401–0—1.425–1

Employee benefit plans, Employee stock ownership plans, Income taxes, Individual retirement accounts, Pensions, Stock options.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91–2318 Filed 1–31–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1–91–003]

Temporary Drawbridge Operation Regulations; Saugatuck River, CT

AGENCY: Coast Guard, DOT.

ACTION: Proposed temporary rule.

SUMMARY: At the request of Metro-North Commuter Railroad (Metro-North), the Coast Guard is considering temporary regulations governing the SAGA Railroad drawbridge over Saugatuck River, at mile 1.1, at Westport, Connecticut to provide that the draw need not be opened for the passage of vessels for 45 days from 15 February through 31 March 1991. This proposed temporary regulation is being considered to facilitate the rehabilitation of the north leaf of the bridge before the boating season. This action will relieve the bridge owner of the burden of having to open the draw

during the rehabilitation of the bridge and will only permit the transit of marine traffic which can pass under the closed span.

DATES: Comments must be received on or before 10 February 1991.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073. The comments and other material referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. A shortened comment period has been implemented in order to expedite repairs and to permit the proposed temporary regulation to be in effect by 15 February 1991, if considered appropriate. Additionally, preliminary input from marine interests indicate that they have no objection providing work is completed before 1 April 1991. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

Drafting Information

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

Discussion of Proposed Temporary Regulations

Current regulations provide that the draw shall open as soon as possible for passage of a public vessel of the United States, vessel in tow or vessel in distress and shall operate as follows: (1) Year-round need not open: (i) Weekdays from 7 a.m. to 8:10 a.m. and 5:30 p.m. to 7 p.m. except on Federal holidays; (ii) From 9 p.m. to 5 a.m. (2) From October 1–May 31, open on signal: (i) Weekdays from 8:10 a.m.–4 p.m.; (ii) Weekends and Federal holidays 7 am.–4 p.m.; (iii) If at least eight hours notice is given: daily, from 5 a.m.–7 a.m., 4 p.m.–5:30 p.m. and 7 p.m.–9 p.m. and weekends and Federal holidays from 5:30 p.m.–7 p.m. (3) From June 1–September 30, open on signal 5 a.m.–9 p.m., except as provided in paragraph (b)(1)(i) of this section. (4) A delay in opening the draw not to exceed 10 minutes may occur when a train scheduled to cross the bridge without stopping has entered the drawbridge block. The proposed temporary regulation would suspend the regulations for 45 days and allow the north span of the bridge to remain in the closed position at all times from 7 a.m. on 15 February through 11 p.m. on 31 March 1991. The temporary regulations would be issued under 33 CFR 117.35. Metro-North requested the closure of the bridge to facilitate major structural repairs to the north span. The work also involves the removal and replacement of the north railroad track, the north leaf counterweight blocks, and the bottom bracing for the counterweight. An inability to open either the north or south leaves, prevents vessel transits except for those low clearance vessels which can pass under the closed leaves. The 1989 and 1990 bridge opening logs for February and March indicate only 4 and 3, total vessel openings, respectively. The existing bridge, built in 1904, is a twin leaf bascule bridge with a vertical clearance of 20 and 13 feet above mean low and mean high water, respectively.

Economic Assessment and Certification

These proposed temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based upon the fact that the closure will be accomplished outside the peak boating season and when recreational boats are out of the water. The regulation also will not prevent the passage of vessels who are able to pass under the closed span. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

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

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Temporary Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.221(b) (1) and (2) are suspended for a 45 day period and (b)(3) is added for the same a 45 day period from 15 February through 31 March 1991 to read as follows: Because this is a temporary rule, this paragraph will not be codified in the CFR.

§ 117.221 Saugatuck River.

* * * * *

(b) * * *

(3) *Repair of the SAGA bridge.* The draw need not be opened for the passage of any vessel and paragraphs (b) (1) and (2) are suspended from 7 a.m., February 15, through 11 p.m., 31 March 1991, inclusive, to effect major repairs to the north bridge leaf.

* * * * *

Dated January 24, 1991.

R.I. Rybacki,

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

[FR Doc. 91–2437 Filed 1–31–91; 8:45 a.m.]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD1–91–002]

Drawbridge Operation Regulations; Neponset River, MA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Massachusetts Department of Public Works (MDPW), the Coast Guard is considering a change to the regulations governing the Granite Avenue Bridge over the Neponset River mile 2.5 between Boston and Milton, Massachusetts, by requiring that a 24 hour advance notice be given at all times from January 1 to March 31. This proposal is being made because there have been no requests for openings during the winter months for the past four years. This proposal should relieve the bridge owner of the burden of having a person constantly available to open

the draw during the winter months, and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before March 18, 1991.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073. The comments and other materials referenced in this notice will be available for inspection and copying at that address and at our Boston office located at 408 Atlantic Ave., Rm. 628, Boston, Massachusetts. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to these offices.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Person desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of these regulations are Lieutenant John McDonald, Project Officer, and Lieutenant John Gately, project attorney.

Discussion of Proposed Regulations

The Granite Ave. Bridge crosses the Neponset River at mile 2.5 between Boston and Milton, Massachusetts. The bridge provides a vertical clearance of 6' above mean high water and 16' above mean low water. The current regulations for the Bridge provide that the draw open on signal at all times from May 1 through October 31, and from 8 a.m. to 4 p.m. November 1 through April 30. At all other times the draw will open on signal for commercial and recreational vessels if at least 24 hours advance notice is given. The Massachusetts Department of Public Works requested the regulation change because no request for openings had been received for the past four years during the winter months from January 1 through March 31. The proposed revision to the regulations would require clearance gauges at the drawbridge to minimize unnecessary openings of the bridge and facilitate transit by smaller vessels when the bridge is on 24 hour advance notice. Additionally, the changes would correct the mileage and location of the bridge.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is because the regulation will not prevent the passage of vessels but just require advance notice if openings are required. Additionally, the one yacht club above the bridge removes its docks and shuts down water related activity during this period. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.611 is revised to read as follows:

§ 117.611 Neponset River.

The draw of the Granite Ave. Bridge, mile 2.5 between Boston and Milton, Massachusetts, operates as follows:

(a) Public vessels of the United States, vessels in distress, and state or local vessels used for public safety shall be passed as soon as possible. The opening signal from these vessels is four or more short blasts of a whistle, horn, or a telephone request.

(b) The bridge owner shall provide and keep in good legible condition clearance gauges with figures not less than 10 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(c) Open on signal:

(1) May 1 through October 31, at all times.

(2) April 1 through April 30 and November 1 through December 31, from 8 a.m. through 4 p.m.

(d) Open on signal if at least 24 hours advance notice is given at all other times except as provided in (a) and (c) above.

Dated: January 28, 1991.

R.I. Rybacki,

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

[FR Doc. 91–2436 Filed 1–31–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AC70

Transportation of Claimants and Beneficiaries

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the regulations that govern VA's program to provide for the transportation of claimants and beneficiaries. This amendment, which implements new travel provisions of Public Law 100–322, will authorize beneficiary travel payments for eligible veterans and beneficiaries for medically indicated special modes of transportation, public transportation, or mileage reimbursement where public transportation is not reasonably accessible or is medically inadvisable. A deductible would apply except for veterans or beneficiaries who require a special mode of transportation and veterans or beneficiaries scheduled for compensation and pension examinations.

DATES: Written comments must be received on or before March 4, 1991. Comments will be available for public inspection until March 13, 1991. These regulations are proposed to be retroactively effective July 1, 1988, as required by law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until March 13, 1991.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Procedures Division (161B), Medical Administration Service, Veterans Health Services and Research Administration, (202) 233–2143.

SUPPLEMENTARY INFORMATION: Section 111 of title 38, United States Code, in conjunction with certain other title 38 authorities, provides a discretionary program for the payment of the necessary travel expenses of certain VA beneficiaries. These benefits were significantly reduced by 1987 amendments to the governing regulations located at 38 CFR 17.100, Transportation of claimants and beneficiaries which eliminated VA payments for the veteran patients who live within a 100 mile radius of the facility at which they seek health care, except for emergency travel by special modes of transportation.

The Veterans' Benefits and Services Act of 1988, Public Law 100–322, section 108, restores in large part, VA travel reimbursement benefits. It requires that, if VA provides any beneficiary travel reimbursement under section 111 in any given fiscal year, then payments must be provided in that year in the cases of travel for health-care services for all the categories of beneficiaries specified in the statute. In order to limit the overall cost of this program, the law imposes a $3 one-way deductible applicable to all travel except for veterans otherwise eligible for beneficiary travel reimbursement who are traveling by special modes of transportation (as defined in these regulations), or to receive a compensation and pension examination. In order to limit the overall impact on veterans whose clinical needs dictate frequent travel for VA medical care, an $18 per calendar month cap on the deductible would apply for those veterans who are pre-approved as needing to travel on a frequent basis. Among the proposed amendments to the regulations are several provisions intended to clarify the meaning of terms used in the law. They define the term "unable to defray the expenses of travel" to include service-connected veterans rated at least 30%, and veterans traveling in connection with treatment of a service-connected disability. That will assure that those veterans are able to receive the same benefit that nonservice-connected veterans can receive to travel by a special mode of transportation, such as an ambulance, when necessary. The regulations also clarify the meaning of severe financial hardship for purposes of waiving the deductible. They state that hardship will result when loss of employment, illness or disability cause income to drop below the maximum level of VA pension, which in 1990 is $10,824 for a single veteran. Finally, the regulations clarify which persons in addition to veterans are eligible to receive beneficiary travel payments, including attendants when it has been determined in advance that the beneficiary's physical or mental condition requires the presence of an attendant.

These proposed regulatory amendments are considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; they will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will they have 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.

The Secretary of the Department of Veterans Affairs hereby certifies that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These proposed regulations concern the provision of beneficiary travel reimbursement to specified categories of eligible veterans. No paperwork, administrative or other regulatory burdens are imposed upon small entities.

The Catalog of Federal Domestic Assistance number if 64.001.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Phillippines, Veterans.

Approved: November 29, 1990.

Edward J. Derwinski,
Secretary of Veterans Affairs.

38 CFR part 17, Medical is proposed to be amended as follows:

PART 17—[AMENDED]

1. In § 17.100, the introductory text and paragraphs (e), (h), (i), and (m) are removed, paragraphs (a) through (d), and (f), (g), (j), (k), (l) are redesignated (f) through (n), respectively, and new paragraphs (a) through (e) are added to read as follows:

§ 17.100 Transportation of claimants and beneficiaries.

(a) Each fiscal year, the Secretary shall determine whether VA will pay beneficiary travel in that year. If travel will be provided, it shall be paid in accordance with these regulations.

(Authority: 38 U.S.C. 111, as amended by section 108, Pub. L. 100–322)

(b) Transportation at Government expense shall be authorized for the following categories of VA beneficiaries, subject to the deductible established in § 17.101, "Limitations":

(1) A veteran or other person traveling in connection with treatment for a service-connected disability (irrespective of percent of disability).

(2) A veteran with a service-connected disability rated at 30 percent or more, for treatment of any condition.

(3) A veteran receiving VA pension benefits.

(4) A veteran whose annual income, as determined under 38 U.S.C. 503, does not exceed the maximum annual rate of pension which would be payable if the veteran were eligible for pension, or who is unable to defray the expenses of travel.

(c) Transportation at Government expense shall be authorized for the following VA beneficiaries without their being subject to the deductible established in § 17.101, "Limitations":

(1) A veteran traveling in connection with a scheduled compensation or pension examination.

(2) A veteran or other person traveling by a specialized mode of transportation such as an ambulance, ambulette, air ambulance, wheelchair van, or other vehicle specially designed to transport disabled individuals provided:

(i) A physician determines that the

special mode of travel is medically required;

(ii) The person is unable to defray the expenses of the travel; and

(iii) The travel is authorized in advance or was undertaken in connection with a medical emergency such that delay to obtain authorization would be hazardous to the person's life or health.

(3) Patient is in receipt of VA pension (or has annual income that does not exceed the pension rate).

(d) For the purposes of this section, the term "other person" refers to:

(1) An attendant when it has been determined in advance that the beneficiary's physical or mental condition requires the presence of an attendant.

(2) A dependent or survivor receiving care in a VA facility under 38 U.S.C. 613.

(3) Members of the veteran's immediate family, the veteran's legal guardian, or the individual in whose household the veteran certifies an intention to live, when the veteran is receiving services under 38 U.S.C. 601(6)(B).

(e) A veteran or other person shall be considered unable to defray the expenses of travel if:

(1) Annual income for the year immediately preceding the application for benefits does not exceed the maximum annual rate of pension which would be payable if the person were eligible for pension; or

(2) The person is able to demonstrate that due to circumstances such as loss of employment, or incurrence of a disability, income in the year of application will not exceed the maximum annual rate of pension which would be payable if the person were eligible for pension; or

(3) The person has a service-connected disability rated at least 30%; or

(4) The person is traveling in connection with treatment of a service-connected disability.

(Authority: 38 U.S.C. 111, as amended by section 108, Pub. L. 100-322)

* * * * *

§ 17.100 [Amended]

2. In redesignated paragraph (h) the last sentence is removed.

3. In redesignated paragraph (k) remove the phrase "exception defined in paragraph (h)(1) of this section" and add, in its place, the phrase "limitations described in § 17.101, Limitations".

4. In redesignated paragraph (k) remove the phrase "exceptions defined in paragraph (h) of this section" and add, in its place, the phrase "limitations described in § 17.101, Limitations".

§§ 17.101 and 17.102 [Redesignated as §§ 17.102 and 17.103]

5. Sections 17.101 and 17.102 are redesignated as §§ 17.102 and 17.103, respectively, and a new § 17.101 is added to read as follows:

§ 17.101 Limitations.

(a) VA shall deduct from amounts payable to persons under § 17.100(b), an amount equal to $3 for each one-way trip to a VA facility, up to a maximum of $18 in any calendar month. Persons required to make more than six one-way visits per calendar month will receive full travel reimbursement after the $18 cap is met.

(b) The provisions of subsection (a) may be waived when imposition of the deductible would cause severe financial hardship. Loss of employment, or sudden illness or disability causing the beneficiary's income in the year of application to fall below the maximum level of VA pension shall be deemed to constitute severe financial hardship.

(c) Transportation will not be authorized for the cost of travel by taxi or a hired car for visually impaired veterans (as a special mode), or by privately owned vehicle in any amount in excess of the cost of such travel by other forms of public transportation unless public transportation is not reasonably accessible or would be medically inadvisable.

(d) Transportation will not be authorized for the cost of travel in excess of the actual expense incurred by any person as certified by that person in writing.

(Authority: 38 U.S.C. 111, as amended by Section 108, Pub. L. 100-322)

[FR Doc. 91-2378 Filed 1-31-91; 8:45 am]
BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 90-4, DA 91-69]

Cable Service; Effective Competition Standard for Cable Basic Service Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending time.

SUMMARY: Action taken herein extends the time for filing comments and reply comments to the Further Notice of Proposed Rule Making in MM Docket No. 90-4, 56 FR 406 (January 4, 1991). This Further Notice proposes revision to the rules for determining whether a cable system is subject to effective competition and thus exempt from rate regulation of basic cable service by its local franchising authority. The Further Notice also seeks comment on proposals regarding the standards for rate regulation in situations where effective competition does not exist. The National Association of Broadcasters and the Association of Independent Television Stations, Inc., requested the extension of time. In view of the interest in developing a complete record in this proceeding and the likelihood that a brief delay in filing comments may ultimately expedite a sound resolution of this matter, we find the requested extension of time warranted.

DATES: Comments are due on February 14, 1991, and reply comments are due on March 1, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Order Granting Motion for Extension of Time To File Comments

In the Matter of reexamination of the effective competition standard for the regulation of cable television basic service rates.

Adopted: January 25, 1991; Released: January 25, 1991;

By the Chief, Mass Media Bureau:

1. On December 13, 1990, the Commission adopted a Further Notice of Proposed Rule Making (Further Notice) in this proceeding, 56 FR 406 (January 4, 1991), proposing to revise its rules for determining whether a cable system is subject to effective competition and thus exempt from rate regulation of basic cable service by its local franchising authority. The Further Notice also seeks comment on proposals regarding the standards for rate regulation in situations where effective competition does not exist. Comments are currently due on January 31, 1991, and reply comments are due on February 15, 1991.

2. On January 18, 1991, the National Association of Broadcasters (NAB) and the Association of Independent Television Stations, Inc. (INTV), submitted a joint motion to extend the

date for filing comments to February 14, 1991 and the date for filing reply comments to March 1, 1991. NAB and INTV state that the Further Notice includes several new proposals for determining when cable systems can be deemed to face effective competiton, such as a penetration factor and a behavioral test. They also observe that the Further Notice seeks comment on the relationship of must carry rules to the balance Congress sought to establish in the Cable Communications Policy Act of 1984, an issue not previously raised in this proceeding. Moreover, NAB notes that its position on these issues cannot be finalized until the conclusion of its Television Board's winter meeting, which will be one day before the present due date for comments. For these reasons, NAB and INTV seek an extension of time to ensure fully considered responses to the proposals.

3. The Further Notice comment filing dates reflect the Commission's interest in resolving the matters raised in a prompt fashion. However, we recognize the significance of our rules in this area for cable subscribers, cable system operators, and other participants in the market and that new and important issues relating to matters of interest to broadcasters have been raised. Accordingly, in view of the interest in developing a complete record in this proceeding, and the likelihood that a brief delay in filing comments may ultimately expedite a sound resolution of this proceeding, the filing dates for comments and reply comments will be extended as requested.

4. Accordingly, it is ordered that the dates for filing comments and reply comments in response to the above referenced Further Notice of Proposed Rule Making are extended to February 14, 1991, and March 1, 1991, respectively. This action is taken pursuant to authority provided in section 4(i) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's rules.

5. For further information concerning this proceeding, contact Marcia Glauberman, Mass Media Bureau, (202) 632–6302.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 91–2376 Filed 1–31–91; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Ex Parte No. 334 (Sub. No. 8); Ex Parte No. 334 (Sub. No. 8A)]

Joint Petition for Rulemaking on Railroad Car Hire Compensation; Joint Petition for Exemption of Arbitration Rule From Application of 49 U.S.C. 10706 and Motion to Dismiss

AGENCY: Interstate Commerce Commission.

ACTION: Proposed Rule; Correction.

SUMMARY: The Commission is correcting an error in the Notice of proposed rule and proposed exemption of car hire rate arbitration rule published in the **Federal Register** January 17, 1991, at 56 FR 1781. The dates and addresses and other information stated in that notice are correct.

FOR FURTHER INFORMATION CONTACT: Jospeh H. Dettmar (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1033

Railroads.

PART 1033—CAR SERVICE

1. The authority for part 1033 continues to be proposed to be revised as follows:

Authority: 49 U.S.C. 10321, 10326, 11121, and 11122; 5 U.S.C. 553.

§ 1033.1 [Corrected]

2. In § 1033.1, in paragraph (b)(1), the reference to "paragraph (a)(3)" should correctly read "paragraph (b)(3)."

Decided: January 25, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–2421 Filed 1–31–91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for Spiranthes diluvialis (Ute ladies'-tresses) From the States of Colorado, Nevada, and Utah

AGENCY: Fish and Wildife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: Because of requests by a county government and a private company, the Fish and Wildlife Service gives notice of reopening the comment period on the proposed determination of threatened status for the plant species *Spiranthes diluvialis* (Ute ladies'-tresses). This species historically occurred along relatively low elevation riparian areas in Colorado, Nevada, and Utah. Reopening the comment period will allow comments on this proposal from all interested parties.

DATES: Comments will now be received until March 15, 1991.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Larry England at the above address, telephone: (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Spiranthes diluvialis was historically found in low elevation riparian and similar wetland areas in the eastern Great Basin of western Utah and adjacent Nevada, in riparian areas at scattered locations on the Colorado Plateau in eastern Utah and in riparian areas at scattered locations along the eastern foot of the Front Range in Colorado. The species' historical populations in the Great Basin and its historical populations in El Paso and Weld counties, Colorado, are presumed to be extinct. The species' remaining populations in the Colorado Plateau of eastern Utah and along the Front Range of Colorado are very small and vulnerable to possible extinction in the future. The species is vulnerable to degradation of its riparian habitat.

On November 13, 1990, the Service published in the **Federal Register** (55 FR 47347) a proposal to list *Spiranthes diluvialis* as threatened. The comment period on the proposal originally closed on January 14, 1991. The Service has been requested by a county government and a private company with an interest in the species' habitat to extend the public comment period to allow them the necessary time to review and

comment on the original proposal. Therefore, the Service is exending the public comment period. Written comments may now be submitted until March 15, 1991, to the Service office in the "ADDRESSES" section of this notice.

Author

The primary author of this proposed rule is John L. England, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/524–4430 or FTS 588–4430, see "ADDRESSES" above).

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. *et seq.*).

List of Subjects in 50 CFR Part 17

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

Dated: January 28, 1991.

John L. Spinks, Jr.,

Deputy Regional Director, Fish and Wildlife Service.

[FR Doc. 91–2377 Filed 1–31–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 901196–0296]

RIN 0648–AD71

Disposition of Tissues From Stranded Marine Mammals

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

ACTION: Extension of comment period.

SUMMARY: NMFS extends the comment period concerning the disposition of tissues from stranded marine mammals. The first notice was published in the **Federal Register** on December 20, 1990 (55 FR 52194). The extension was requested by institutions interested in submitting comments.

DATES: Comments on the proposed rule must be postmarked on or before March 1, 1991.

ADDRESSES: Comments should be mailed to Dr. Nancy Foster, Director, Office of Protected Resources (F/PR), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Permits Division, Office of Protected Resources, Silver Spring, MD, 301–427–2322.

Dated: January 25, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 91–2345 Filed 1–31–91; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 301

[Docket No. 901239–0339]

Pacific Halibut Fisheries

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

ACTION: Notice of proposed catch sharing plan in Area 2A; extension of comment period.

SUMMARY: NOAA recently announced a proposed continuation into 1991 of the 1990 Catch Sharing Plan developed by the Pacific Fishery Management Council to allocate the catch of Pacific halibut between treaty Indian and non-Indian commercial and recreational fishermen in International Pacific Halibut Commission statistical Area 2A (see 56 FR 1378, January 14, 1991). Written comments on the proposed catch sharing plan were to be submitted to the Northwest Region on or before January 15, 1991, a date that did not provide adequate opportunity for public comment. NOAA, therefore, extends the comment period for receipt of written comments to February 19, 1991.

DATES: Written comments on the proposed plan must be received by February 19 1991.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

Dated: January 28, 1991.

Richard H. Schaefer,

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

[FR Doc. 91–2444 Filed 1–31–91; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Parts 611, 672, and 675

[Docket No. 901108–0308]

RIN 0648–AD44

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes product recovery rates (PRRs) for groundfish product types for purposes of managing groundfish harvests off Alaska. This action is necessary to solicit comments from the fishing industry abot PRRs for known product types, which will be used in conjunction with other regulatory measures. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

DATES: Comments are invited until March 4, 1991.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Copies of the environmental assesment/regulatory impact review (EA/RIR) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

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

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the Gulf of Alaska and Bering Sea and Aleutian Islands Area are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plans for the Gulf of Alaska Groundfish Fishery (GOA FMP) and Bering Sea/Aleutian Islands Groundfish (BSAI FMP). The FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675.

This regulatory amendment proposes PRRs for groundfish product types produced by the groundfish fishing industry from species harvested off Alaska. Each PRR represents an arithmetic proportion of the amount of product recovered from a whole fish during processing operations. This proportion is applied to data supplied by processors to determine landings by species for management of the Alaskan groundfish fisheries.

For instance, the Alaska Region is currently applying PRRs to processor data for certain product types produced from groundfish to manage harvest quotas and to monitor directed fishing for groundfish. Standard PRRs for monitoring harvest quotas are used in

the following manner. Under existing recordkeeping and reporting requirements at §§ 672.5 and 675.5, each catcher/processor, mothership processor, and shoreside processor using groundfish harvested off Alaska must maintain a Daily Cumulative Production Log (DCPL). Under the reporting requirements, each processor who is required to maintain a DCPL must submit to NMFS on a weekly basis a Weekly Production Report (WPR) that summarizes production amounts by species and by product. Requirements for recordkeeping using logbooks have been in place since the beginning of the 1990 fishing year. They require records of product weights, a change from earlier regulations that required all reporting to be done in round weight.

Total allowable catch specifications for groundfish species or groundfish complexes are expressed in round weight. NMFS monitors groundfish quotas by using PRR's to convert the amounts of processed products reported in the WPRs to round weight equivalents. Establishing standard PRRs is necessary for use in determining round weight equivalents. In performing this calculation, the amount of product would be divided by the appropriate PRR. For example, if 10 metric tons (mt) of whole, round Pacific cod were produced and the PRR was 1.0, then the round weight equivalent would be 10 mt. However, if 10 mt of Eastern cut, headed-and-gutted Pacific cod were produced and the PRR was 0.58, then the round weight equivalent would be 10/0.58, or 17.2 mt. The latter amount, 17.2 mt, would be subtracted from the remaining quota.

Reasonably accurate PRRs are necessary to allow full harvest of the groundfish stocks, while not overharvesting them. If the PRR being used for calculations is lower than the actual PRR occurring for a given species, then the calculated amount of harvest is an overestimated value. Using the above example of 10 mt of headed-and-gutted Pacific cod, an erroneous PRR of 0.5 would have resulted in a round weight equivalent of 20.0 mt being subtracted from the quota instead of 17.2 mt. Fishermen would lose the opportunity to harvest 2.8 mt in this example. Conversely, an erroneous PRR of 0.75 would have resulted in a round weight equivalent of 13.3 mt instead of 17.2 mt. Erroneously high PRRs result in underestimates of groundfish caught and increase the likelihood of an overharvest of the established quota.

Although single TACs are specified for the "other species" categories in the Gulf of Alaska and in the Bering Sea and Aleutian Islands area, these categories are composed of several species. In the Gulf of Alaska, "other species" means: Atka mackerel, sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. In the Bering Sea and Aleutian Islands area, "other species" means sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. Because products from each of these species would result in specific PRRs, records and reports of products from each of these species will be required separately beginning in 1991.

Standard PRRs for monitoring directed fishing as defined at 50 CFR 611.92, 611.93, 672.2, and 675.2 (55 FR 9887, March 16, 1990) would be used to calculate round weight equivalents from product weights to determine whether amounts of fish or fish products retained on board a vessel are within percentages used to define directed fishing. Standard PRRs are necessary to enforce the directed fishing definition in a consistent manner. In the past, enforcement officers have relied on advice from the vessel operator as to what product recovery rate he was experiencing at the time. This procedure led to uncertainties when different recovery rates were being recorded among vessels fishing in relatively close proximity to each other and processing the same product with the same equipment.

The Secretary requests comments on product types and PRRs that could be utilized for managing the groundfish fisheries. PRRs proposed in this notice are annual averages. Such average PRRs for groundfish have been utilized by the Alaska Department of Fish and Game (ADF&G) and NMFS for calculating round weight from ADF&G fish tickets for purposes of monitoring quotas. These existing PRRs annually have undergone extensive review and updating by a team of NMFS and ADF&G scientists. Data are not available at this time that indicate significant differences should be expected between Gulf of Alaska and Bering Sea/Aleutian Islands PRRs.

With respect to pollock, sources of data for PRRs were obtained by NMFS observers from the joint venture fisheries in the Shelikof Strait within the Gulf of Alaska during the years 1983 through 1985. During 1985, data also were collected in the Bering Sea. Examination of PRRs for roe show that they vary widely, ranging from 3 to almost 20 percent. Reasons for this variance pertain mostly to seasonal differences between premature and mature pollock, and between mature and hydrate pollock roe. More fully hydrated egg sacs are heavier and yield a higher recovery rate than those less fully hydrated. Fully hydrated egg sacs are less desirable and frequently are not retained. Another factor contributing to the variability of roe recovery rates is volume of the catch. Large hauls of pollock are difficult to process. Therefore, a processor may choose to retain only certain roe sacs of the fullest and highest quality. Roe that would normally be retained in hauls with small amounts of pollock may not be retained in hauls with large amounts of pollock due to time requirements of processing and volume of the product. Data collected by observers in the Bering Sea indicate that PRRs for roe are similiar to the rates found in Shelikof Strait.

A PRR of 13.8 percent is proposed for pollock roe for the Gulf of Alaska and Bering Sea/Aleutian Islands Area. This PRR is for mature female pollock with utilizable roe. It assumes that males and underutilized or unripe females are reported separately, either as another product or as discarded fish, as required by logbook instructions.

At this time, 29 product types are being used to manage the groundfish fishery. NMFS might use other products to manage the groundfish fishery as well if additional product types and expected recovery rates become known. Other product types will be forthcoming as markets are developed. Names and descriptions of current product types are as follows:

Product Type and Code Description

Whole Food Fish

1. Unprocessed whole fish for human consumption.

Whole Bait Fish

2. Unprocessed whole fish used for bait.

Bled

3. Throat, or isthmus slit to allow blood to drain.

Gutted

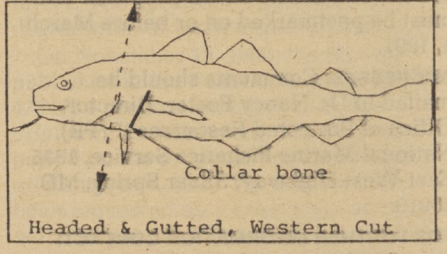
4. Belly slit and viscera removed.

Headed and Gutted with Roe

6. Head removed just before or aft of collar bone, viscera removed, and roe retained

Headed & Gutted, Western Cut

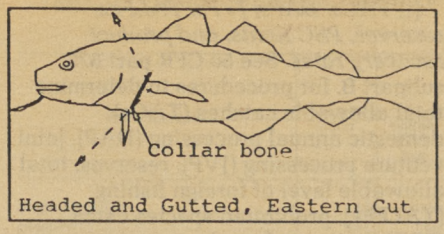
7. Head removed just in front of the collar bone, belly slit and viscera removed.



Headed & Gutted, Western Cut

Headed & Gutted, Eastern Cut

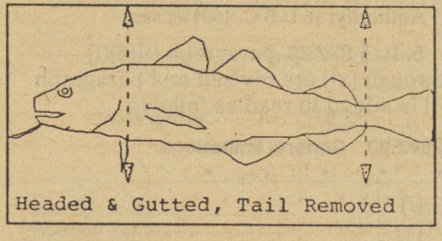
8. Head removed just behind the collar bone, belly slit and viscera removed.



Headed and Gutted, Eastern Cut

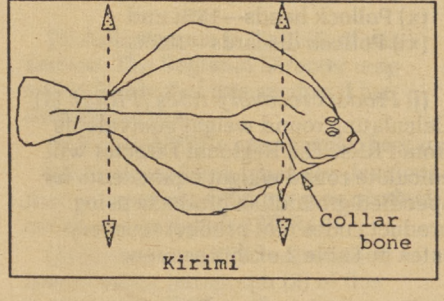
Headed & Gutted, Tail Removed

10. Head removed usually in front of collar bone, belly slit and viscera removed, and tail removed.


Headed & Gutted, Tail Removed

Kirimi

11. Viscera removed, head removed either in front or behind the collar bone; and tail removed by cuts perpendicular to the spine, resulting in a steak.



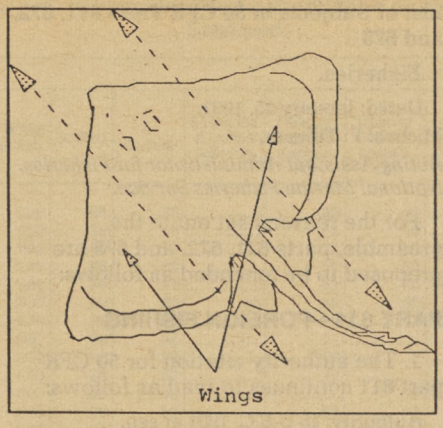
Kirimi

Salted and Split

12. Head off, belly slit, viscera removed, filets cut from head to tail but remaining attached near tail.

Wings

13. On skates, side fins are cut off next to body, body discarded or used as meal.


Wings

Roe

14. Eggs, either loose or in sacs, or skeins

Pectoral Girdle

15. Collar bone and associated bones

Heads

16. Heads only, regardless where severed from body

Cheeks

17. Side (opercular) bone and muscles on side of head

Chins

18. Lower jaw (mandible) and muscles

Belly

19. Body cavity walls below backbone

Fillets with Skin and Ribs

20. Meat and skin with ribs attached from sides of body behind head and in front of tail

Fillets with Skin, No Ribs

21. Meat and skin; ribs removed from sides of body behind head an in front of tail

Fillets with Ribs and No Skin

22. Meat with ribs; skin removed from sides of body behind head and in front of tail

Fillets, Skinless/Bone Removed

23. Meat with both skin and ribs removed from sides of body behind head and in front of tail

Surimi

30. Paste from any of the fish flesh

Minced

31. Ground up flesh and some body organs

Fish Meal

32. Ground up fish parts, usually including parts not otherwise used for human consumption

Milt

34. Sperm sacs

Stomachs

35. Stomachs and other internal organs

Octopus and Squid Mantles

36. Fleshy parts

Butterfly, No Backbone

37. Body slit along back and backbone removed.

Discards

99. While fish discarded, no processing

New paragraphs in 50 CFR 672.20 and 50 CFR 675.20 and changes in 50 CFR 611.92 and 50 CFR 611.93 are proposed to incorporate these product types. Codes for these various product types and PRRs are proposed at Table 2 in paragraph 672.20(j) and at Table 3 in paragraph 675.20(k). Comments also are invited on any other product type and associated PRR not presented in these tables.

The Secretary recognizes that, at times, new information might be available that indicates current PRRs are misspecified or that new product types have been developed that require specification of new PRRs. A procedure is proposed that would allow adjustments in Table 2 and Table 3 in aragraphs 672.20(j) and 675.20(k), respectively. Under this procedure, the Secretary would file a notice of the proposed adjustment with the Office of the Federal Register. The notice would provide a description of the proposed adjustment and the information on which the proposed adjustment is based. Comment would be invited on the proposed adjustment for 30 days from the date of filing the notice for public inspection with the Office of the Federal Register. In some cases, the Secretary may decide that good cause exists to put the adjustment into effect without affording a prior opportunity for public comment. In such cases, the Secretary will invite comments on the necessity for the adjustment for 15 days after the effective date of the notice.

Some of the PRRs and product types proposed by this action for pollock are different than values in the proposed rule to constrain roe stripping of female pollock for Amendments 14 to 19 to the BSAI FMP and GOA FMP, respectively (55 FR 37907; September 14, 1990). That proposed rule contains PRRs for the following pollock products: Fillets, surimi, minced, meal, and headed and gutted. However, more pollock product types and associated PRRs are listed in this proposed rule. The PRRs and product types for pollock in this proposed rule that the Secretary approves constitute the best available list for pollock. The final rule for this regulatory amendment will supersede the final rule for Amendments 14 and 19. This proposed rule does not contain any proposed changes to the standard limit of pollock roe on board (10%), as a percent of the total round-weight equivalent of pollock and pollock products onboard a vessel at any time during a fishing trip.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment for this rule. Copies of the EA may be obtained from the Regional Director at the above address.

The Assistant Administrator has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. This proposed rule, if adopted, is not likely not 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 a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified that this proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The product recovery rates contained in this proposed rule are the same as those currently used in the fishery to determine round weight of fish harvested. This regulatory amendment intends to codify the product recovery rates after giving the public an opportunity to comment on these values. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

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

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries.

Dated: January 25, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, parts 611, 672, and 675 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for 50 CFR part 611 continues to read as follows:

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

2. In § 611.92, paragraph (c)(1)(i) is revised to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(c) * * *

(1) *TACs, DAPs, JVPs, TALFFs, Reserves, PSC Limits, and product recovery rates.*

(i) See 50 CFR part 672, subpart B, for procedures to determine total allowable catches (TACs), domestic annual processing (DAP), joint venture processing (JVP), reserves, total allowable level of foreign fishing (TALFFs), prohibited species catch (PSC) limits, and product recovery rates (PRRs) used for purposes of calculating round weight equivalents that are used for enforcing definitions of directed fishing. Species listed in paragraph (b)(3) and Table 1 of this section as "prohibited species," and species listed in paragraph (b)(4) of this section as "non-specified species" and species for which the TALFF is zero, including species for which a PSC limit has been specified, will be treated in the same manner as prohibited species under § 611.11.

* * * * *

3. In § 611.93, paragraph (b)(1)(i) is revised to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(1) * * *

(i) *TACs, DAPs, JVPs, TALFFs, reserves, PSC limits, and product recovery rates.* See 50 CFR part 675, subpart B, for procedures to determine total allowable catches (TACs), domestic annual processing (DAP), joint venture processing (JVP), reserves, total allowable level of foreign fishing (TALFFs), prohibited species catch (PSC) limits, and product recovery rates (PRRs) used for purposes of calculating round weight equivalents that are used for enforcing definitions of directed fishing.

* * * * *

PART 672—GROUNDFISH OF THE GULF OF ALASKA

4. The authority citation for 50 CFR part 672 continues to read as follows:

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

5. In § 672.20, paragraph (i)(2)(i) through (xi) are revised and paragraph (j) is added to read as follows:

§ 672.20 General limitations.

* * * * *

(i) * * *

(1) * * *

(2) * * *

(i) Pollock surimi—15%;

(ii) Pollock fillets: with skin and ribs cut—35%; with skin, but no ribs—30%; with ribs, no skin—30%; skinless/boneless—25%.;

(iii) Pollock minced—34%;

(iv) Pollock meal—17%;

(v) Pollock headed and gutted: with roe—70%; Western cut—65%; Eastern cut—56%; without tail—50%;

(vi) Pollock, whole food fish—100%;

(vii) Pollock, whole bait fish—100%;

(viii) Pollock, bled—98%;

(ix) Pollock, gutted—80%;

(x) Pollock heads—15%; and

(xi) Pollock discards—100%.

* * * * *

(j) *Product recovery rates (PRRs).* (1) Calculating round weight equivalents from PRRs. The Regional Director will calculate round weight equivalents for specified groundfish products using product codes and product recovery rates in Table 2 of this section.

TABLE 2.—PRODUCT RECOVERY RATES FOR GULF OF ALASKA GROUNDFISH BY SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS [1,2]

FMP Species	Species Code	Product Code													
		1. Whole food fish	2. While bait fish	3. Bled	4. Gutted	6. Headed & gutted with roe	7. Headed & gutted western cut	8. Headed & gutted eastern cut	10. Headed & gutted w/o tail	11. Kirimi	12. Salted & split	13. Wings	14. Roe	15. Pectoral girdle	16. Heads
Pacific Cod	110	1.00	1.00	0.98	0.85	0.63	0.60	0.58	0.50		0.45		0.05	0.05	
Deep Water Flatfish	118	1.00	1.00	.99	.90	.80	.72	.65	.62	0.48			.08		
Shallow Water Flatfish	119	1.00	1.00	.98	.90	.80	.72	.65	.62	.48			.08		
Arrowtooth Flounder	121	1.00	1.00	.98	.90	.80	.72	.65	.62	.48			.08		
Other Rockfish	139	1.00	1.00	.96	.88		.60	.50							0.15
Thorneyhead Rockfish	143	1.00	1.00	.98	.88		.60	.55							0.20

TABLE 2.—PRODUCT RECOVERY RATES FOR GULF OF ALASKA GROUNDFISH BY SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS [1,2]—Continued

FMP Species	Species Code	Product Code													
		1. Whole food fish	2. While bait fish	3. Bled	4. Gutted	6.Headed & gutted with roe	7. Headed & gutted western cut	8. Headed & gutted eastern cut	10. Headed & gutted w/o tail	11. Kirimi	12. Salted & split	13. Wings	14. Roe	15. Pectoral girdle	16. Heads
Slope Rockfish	144	1.00	1.00	.98	.88		.60	.50							15
Sculpins	161	1.00	1.00	.98	.88		.50	.40							
Demersal Rockfish	168	1.00	1.00	.98	.89		.72								.15
Pelagic Rockfish	169	1.00	1.00	.98	.88		.65	.50							.15
Atka Mackerel	193	1.00	1.00	.98	.87		.61	50					.14		
Pollock	270	1.00	1.00	.98	.80	.70	.65	.56	.50						.15
Smelts	510	1.00	1.00	.98	.82		.71								
Eulachon	511	1.00	1.00	.98	.82		.71								
Capelin	516	1.00	1.00	.98	.89		.78								
Sharks	689	1.00	1.00	.98	.83		.72								
Skates	700	1.00	1.00	.98	.90			.39				0.32			
Sablefish	710	1.00	1.00	.98	.89		.68	.63	.50						
Octopus	870	1.00	1.00	.98											
Squid	875	1.00	1.00	.98	.69										

[1] A value of 1.00=round or live weight of fish.
[2] N/A denotes not applicable.

TABLE 2.—PRODUCT RECOVERY RATES FOR GULF OF ALASKA GROUNDFISH BY SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS [1,2]—Continued

FMP Species	Species Code	Product Code													
		17. Cheeks	18. Chins	19. Belly	20. Fillets: with skin & ribs cut	21. Fillets skin on no ribs cut	22. Fillets: with ribs no skin	23. Fillets: skinless/ boneless	30. Surimi	31. Mince	32. Meal	33. Oil	36. Mantles	37. Butterfly backbone removed	99. Discards
Pacific Cod	110	0.05		0.10	0.45	0.35	0.25	0.25		0.50	0.17			0.43	1.00
Deep Water Flatfish	118				.32	.27	.27	.22			.17				1.00
Shallow Water Flatfish	119				.32	.27	.27	.22			.17				1.00
Arrowtooth Flounder	121				.32	.27	.27	.22			.17				1.00
Other Rockfish	139	.05	.05	.10	.40	.30	.35	.25			.17				1.00
Thorneyhead Rockfish	143	.05	.05	.10	.40	.30	.35	.25			.17				1.00
Slope Rockfish	144	.05	.05	.10	.40	.30	.35	.25			.17				1.00
Sculpins	161										.17				1.00
Demersal Rockfish	168	.05	.05	.10	.40	.30	.35	.25			.17				1.00
Pelagic Rockfish	169	.05	.05	.10	.40	.30	.35	.25			.17				1.00
Atka Mackerel	193										.17				1.00
Pollock	270				.35	.30	.30	.25	0.15	.34	.17				1.00
Smelts	510					.38					.22				1.00
Eulachon	511					.38					.22				1.00
Capelin	516										.22				1.00
Sharks	689					.30	.30	.25			.17				1.00
Skates	700										.17				1.00
Sablefish	710	.05			.35	.30	.30	.25			.22				1.00
Octopus	870												0.85		1.00
Squid	875												.75		1.00

[1] A value of 1.00=round or live weight of fish.
[2] N/A denotes not applicable.

(2) Adjustments to Table 2 of this section. The Regional Director may adjust Table 2 of this section if he determines that:

(i) Existing PRRs are misspecified; or

(ii) New products types are developed that warrant establishing new product codes and associated PRRs.

(3) Procedure. (i) No adjustment issued under paragraph (2) of this paragraph will take effect until:

(A) The Secretary has filed the proposed adjustment for public inspection with the Office of the Federal Register, and

(B) The Secretary has published the proposed adjustment in the **Federal Register** for public comment for a period of thirty (30) days from the date it is filed with the Office of the Federal Register before it is made final, unless the Secretary finds for good cause that such notice and public procedure is impracticable, unnecessary, or contrary to the public interest.

(ii) If the Secretary decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the adjustments will be received by the Regional Director for a period of fifteen (15) days after the effective date of the notice.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

6. The authority citation for 50 CFR part 675 continues to read as follows:

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

7. In § 675.20, paragraph (j)(2)(i) through (xi) are revised and paragraph (k) is added to read as follows:

§ 675.20 General limitations.

* * * * *

(j) * * *

(1) * * *

(2) * * *

(i) Pollock surimi—15%;

(ii) Pollock fillets: with skin and ribs, cut—35%; with skin, but no ribs—30%; with ribs, no skin—30%; boneless—25%;

(iii) Pollock minced—34%;

(iv) Pollock meal—17%;

(v) Pollock, headed and gutted: with roe—70%; Western cut—65%; Eastern cut—56; without tail—50%;

(vi) Pollock, whole food fish—100%;

(vii) Pollock, whole bait fish—100%;

(viii) Pollock, bled—98%;

(ix) Pollock, gutted—80%;
(x) Pollock heads—15%; and
(xi) Pollock discards—100%.

* * * * *

(k) *Product recovery rates (PRRs).* (1) Calculating round weight equivalents from PRRs. The Regional Director will calculate round weight equivalents for specified groundfish products using products codes and product recovery rates in Table 3 of this section.

TABLE 3.—PRODUCT RECOVERY RATES FOR BERING SEA/ALEUTIAN ISLANDS AREA GROUND BY SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS [1,2]

FMP Species	Species Code	Product Code													
		1. Whole food fish	2. While bait fish	3. Bled	4. Gutted	6. Headed and gutted with roe	7. Headed and gutted western cut	8. Headed and gutted eastern cut	10. Headed and gutted w/ o tail	11. Kirimi	12. Salted and split	13. Wings	14 Roe	15. Pectoral girdle	16. Heads
Pacific Cod	110	1.00	1.00	0.98	0.85	.063	.060	.058	.050		0.45		0.05	0.05	
Other Flatfish	120	1.00	1.00	.98	.90	.80	.72	.65	.62	.48			.08		
Arrowtooth Flounder	121	1.00	1.00	.98	.90	.80	.72	.65	.62	.48			.08		
Rock Sole	123	1.00	1.00	.98	.90	.80	.72	.65	.62	.48			.08		
Yellowfin Sole	127	1.00	1.00	.98	.90	.80	.72	.65	.62	.48			.08		
Greeland Turbot	134	1.00	1.00	.98	.90	.80	.72	.65	.62	.48			.08		
Other Rockfish	139	1.00	1.00	.98	.88		.60	.50							.15
Pacific Ocean Perch	141	1.00	1.00	.98	.88		.65	.50							.15
Sculpins	161	1.00	1.00	.98	.88		.50	.40							
Atka Mackerel	193	1.00	1.00	.98	.87		.61	.50							
Pollock	270	1.00	1.00	.98	.80	.70	.65	.56	.50	.50				.14	.15
Smelts	510	1.00	1.00	.98	.82		.71								
Eulachon	511	1.00	1.00	.98	.82		.71								
Capelin	516	1.00	1.00	.98	.89		.70								
Sharks	689	1.00	1.00	.98	.83		.72								
Skates	700	1.00	1.00	.98	.90			.39				.32			
Sablefish	710	1.00	1.00	.98	.89		.68	.63	.50						
Octopus	870	1.00	1.00	.98											
Squid	875	1.00	1.00	.98	.69										

[1] A value of 1.00=round or live weight of fish.
[2] N/A denotes not applicable.

TABLE 3.—PRODUCT RECOVERY RATES FOR BERING SEA/ALEUTIANISLANDS ARE GROUNDFISH BY SPECIES CATEGORIES, PRODUCT CODEAND DESCRIPTIONS [1,2]—Continued

FMP Species	Species Code	Product Code													
		17. Cheeks	18. Chins	19. Belly	20. Fillets: with skin and ribs cut	21. Fillets skin on no ribs cut	22. Fillets: with ribs no skin	23. Fillets: skinless/ boneless	30. Surimi	31. Mince	32. Meal	33. Oil	36. Mantles	37. Butterfly backbone removed	99. Discards
Pacific Cod	110	0.05		0.10	0.45	0.35	0.25	0.25		0.50	0.17			0.43	1.00
Other Flatfish	120				.32	.27	.27	.22			.17				1.00
Arrowtooth Flounder	121				.32	.27	.27	.22			.17				1.00
Rock Sole	123				.32	.27	.27	.22			.17				1.00
Yellowfin Sole	127				.32	.27	.27	.22			.17				1.00
Greenland Turbot	134				.32	.27	.27	.22			.17				1.00
Other Roickfish	139	.05	.05	.10	.40	.30	.35	.25			.17				1.00
Pacific Ocean Perch	141	.05	.05	.10	.40	.30	.35	.25			.17				1.00
Sculpins	161										.17				1.00
Atka Mackerel	193										.17				1.00
Pollock	270				.35	.30	.30	.25	.15	.34	.17				1.00
Smelts	510					.38					.22				1.00
Eulachon	511					.38					.22				1.00
Capelin	516										.22				1.00
Sharks	689					.30	.30	.25			.17				1.00
Skates	700										.17				1.00
Sablefish	710	.05			.35	.30	.30	.25			.22				1.00
Octopus	870										.17				1.00
Squid	875										.17		.75		1.00

[1] A value of 1.00=round or live weight of fish.
[2] N/A denotes not applicable.

(2) Adjustments to Table 3 of this section. The Regional Director may adjust Table 3 of this section if he determines that:

(i) Existing PRRs are misspecified; or

(ii) New products types are developed that warrant establishing new product codes and associated PRRs.

(3) Procedure. (i) No adjustment issued under paragraph (2) of this paragraph will take effect until:

(A) The Secretary has filed the proposed adjustment for public inspection with the Office of the Federal Register, and

(B) The Secretary has published the proposed adjustment in the **Federal Register** for public comment for a period of thirty (30) days from the date it is filed with the Office of the Federal Register before it is made final, unless the Secretary finds for good cause that such notice and public procedure is impracticable, unnecessary, or contrary to the public interest.

(ii) If the Secretary decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the adjustment will be received by the Regional Director for a period of fifteen (15) days after the effective date of the notice.

[FR Doc. 91-2300 Filed 1-31-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 22
Friday, February 1, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Monday, February 11, 1991. The meeting will be held at the Pinewood House and Garden, Bok Tower Gardens, Tower Boulevard and Burns Avenue, Lake Wales, Florida, beginning at 9 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Council Business
III. Executive Director's Report
IV. Section 106 Cases
V. New Business
VI. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., room 809, Washington, DC, 202–786–0503, at least seven (7) days prior to the meeting.

For further information contact: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #809, Washington, DC 20004.

Dated: January 28, 1991.

Robert D. Bush,

Executive Director.

[FR Doc. 91–2366 Filed 1–31–91; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Gillibrand Soledad Canyon Mining Operations; Availability

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of a draft environmental impact statement.

SUMMARY: The Forest Service has prepared an Environmental Impact Statement for the Gillibrand Soledad Canyon Mining Operations. This is in response to a Plan of Operations submitted to the Forest Service for the development and production phase of a proposed mining operation. The agency invites written comments on the Draft document.

DATES: Comments concerning the Draft Environmental Impact Statement must be submitted by March 12, 1991.

ADDRESSES: Submit written comments concerning the draft document to Charles K. McDonald, Environmental Coordinator, Angeles National Forest, 701 N. Santa Anita Avenue, Arcadia, CA 91006–2799.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Mr. McDonald at the above address or phone (818) 574–5257, FTS 799–0257.

SUPPLEMENTARY INFORMATION: The Angeles National Forest Land and Resources Management Plan, Final Environmental Impact Statement and Record of Decision have been issued. These documents permit, under the rules and regulations for mining operations, the approval for plans of operations.

In preparing the environmental impact statement, the Forest Service identified nine alternatives, four of which were considered in detail.

Michael Rogers, Forest Supervisor, Angeles National Forest, Arcadia, California, is the responsible official.

Public participation is important during the analysis. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies, the proponent and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the final environmental impact statement (FEIS).

The Forest Service will hold the following public meeting:

7–10 p.m., Friday, February 22, 1991, Church of the Canyons, 28050 Sand Canyon Road, Canyon Country, California 91351.

The FEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1, 1991. At that time EPA will publish a notice of availability of the FEIS in the **Federal Register.**

It is very important that those interested in this proposal participate at this time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can

meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be anlayzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by June 1, 1991. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: January 23, 1991.

Paul Johnson,

Deputy Forest Supervisor.

[FR Doc. 91-2322 Filed 1-31-91; 8:45 am]

BILLING CODE 3410-11-M

Turkey Fire Salvage Timber Sale; Lewis and Clark National Forest, Judith Basin County, MT

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts associated with timber harvesting and road construction and reconstruction to salvage timber that was burned by the Turkey Fire, November 23–30, 1990. The Turkey Fire Salvage analysis area is located approximately 15 miles southwest of Stanford, Montana. The analysis area includes 9,950 acres of National Forest system lands, approximately 4,500 acres were burned in the Turkey Fire. A portion of the analysis area lies within the 27,000 acre Tollgate-Sheep Roadless Area 1–733. Under the Lewis and Clark National Forest Plan (1986), these roadless acres were allocated for non-wilderness management. It is anticipated that 300–600 acres of land could be affected by a timber harvest that would remove 2–4 million board feet. Tractor or other ground-based equipment would be used to harvest the timber. Approximately 1–2 miles of new road could be necessary.

Preliminary scoping for this analysis by an interdisciplinary team from the Lewis and Clark National Forest has identified the following significant issues in relation to the proposed actions:

1. What are the effects of timber harvesting and roading on the roadless and wilderness values in the Tollgate-Sheep Roadless Area?
2. What are the effects of timber harvesting and roading on the existing elk cover values and habitat use patterns?
3. What are the effects of timber harvesting and roading on the existing visual resource values?
4. What is the short-term economic viability of the proposed timber harvest and roading?
5. What effects will the proposed timber harvesting and roading have on soil movement and watershed values?

The Forest Service is seeking information and comments from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposed actions. The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. This information will be used in preparing the draft environmental impact statement (DEIS). The process includes:

1. Identification of potential issues related to the proposed action.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of alternatives to the proposed action.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

DATES: Comments concerning the scope of the analysis should be received on or before March 4, 1991, to receive timely consideration in the preparation of the DEIS.

ADDRESSES: Send written comments to Bob Gilman, District Ranger, Judith Ranger District, 109 Central Ave., Box 484, Stanford, Montana 59479.

FOR FURTHER INFORMATION CONTACT: Rick Abt, Turkey Fire Salvage Interdisciplinary Team Leader, Judith Ranger District, (406) 566–2292.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Lewis and Clark National Forest Land and Resource Management Plan of June, 1986, which provides goals and objectives. Forest-wide management standards and management area prescriptions are identified in the Plan to provide overall guidance and management practices in achieving these goals and objectives.

The primary purpose and need for the proposed action is to begin harvesting timber that was damaged by the Turkey Fire in November 1990.

The proposed projects are within the Wolf Creek Geographic Unit (LB–8) as defined by the Forest Plan, and the Tollgate-Sheep Roadless Area, identified in the RARE II process. The analysis will consider timber stands within the Turkey Fire area, specifically sections 1–36, T14N, R11E and sections 1, 12, 13, 24, 25, 36, T14N, R10E.

The areas of proposed harvest for the Turkey Fire Salvage project are within Management Area B and Management Area I of the Lewis and Clark National Forest Plan (p. 4–65). Management Area B emphasizes timber management and provides for moderate levels of livestock production while minimizing impacts to other resources. Management Area I emphasizes the maintenance or enhancement of important big-game habitat including winter ranges, migration routes, elk calving areas and sheep lambing areas. Management Area R (riparian) is located within the analysis area in Sage Creek and Hay Coulee. Management Area R emphasizes protection or enhancement of unique ecosystem values associated with riparian zones. Timber and range management activities are permitted.

A range of alternatives will be considered in the analysis. A "no-action" alternative, deferring timber harvest activities will be one alternative analyzed. Other alternatives will examine various levels and locations of harvest treatment and regeneration to salvage timber before its value for lumber is lost.

The analysis will disclose the environmental effects of alternative ways of implementing management direction outlined in the Forest Plan and harvesting timber, and in addressing the identified issues. The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose site specific mitigation measures and the effectiveness of each proposed mitigation measure.

The public is invited to visit with Forest Service officials at any time during the EIS preparation prior to the issuance of the Record of Decision. However, two periods of time are identified for formal public comment on this analysis. The two public comment periods are during the scoping process (through one month following publication date for this notice) and during the formal review of the draft EIS (estimated April–May 1991).

The DEIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in April 1991. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be for 45 days from that date of publication.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the Forest Service to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts, *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by July 1991.

The Forest Service will respond in the FEIS to the comments received on the DEIS. John D. Gorman, Forest Supervisor for the Lewis and Clark National Forest, the responsible official for this EIS, will make a decision regarding this proposal after considering the comments, responses and environmental consequences discussed in the FEIS as well as applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision. Because of the critical need to salvage the dead timber in a timely fashion, I will seek Regional Forester approval to exempt this decision from administrative appeal pursuant to 36 CFR 251.83(m).

Dated: January 25, 1991.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 91-2349 Filed 1-31-91; 8:45 am]

BILLING CODE 3410-11-M

Revised Draft EIS for the Shasta-Trinity National Forest Land & Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Issue a Revised Draft Environmental Impact Statement and proposed Forest Land and Resource Management Plan for the Shasta-Trinity National Forests.

SUMMARY: The Forest Service will prepare a Revised Draft Environmental Impact Statement and proposed Forest Land and Resource Management Plan for the Shasta-Trinity National Forests; Humboldt, Modoc, Shasta, Siskiyou, Tehama and Trinity Counties.

DATES: Revised Draft EIS will be issued winter, 1991-92.

FOR FURTHER INFORMATION CONTACT: Questions about the Revised Draft Environmental Impact Statement and/or proposed Forest Land and Resource Management Plan should be directed to John Kruse, Forest Planner, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, CA 96001. Telephone (916) 246-5407.

SUPPLEMENTARY INFORMATION: A Draft Environmental Impact Statement and proposed Forest Land & Resource Mangement Plan was issued February 27, 1990, for a 120-day perod of public review and comment. Approximately 1,650 individuals, organizations and elected officials provided comments on that document. On June 22, 1990 the U.S. Fish & Wildlife Service listed the northern spotted owl as an threatened species throughout its range under the Endangered Species Act. On September 30, 1990 all direction, including Spotted Owl Habitat Areas (SOHAs), in the 1984 Pacific Southwest Regional Guide pertaining to the northern spotted owl was vacated. At that same time, it was determined that the Forest Service would conduct land and resource management activities in a manner not inconsistent with the recommendations of the Interagency Scientific Committee pending: (1) Enactment of new legislation, (2) any applicable action by the Endangered Species Committee, (3) adoption of a recovery plan by the Fish and Wildlife Service, or (4) the results of further consultation between the Forest Service and Fish and Wildlife Service. This action significantly changes the range of mangement opportunities displayed in the February 27, 1990 Draft EIS and proposed Land & Resource Management Plan for the Shasta-Trinity National Forests. Therefore, those documents have been withdrawn. A revised Draft EIS and proposed Forest Plan that will provide the public with an opportunity to review and comment on the full disclosure of the effects of the listing of the northern spotted owl will be prepared and issued during the winter 1991-92.

The comment period on the draft environmental impact statement will be 90 days from the date that the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Shasta-Trinity National Forests participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement, *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be

analyzed and considerd by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by fall 1992. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: January 22, 1990.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 91-2389 Filed 1-31-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Northwest Region Federal Fisheries Permits.

Form number: None; OMB—0648–0203.

Type of request: Request for extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 9 respondents; 13.5 reporting hours; average hours per response—1.5 hours.

Needs and uses: Fishermen wanting to conduct experimental fishing in the Northwest Region must apply for a permit. Permittees must file reports on the results of the experiment.

Affected public: Business or other for-profit, non-profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 28, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-2342 Filed 1-31-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Southeast Region Federal Fisheries Permits.

Form number: No form number assigned; OMB—0648—0205.

Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 6,792 respondents; 1,698 reporting hours; average hours per response—.25 hours.

Needs and uses: Persons wishing to participate in various fisheries are required to obtain a permit. Information obtained from the permit system is used for fishery management, enforcement of fishery regulations, and research.

Affected public: Individuals, business or other for-profit, small businesses or organizations.

Frequency: Annually.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 28, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-2343 Filed 1-31-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-588-056]

Melamine From Japan; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on melamine from Japan. Interested parties who object to this revocation must submit their comments in writing not later than February 28, 1991.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFOMATION CONTACT: Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1977, the Department of Treasury published an antidumping finding on melamine from Japan (42 FR 6366). The Department ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than February 28, 1991, interested parties, as defined in § 353.2(i) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by February 28, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by February 28, 1991, we shall conclude that the finding is no longer of interest to

interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: January 28, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-2453 Filed 1-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-003]

Shop Towels of Cotton From The People's Republic of China

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 22, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on shop towels of cotton from the People's Republic of China. The review covers four exporters and four third-country resellers and the period October 1, 1987 through September 30, 1988.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, the final results for certain firms are changed from those presented in the preliminary results.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Michael J. Ready or Louis I. Apple, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2613 or 377-1769, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 34307) the preliminary results of its administrative review of the antidumping duty order on shop towels of cotton from the People's Republic of China (PRC) (48 FR 45277, October 4, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (The Tariff Act).

Scope of the Review

Imports covered by this review are shipments of shop towels of cotton from the People's Republic of China. During the review period, cotton shop towels were classifiable under item 366.2840 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item 6307.10.20. The HTS and TSUSA item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers four exporters and four third-country resellers for the period October 1, 1987 through September 30, 1988. The only company to answer the Department's questionnaire is China National Arts and Crafts Import and Export Corporation, Tianjin Branch (CNART-Tianjin). Effective January 1, 1989, this firm changed its name to Tianjin Arts & Crafts Import & Export Corporation. One firm, China Resources Transportation and Godown Co., Ltd., had no shipments during the period. This firm is not known to have been a manufacturer or exporter of the merchandise during or prior to the period of investigation and will be regarded as a new exporter for any shipments after the period. The other producers and resellers either had no sales during the period of review or did not respond to the Department's questionnaire.

We have assigned to each firm which did not respond a deposit rate equal to the rate we calculated for the only responding firm in this review period. There is no evidence that any of the non-responding firms actually made any exports to the United States during the period of review.

Following the policy stated in the recent administrative review involving Iron Construction Castings from the PRC, we are publishing a single country-wide rate applicable to all exporters located within the PRC. We have continued to publish separate rates for third-country resellers.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the C&F, packed price to unrelated purchasers in the United States.

In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984), we based the deduction for inland freight on freight rates in a market economy country (India).

Since the goods were transported from China to the United States aboard PRC-owned carriers, we based the deduction for ocean freignt on the charges of non-state-owned carriers filed with the United States Federal Maritime Commission.

Foreign Market Value

We have concluded that the People's Republic of China is a nonmarket economy (NME) for purposes of the administrative review. As a result, section 773(c) of the Tariff Act, as amended, requires the Department to determine foreign market value on the basis of the value of the factors of production utilized in producing the merchandise.

The Act requires the Department to select, for purposes of valuing factors of production, one or more market economy countries that are at a level of economic development comparable to that of the NME and that are significant producers of comparable merchandise.

Of countries known to produce shop towels, we determined that India, Pakistan and Indonesia are comparable to the PRC in terms of overall economic development, based on per capita GNP, the distribution of labor between the agricultural and non-agricultural sectors, and growth rate in per capital GNP, and that these countries are significant producers of cotton shop towels based on the Department's import statistics.

We chose India as the most comparable surrogate on the basis of per capita GNP, the distribution of labor between the agricultural and non-agricultural sectors, and growth rate in per capita GNP. Where possible, we obtained information for valuing factors of production from publicly available sources in India. The values we assigned to various factors were based on Indian prices except for certain factors for which adequate Indian information was not available. The factors which were not assigned Indian values were assigned values based on data from Indonesia or Pakistan. Where appropriate, we deflated the factor values to first quarter 1987 using wholesale price indices published by the International Monetary Fund. We calculated FMV based on factors of production reported by the Chinese producer, CNART-Tianjin, who submitted its factors of production on a per-bale of cotton shop towels basis. We multiplied the per-bale factor by the value for each component material to arrive at a cost for materials. We added an amount for labor which we valued in India. To the resulting sum, we added an amount for factory overhead based on information received from the Indonesian shop towel industry and relayed by the U.S. Embassy in Indonesia. We then added the statutory minimum of 10 percent for general expenses, pursuant to section 773(e)(1)(B) of the Act because the

statutory minimum is higher than any figure we obtained from a surrogate producer. We next added amounts for profit and packing based on data received from the Indonesian shop towel industry and relayed by the U.S. Embassy in Indonesia. We used the total of the foregoing amounts to represent foreign market value for a single bale of cotton towels, which was then compared to CNART–Tianjin's U.S. price for a single bale of cotton shop towels.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner, Milliken & Co., and from the only responding company, Tianjin Arts & Crafts Import & Export Corporation, formerly known as China National Arts & Crafts Import & Export Corporation, Tianjin Branch. At the request of the respondent, we held a public hearing on October 9, 1990. Because petitioner's comments were solely in support of the Department's preliminary results and in opposition to respondent's comments, we have only discussed respondent's comments.

Comment 1: Respondent argues that the Department should select Indonesia rather than India as the surrogate economy within which to value the PRC factors of production. Respondent supports its argument by asserting that 1) the Departmeant has in several past cases considered Indonesia to be at a level of economic development comparable to the PRC; and, 2) that in choosing between several potential surrogates, the Department has in past cases expressed a preference for the surrogate whose merchandise is most similar in physical characteristics to the merchandise under investigation.

DOC Position: With respect to respondent's first argument we agree that, for purposes of the Act, Indonesia is at a level of economic development comparable to the PRC. In fact, as discussed above, we have valued certain of the PRC factors of production in Indonesia. However, we consider India to be the most comparable surrogate on the basis of per capita GNP, the distribution of labor between the agricultural and non-agricultural sectors, and growth rate in per capita GNP. Consequently, India was our first choice for a source of values for PRC factors of production. We used Indonesian values only for those factors for which we were unable to obtain adequate information from Indian sources. In this regard we note that we have also used data from India to value factors of production in at least two prior antidumping investigations involving products from the PRC: Chloropicrin (Final Determination of Sales at Less Than Fair Value, 49 FR 5982, February 16, 1984); and Tapered Roller Bearings (Final Determination of Sales at less than Fair Value, 52 FR 19748, May 27, 1987).

With respect to respondent's second argument, we note that all of the cases respondent cites in support of his assertion that the Department has expressed a preference for surrogates whose merchandise is most similar to that under investigation were completed prior to the enactment of the Omnibus Trade and Competitiveness Act of 1988. Under the prior statutory provision, the Department's first priority in NME investigations was to compare the selling prices of producers in surrogate countries with NME exporters' selling prices to the United States. Under such a statutory scheme, it was necessary to choose surrogate countries with product matches as close as possible. Under the 1988 statute, the priority has shifted to the factors of production approach. The present statutory provision only requires that surrogate countries be at a level of economic development comparable to that of the nonmarket economy country and be significant producers of *comparable* merchandise (emphasis added). During the period of review, according to the Department's import statistics, more than 740,000 pounds of cotton shop towels were imported into the United States from India. This level of imports, when compared to the imports from other countries, establishes that India is a significant producer of comparable merchandise to that produced by the PRC.

Comment 2: Respondent argues that in the preliminary results for this review the Department's methodology used to value the PRC factor for yarn used in the production of shop towels was inappropriate. In place of that methodology, respondent urges the Department to use the export price (provided by the respondent) of identical yarn produced in the PRC, or, alternatively, a value derived from a price obtained by the U.S. Embassy in Indonesia from a shop towel producer in that country.

DOC Response: For the preliminary results of this review, we valued the PRC factor for "10s" yarn on the basis of the Indian price for "20s" yarn. We adjusted the Indian price by multiplying it by the ratio between the prices of 10s and 20s yarn in the United States. We used such an approach because it was based on the best information available to us at the time. As discussed below, for the final results of this review, we have valued the PRC yarn factor using a methodology which avoids making an adjustment for a difference in yarn numbers.

We disagree with respondent's suggestion that we value the yarn production factor with the price at which yarn produced in the PRC is sold for export. Prices can be influenced by cost structures as much as by price competition. While it may be true PRC yarn export prices are more reflective of normal market considerations than are internal prices within the PRC, these export prices are also reflective of yarn production costs within the PRC. Because we have no way of determining the extent to which the export price may be distorted by such nonmarket costs, PRC yarn export prices fail to provide a reliable basis for establishing a market value for the yarn production factor.

Respondent's alternative suggestion was to use an Indonesian price obtained by the U.S. Embassy. We rejected this price for purpose of the preliminary results because, based on the description of the product, we presumed that the price pertained to finished shop towels instead of yarn. The U.S. Embassy in Indonesia has since confirmed that the price in question was in fact a price for towels—not yarn.

Since publication of the preliminary results, the U.S. Consulate General in Karachi, Pakistan, has provided data concerning the price of 10s cotton yarn in that country. For purposes of final results of this review, we based the valuation of the factor of production for cotton yarn on this information from Pakistan. In doing so we have avoided the necessity of adjusting for different yarn numbers.

Comment 3: Respondent argues that the Department should value the factor of production for sewing thread based on a wholesale price in Indonesia, rather than on a retail price in India.

DOC Response: For the preliminary results, we valued the thread factor based on a retail price in India. We adjusted this price downwards, using a factor supplied by the International Cotton Advisory Committee, to account for the mark-up from wholesale to retail. By using this approach, we were able to value the factor in the preferred surrogate country, India. The Indonesian price put forward by respondent was unusable because the terms of sale of the price were ambiguous. It was unclear whether it was an ex-factory or C&F U.S. price.

Comment 4: Respondent argues that the price used by the Department to value the factor of production for ink

was inappropriate because it was a price for ink used to stamp napkins, not shop towels. Instead, respondent suggests we use the price of ink obtained from a shop towel producer in Indonesia.

DOC Response: Respondent's assertion is incorrect. The price we used to value the ink factor was, according to the U.S. Embassy, New Delhi, India, "The price of most commonly used dyestuff (blue) for cotton shop towels * * *".

Comment 5: Respondent argues that for the preliminary results the Department erroneously included separate amounts for electricity, water, and coal. Respondent claims that since these items are included in factory overhead pursuant to generally accepted accounting principles, to add them separately would be double-counting.

DOC Response: We agree with respondent. The factory overhead percentage we have used was given to us as a percentage of "total direct costs". Therefore, we have not added separate amounts for electricity, water and coal for purposes of these final results.

Comment 6: Respondent argues that the data obtained from a particular shop towel producer in Indonesia on which the Department, for the preliminary results, based its additions for factory overhead and profit should be disregarded because other data submitted by the same producer suggest that its costs were abnormally high and that the company did not produce shop towels.

DOC Response: We disagree with respondent. The cost structure of an individual producer in a market vs. a non-market country can not be compared and therefore is irrelevant for purposes of our analysis. The statute only requires that the country within which we value the factors of production be at a level of economic development comparable to that of the nonmarket economy country and be a significant producer of comparable merchandise. As noted above, we have determined that Indonesia qualifies, for purposes of this review, as a surrogate country on both of the above counts. Furthermore, in the cable containing the data in question, the U.S. Embassy in Indonesia stated that this producer was "a company that mainly produces cotton shop towels for export purposes."

Comment 7: Respondent argues that the Department in its preliminary results should have adjusted for inflation the Indonesian price upon which the Department based its valuation of the factor of production for packing.

DOC Response: We agree. Since publication of the preliminary results, the U.S. Embassy in Indonesia has advised that the price in question was effective subsequent to the relevant period. Therefore, we adjusted this price for inflation.

Comment 8: Respondent argues that in valuing the factors for both skilled and unskilled labor, the Department should use data pertaining to the Indonesian, rather than Indian, textile industry.

DOC Response: We disagree. The Indian data we have relied upon, in our judgment, is adequate. We therefore see no reason to move away from India, the preferred surrogate country, for the purpose of valuing these factors. Respondent urges us to disregard the Indian data in part, because it pertains to the textile industry in general rather than to the shop towel industry in particular. We note that the Indonesian data which respondent prefers that we use is equally non-specific.

Comment 9: Respondent argues that in the event the Department persists in its use of the Indian data for purposes of valuing the two factors of production for labor for the final results in this review, we should convert the annual rates contained in the data to hourly rates by using a 48-hour workweek instead of the 40-hour workweek we used for the preliminary results.

DOC Response: We agree. For the preliminary results, we valued the factors of production for both skilled and unskilled labor by using Indian wage data which was presented to us on an annual (per year) basis. In converting these annual rates to hourly rates, we assumed a 40-hour workweek. We have since determined that textile workers in India work a 48-hour workweek. Therefore, for purposes of the final results we have converted the Indian data from an annual to hourly basis using a 48-hour workweek.

Final Results of the Review

Based on our analysis, the final results of the review for certain firms are changed from those presented in the preliminary results, and we determine that the following margins exist for the period October 1, 1987 through September 30, 1988:

Exporters	Margin (percent)
All exporters located within the People's Republic of China	55.27
CNART/Cuisininere	[1] 37.20
CNART/Fabric Enterprise	[1] 37.20
Chinatex/Trans-Atlantic Sales	[1] 66.00
China Resources Transportion**	[2]

[1] Third-country reseller with no shipments during the period; rate is from last review in which there were shipments.

[2] Not a known exporter or reseller.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for shipments from these firms. For any future entries of this merchandise from a new exorter, whose first shipments occurred after September 30, 1988, and who is unrelated to any review firm or any previously reviewed firm, a cash deposit of 55.27 percent shall be required. These deposit requirements are effective for all shipments of Chinese shop towels of cotton entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce regulation (19 CFR 353.22 (1990)).

Dated: January 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-2454 Filed 1-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-012]

Carbon Black From Mexico; 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 countervailing duty order on carbon black from Mexico. We preliminarily determine the total bounty or grant to be 11.21 percent *ad valorem* for Hules Mexicanos, S.A. and 4.69 percent *ad valorem* for all other firms during the period January 1, 1986 through August

23, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Pia 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 June 5, 1987, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (52 FR 21338) for the countervailing duty order on carbon black from Mexico (48 FR 29564; June 27, 1983). On June 25, 1987, the petitioner, Cabot Corporation, requested an administrative review of the order. We initiated the administrative review, covering the period January 1, 1986 through December 31, 1986, on July 17, 1987 (52 FR 27037). Subsequent to initiation, the Department revoked the countervailing duty order effective August 24, 1986 (54 FR 53163; December 27, 1989). As a result of the revocation, we have adjusted the review period to cover January 1, 1986 through August 23, 1986.

The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). On December 17, 1990, the Department published the final results of its last administrative review of the countervailing duty order on carbon black from Mexico (55 FR 51745).

Scope of Review

Imports covered by this review are shipments of Mexican carbon black. During the review period, such merchandise was classifiable under item number 473.0400 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item number 2803.00.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period Janury 1, 1986 through August 23, 1986 and 12 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export.

We found that the annual interest rate financial institutions charged borrowers for peso-denominated FOMEX pre-export loans outstanding during the review period ranged from 39.60 to 49.60 percent. The annual interest rate for dollar-denominated FOMEX export financing ranged from 6.10 to 7.40 percent during the review period.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the review period were obtained between December 1985 and May 1986. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the review period.

The Banco de Mexico stopped publishng data on nominal and effective commercial lending rates after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's Indicadores Economicos y Moneda (I.E.). We calculated the average difference between the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, and the I.E. effective rates for the period 1981 through 1984. We added this average difference to the 1986 CPP rates. In this way, we calculated a benchmark of 135.27 percent for pre-export peso loans obtained in 1986.

To determine the effective interest rate benchmark for dollar loans, we used an average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which was 10.47 percent in 1986.

Both of the two known exporters of this merchandise used this program during the review period. Because we found that the exporters were able to tie their FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to U.S. shipments. We allocated each company's FOMEX benefit over the value of its total U.S. shipments during the review period. On this basis, we preliminarily determine the benefit from FOMEX pre-export loans during the review period to be 0.32 percent *ad valorem* for Humex and 3.20 percent *ad valorem* for all other firms. We preliminarily determine the benefit from FOMEX export loans to be 1.45 percent *ad valorem* for Humex and 0.59 percent *ad valorem* for all other firms.

(2) NDP Discounts

Under the National Development Plan (NDP), which was still in operation during the review period, PEMEX, the government-owned oil company, and the Comision Federal de Electricidad (CFE), the government-owned electric utility, granted discounts to companies located in specific regions or engaged in certain priority activities. During the review period, Humex received discounts on certain purchases of electricity, natural gas, and carbon black feedstock. Because such discounts are provided only to specific enterprises or industries, we consider them to be domestic bounties or grants.

We allocated the total value of discounts received by the firm over its total sales to all markets during the review period. On this basis, we preliminarily determine the benefit from this program to be 9.44 percent *ad valorem* for Humex and zero for all other firms.

(3) FONEI

The Fund for Industrial Development (FONEI), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the NDP, which include industrial decentralization. We consider this FONEI loan provision to confer a county or grant because it restricts loan benefits to those enterprises located outside of Zone IIIA.

One firm had a variable-rate peso-denominated FONEI loan outstanding during the review period. We treated this variable-rate loan as a series of short-term loans. To calculate the benefit, we used the same benchmark as for the FOMEX peso-denominated pre-export loans and compared it to the preferential interest rates in effect for each FONEI loan payment made during the review period. We allocated the benefits from these loan payments over the firm's total sales of all products to all markets during the review period. On this basis, we preliminarily determine the benefit from this program to be zero

for Humex and 0.90 percent *ad valorem* for all other firms during the review period.

(4) Preferential Pricing of Carbon Black Feedstock (CBFS)

In our first administrative review for the period April 8, 1983 through September 30, 1983, we found that PEMEX provided carbon black feedstock (CBFS) to carbon black producers at preferential prices (see 51 FR 30387; August 26, 1986). Following the methodology used in that review, we compared, for each quarter in the review period, the price difference between U.S. Gulf Coast prices for no. 6 fuel oil and CBFS to the price difference between the PEMEX prices for those two products. On this basis, we preliminary determine that CBFS was not provided to Mexican carbon black producers at preferential prices during the review period and, therefore, did not confer a countervailable benefit.

(5) Other Programs

We also examined the following programs and preliminarily determine that exporters of carbon black did not use them during the review period:

(A) CEPROFI tax certificates;
(B) FOGAIN;
(C) Bancomext loans;
(D) Import duty reductions and exemptions;
(E) Article 94 and Article 15 loans;
(F) State tax incentives;
(G) Delay of payments on loans; and
(H) Delay of payments to PEMEX of fuel charges.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period January 1, 1986 through August 23, 1986 to be 11.21 percent *ad valorem* for Humex and 4.69 percent *ad valorem* for all others firms.

Therefore, the Department intends to instruct the Customs Service to assess countervailing duties of 11.21 percent of the f.o.b. invoice price on shipments from Humex and 4.69 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1986.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the schedule date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations. Any request for disclosure under an administrative protective order must be made no later than five 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 case rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 7519(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-2455 Filed 1-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-801]

Standard Pipe and Line From Argentina; 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 Reviews.

SUMMARY: The Department of Commerce has conducted administrative reviews of the countervailing duty orders on standard pipe and line pipe from Argentina. We preliminarily determine the total bounty or grant to be zero for both products during the period July 14, 1988 through December 31, 1988. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1988, the Department of Commerce (the Department) published in the **Federal Register** (53 FR 37619) the final affirmative countervailing duty determinations and countervailing duty orders on certain welded carbon steel pipe and tube products from Argentina. On September 28, 1989, the Government of Argentina requested administrative reviews of the four separate orders. We published the initiation of the administrative reviews on October 25, 1989 (54 FR 43438). The notice of initiation was amended on December 5, 1989 (54 FR 50306) to correct the dates of the period under review. On January 9, 1990, the Government of Argentina withdrew its request for reviews of the countervailing duty orders on heavy-walled rectangular tubing and on light-walled rectangular tubing. As a result, the Department published a termination of the administrative reviews of these two orders on April 16, 1990 (55 FR 14101). The Department is now conducting the administrative reviews on standard pipe and line pipe in accordance with section 751 of the Tariff Act of 1930, as amended (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 certain welded carbon steel pipe products from Argentina. These products constitute the following two separate "classes or kinds" of merchandise:

(1) *Standard Pipe:* Certain circular welded carbon steel pipes and tubes, 0.375 inch or more but not over 16 inches in outside diameter, generally known in the industry as standard pipe. This is a general-purpose commodity used in such applications as plumbing pipe, sprinkler systems, and fence posts. Standard pipe may be supplied with an oil coating (black pipe) or may be galvanized, and is sold in plain ends, threaded, threaded and coupled, or beveled. These products are generally produced to American Society for Testing and Materials (ASTM) specifications A-120, A-53 or A-135. During the review period, standard pipe was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925

of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060, 7306.30.5065 and 7306.30.5075. Oil country tubular groods, classifiable under TSUSA item numbers 610.3242, 610.3243, 610.3252 and 610.3258, are not covered by this countervailing duty order.

(2) *Line Pipe:* Certain welded carbon steel American Petroleum Institute (API) line pipe, 0.375 inch or more but not over 16 inches in outside diameter, know in the industry as line pipe. Line pipe generally is produced to API specification 5L. Line pipe is used for the transportation of gas, oil, or water, generally in pipeline or utility distribution systems. During the review period, line pipe was classifiable under TSUSA item numbers 610.3208 and 610.3209, and is currently classifiable under HTS item numbers 7306.10.1010 and 7306.10.1050.

The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains in dispositive.

The review covers the period July 14, 1988 through December 31, 1988 and six programs.

Analysis of Programs

(1) Rebate Upon Export of Indirect Taxes Paid (Reembolso)

The reembolso is a tax rebate paid upon export and is calculated as a percentage of the f.o.b. invoice price of the exported merchandise. In the final countervailing duty determination, we determined that: (1) The reembolso is intended to operate as a rebate of both indirect taxes and import duties; (2) the government conducted a study of indirect tax incidence on inputs that are physically incorporated into the exported product; and (3) the rebate schedules are periodically revised to reflect the amount of actual duties and indirect taxes paid.

On October 16, 1986, Decree 1555/86 modified the reembolso program "to make the tax regime permanent and independent from other macroeconomic variables, responding exclusively to the concept of the refund of indirect taxes." The new decree set more precise and transparent guidelines to implement the refund of indirect taxes within the context of the new law. Rather than different rebate rates for each product or industry sector, there are now only three broad rebate levels. The rate for level I is 10 percent, level II is 12.5 percent, and level III is 15 percent. Based on the government's 1988 calculation of the tax incidence in the pipe industry, line pipe and standard pipe are classified in level II and received a 12.5 percent rebate in the review period.

The Department will determine that the reembolso does not confer a bounty or grant if the tax rebate does not exceed the total amount of allowable indirect taxes and import duties borne by inputs that are physically incorporated in the exported product, and indirect taxes levied at the final stage.

We conducted an on-site verification of the 1988 tax incidence study, and calculated the allowable tax incidence based on that study. We found that indirect taxes on physically-incorporated inputs and final stage indirect taxes on standard pipe and line pipe exceeded 12.5 percent, which was the amount of the reembolso during the review period. Because the rebate rate of indirect taxes did not exceed the total of indirect taxes paid, we preliminarily determine that there was no overrebate of indirect taxes for the review period and, therefore, no benefit from this program during the review period.

(2) Other Programs

We examined the following programs and preliminarily determine that exporters of standard and line pipe did not use them during the review period:

A. Export payments under Decree 176; Programa Especial de Exportaciones (PEEX)

B. Pre-export financing under OPRAC 1–1, Circular RF–153

C. Post-export financing under OPRAC 1–9

D. Tax deduction under Decree 173/85

E. Financing of Investments for Export under Communique A–980 (FIDEX)

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be zero during the period July 14, 1988 through December 31, 1988.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after July 14, 1988 exported on or before December 31, 1988.

Further, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 10 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due.

The Department will punish the final results of these administrative reviews including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 24, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–2393 Filed 1–31–91; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to 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 amended.

FOR FURTHER INFORMATION CONTACT: George Muller, 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 amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800, 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 89–2A016."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 89–00016, issued on February 5, 1990 (55 FR 4647, February 9, 1990). A previous amendment to the Certificate was issued on November 7, 1990 (55 FR 47784, November 15, 1990).

Summary of the Application

Applicant: National Geothermal Association, P.O. Box 1350, Davis, California 95617.

Contact: Arthur John Armstrong, Counsel, Telephone: (202) 857–0700.

Application No.: 89–2A016.

Date deemed submitted: January 17, 1991.

The National Geothermal Association seeks to amend its Certificate by adding Ormat Inc. of Sparks, Nevada, as a "Member" of the Certificate.

Dated: January 25, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91–2344 Filed 1–31–91; 8:45 am]

BILLING CODE 3510-DR-M

University of Arizona, et al; Applications for Duty-Free Entry of Scientific Instruments

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 part 301), we invited comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 90–098R. *Applicant:* University of Arizona, Department of Geosciences, Gould-Simpson Building, Room 208, Tucson, AZ 85719. *Instrument:* Mass Spectrometer System, Model MAT 252. *Manufacturer:* Finnigan MAT, West Germany. Original notice of this resubmitted application was published in the Federal Register of July 30, 1990.

Docket Number: 90–153R. *Applicant:* Department of the Interior, U.S. Geological Survey, WRD, P.O. Box 1669, 445 Broadway, Albany, NY 12201. *Instrument:* Electromagnetic Induction Logger, Model EM 39. *Manufacturer:* Geonics Ltd., Canada. Original notice of this resubmitted application was published in the Federal Register of August 28, 1990.

Docket Number: 90–224. *Applicant:* University of Maine, Department of Geological Sciences, Sawyer Research Center, Orono, ME 04469. *Instrument:* Mass Spectrometer, Model SIRA Series II. *Manufacturer:* VG Isotech Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of organic and inorganic carbonate (e.g. single planktonic and benthic foraminifers, molluscs), natural surface and ground waters, terrestrial and marine organic matter, igneous rocks (e.g. massive sulfides), and metamorphic rocks (e.g. graphite). Gases such as H_2, N_2, CO_2, O_2, AR, SO_2, and SF_6, will be extracted from these materials for analysis. In addition, the instruments will be used in the courses *Isotope Geology, Physical Mechanisms of Climate Change* and *Stable Isotope Geology* for the training of students in state-of-the-art techniques and theory in light stable-isotope mass spectrometry. *Application Received by Commissioner of Customs:* December 5, 1990.

Docket Number: 90–226. *Applicant:* Metro Health Medical Center, Cleveland Metropolitan General Hospital, Cytogenetic Laboratory, Department of Pathology, 3395 Scranton Road, Cleveland, OH 44109. *Instrument:* Rapid Karyotyping System, Model RK1. *Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* The instrument will be used to provide routine laboratory analysis of clinically obtained and processed human chromosomes. In addition, the instrument will be used for educational purposes in a Cytogenetics Laboratory Pathology Resident Training Program. *Application Received by the Commissioner of Customs:* December 7, 1990.

Docket Number: 90–227. *Applicant:* University of Arizona, Department of Chemistry, Tuscon, AZ 85721. *Instrument:* Stopped-Flow Spectrofluorimeter. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used for the separation and recovery of metals of strategic importance to the United States, namely, cobalt, nickel, copper, silver, gold, platinum, palladium, iridium, rhodium, osmium, and the lanthanide series (cerium to lutetium) from their natural sources. The type of studies involved requires examination of the reactions that are finished in fractions of seconds, as small as one ten-thousandth of a second. This instrument enables the rapid mixing of metal and extractant solutions and immediate observation of the ensuing reactions. In addition, the instrument will play a vital part in the advanced education and training program of analytical chemistry students. *Application Received by Commissioner of Customs:* December 7, 1990.

Docket Number: 90–228. *Applicant:* University of California, Purchasing Department, 1156 High Street, Santa Cruz, CA 95064. *Instrument:* Infrared Monocular Oculometer. *Manufacturer:* Dr. Bouis, West Germany. *Intended Use:* The instrument will be used for studies of eye movements in normal human subjects. The dynamics of eye movements will be examined in two dimensions in naive subjects doing visual tasks on VDT terminals with various display formats. In addition, the instrument will be used for educational purposes in the courses: Psychology 199, Independent Study and Pyschology 297, Graduate Independent Study. *Application Received by Commissioner of Customs:* December 13, 1990.

Docket Number: 90–229. *Applicant:* Center for Neural Science, New York University, 6 Washington Place, Room 1056, New York, NY 10003. *Instrument:* Electron Microscope and Accessories, Model JEM 1200EXII/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to examine chemical, spatial and developmental specificity among neurons and glia of the mammalian nervous system during experiments conducted to understand the cellular basis for neural function that have been observed electrophysiologically or pharmacologically and to identify new types of cell-cell interactions. In addition, the instrument will be used in neuroscience courses to enhance students' understanding of the current and past questions addressed by neuroscientists. *Application Received by Commissioner of Customs:* December 13, 1990.

Docket Number: 90–230. *Applicant:* Harvard University School of Public Health, 665 Huntington Avenue, Boston, MA 02115. *Instrument:* Mass Spectrometer, Model ZAB–VSE. *Manufacturer:* VG Analytical, United Kingdom. *Intended Use:* The instrument will be used to measure, at enhanced sensitivity, the surface glycoprotein molecules in the AIDS virus coat. Mass spectrometry, coupled with supercritical fluid chromatography, negative ion chemical ionization and the sensitivity provided by focal plane ion detection, will be fundamental to the determination of these surface components. *Application Received by Commissioner of Customs:* December 14, 1990.

Docket Number: 90–231. *Applicant:* Oregon State University, College of Oceanography, Oc Administrative Building 104, Corvallis, OR 97331–5503. *Instrument:* Noble Gas Mass Spectrometer, Model 215–50. *Manufacturer:* Mass Analyzer Products, Ltd., United Kingdom. *Intended use:* The instrument will be used for studies of geological materials—rocks, minerals, natural gases, dissolved gases. Experiments will involve heating materials in vacuum to release noble gases for mass spectrometric measurement. In addition, the instrument will be used for educational purposes in the courses "Isotope Marine Geochemistry" and "Analytical Methods in Geological Oceanography." *Application Received by Commissioner of Customs:* December 17, 1990.

Docket Number: 90–232. *Applicant:* University of California, San Francisco, Department of OB/GYN and Reproductive Sciences, 3rd and Parnassas, San Francisco, CA 94143–0556. *Instrument:* Stopped-flow Spectrofluorimeter, Model SF–51 with Ratio Mixing Accessory. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended use:* Studies of plasma membrane vesicles isolated from human placental tissue, the fluorophores fluorescein sulfonate and aminoaphthalene trisulfonic acid, 6-methoxy(3-sulfopropyl)quinolinium and a variety of water-soluble and lipid-soluble non-electrolytes. The objectives of this study are to determine the osmotic and diffusional water permeabilities across placental microvillous and basal membranes, to analyze the pathways of water and solute transport and to determine the correlation between membrane structure/composition and water and electrolyte transport rates. *Application Received by Commissioner of Customs:* December 19, 1990.

Docket Number: 90–233. *Applicant:* Tulane University, Coordinated Instrumentation Facility, 604 Lindy Boggs Center, New Orleans, LA 70118. *Instrument:* Mass Spectrometer, Model CONCEPT 1 H 32. *Manufacturer:* Kratos Analytical, Inc., United Kingdom. *Intended use:* The instrument will be used for structural determinations of organic, inorganic and biological compounds. Very precise, exact mass measurements will be used to obtain elemental composition of newly synthesized, unknown molecules as well as natural products and peptides for researchers. *Application Received by Commissioner of Customs:* December 21, 1990.

Docket Number: 90–234. *Applicant:* USDA, Department of Agriculture Research Service, Richard B. Russell Agricultural Research Center, College Station Road, P.O. Box 5677, Athens, GA 30613. *Instrument:* Microspectrophotometry System, Model UMSP 80 UV–VIS–IR. *Manufacturer:* Carl Zeiss, West Germany. *Intended use:* The instrument will be used to characterize the amount and types of phenolic content within specific cell walls or tissues of plants, and these parameters related to the lack of biodegradation. Chemical composition, i.e., the phenolic content, of cell walls of various biodegradabilities from different plants will be studied by ultraviolet absorbance, ultraviolet and visible fluorescence, and near infrared absorbance. *Application Received by Commissioner of Customs:* December 21, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–2394 Filed 1–31–91; 8:45 am]

BILLING CODE 3510–DS–M

NASA Langley Research Center et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 am and 5:00 pm in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the dockets below.

Docket number: 90–079. *Applicant:* NASA Langley Research Center, Hampton, VA 23665–5225. *Instrument:* Scanning Electron Microscope, Model JSM–840A. *Manufacturer:* JEOL, Ltd., Japan. *Date of Denial Without Prejudice to Resubmission:* August 13, 1990.

Docket number: 90–087. *Applicant:* University of Rochester, Rochester, NY 14642. *Instrument:* Micromanipulator. *Manufacturer:* Narishige, Japan. *Date of Denial Without Prejudice to Resubmission:* November 2, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–2395 Filed 1–31–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Bernie R. Tershy (P402B)

On May 10, 1989, notice was published in the **Federal Register** (50 FR 20174) that an application had been filed by Mr. Bernie Russell Tershy, Division of Biological Sciences, Cornell University, Ithaca, New York 14853–2702, to take by harassment annually up to 50 blue whales (*Balaenoptera*

musculus), 50 fin whales (*Balaenoptera physalus*), and 50 humpback whales (*Megaptera novaeangliae*) and to tag or attempt to tag up to 10 of each species over the duration of the permit for scientific purposes.

Notice is hereby given that on January 28, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), 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, was based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit is issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permit.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731–7415.

Dated: January 28, 1991.

Nancy Foster,

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

[FR Doc. 91–2346 Filed 1–31–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Permit; Drs. Bernd Wursig and Graham Worthy (P36C)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Dr. Bernd Würsig, Professor and Director Dr. Graham Worthy, Assistant Professor Marine Mammal Research Program, Department of Marine Biology, Texas A&M University at Galveston, P.O. Box 1765, Galveston, TX 77553–1675

2. *Type of Permit:* Scientific Research

3. *Name and Number of Marine Mammals:* Atlantic bottlenose dolphins (*Tursiops truncatus*) 5,000

4. *Type of Take:* The applicant proposes to: (a) take by harassment up to 5000 Atlantic bottlenose dolphins during the course of the Permit (some individuals would be subject to repeated harassment). This study will recognize many individuals by natural marks in order to describe site fidelities, inter-individual affiliations, basic group structure, and approximate numbers of dolphins using different parts of the study area; (b) of these 5,000, take by capture up to 100 different dolphins to extract a tooth and conduct physiological activities; and (c) of these 100, 20 will be tagged using radio-telemetric devices. This study will attempt to ascertain the mass, length, sex, reproductive status, genetic relatedness, physiological condition, and age of each animal.

5. *Location and Duration of Activity:* Texas shoreline of the Gulf of Mexico throughout the year.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., Room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: January 24, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–2347 Filed 1–31–91; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

Department of Agriculture

SN 7–141,857 (4,975,293)—Process for Preserving Raw Fruit and Vegetable Juices Using Cyclodextrins and Compositions Thereof

SN 7–227,211 (4,975,277)—Biological Control of Postharvest Rots in Fruits Using Pseudomonas Cepacia and Pyrrolnitrin Produced Therefrom

SN 7–450,109 (4,974,293)—Apparatus for Cleaning Cotton

SN 7–519,195—Device for Signulating Particles

SN 7–519,196—Rapid, Single Kernel Grain Characterization System

SN 7–544,562—An Enzymatic Ultrafiltration Reactor for Large-Scale Deamidation of Food Proteins

SN 7–593,174—Selective Gossypol Abatement Process from Oil Extraction of Cottonseed

SN 7–603,503—Oligodeoxynucleotide Probes for Campylobacter Fetus and Campylobacter Hyointestinalis
SN 7–610,903—Organophosphorus Insecticides as Synergizicides for Carpopohilus spp. Pheromones
SN 7–610,904—The Use of Cholesteryl Esters as Mounting Sex Pheromones in Combination with 2,6-Dichlorophenol and Pesticides to Control Populations of Hard Ticks
SN 7–614,526—Stimulating a Plant Developmental Response
SN 7–618,437—Biological Control of Postharvest Diseases of Pome Fruit With Pseudomonas Syringae pv. Lachrymans

Department of Health and Human Services

SN 6–693,866—Cloning and Expression of HTLV–III DNA
SN 6–943,406 (4,977,244)—Uromodulin and a Process of Purifying It
SN 7–146,249—Plaque Transfer Assay for Detecting Retrovirus and Measuring Neutralizing Antibodies
SN 7–237,741—A Method of Preparing an Active Human Neutrophil Chemotactic Factor Polypeptide Subunits of the High-Affinity Receptor for Immunoglobulin E
SN 7–270,030 (4,933,274)—Process for Detecting Generic Susceptibility to Cancer (By Determining the Frequency of Chromatid Breaks and Gaps in Cell Samples)
SN 7–323,851—Catalyst for Preparing Polyacrylamide Gel Which Improves the Detection of Biomaterials by Silver Staining
SN 7–382,126—Method for Releasing and Testing Oligonucleotides
SN 7–417,768—Method for Detecting Viral Sites Giving Rise to Neutralizing Antibodies
SN 7–444,406—DNA Segment Encoding a Gene for a Receptor Related to the Epidermal Growth Factor Receptor
SN 7–457,556—Diagnostic Probe for Detecting Human Stomach Cancer (Using Met Protooncogene)
SN 7–463,111—A Rapid Method of Cloning Antibody Genes as Single Chain Immunotoxins
SN 7–479,817—Use of Suramin to Treat Rheumatologic Diseases
SN 7–485,879—Method for Facilitating Engraftment of an Allogeneic Tissue or Organ Using Interleukin (using IL–2)
SN 7–487,626—An immortalized Human Bronchial Epithelial Cell Line
SN 7–487,894—Human Olfactory Neuron Cultures
SN 7–506,947—Novel Infectious Clones of HIV DNA for Easy Mutational Changes (into Long Terminal Repeat (LTR) region)
SN 7–510,695—Selective Cytotoxic Reagents Comprising Toxic Moieties Derived From Mammalian Proteins (Proteins With Ribonucleolytic Activity As Cytotoxic Or Targeted Drugs)
SN 7–516,879—BiSpecific Antibody Enhancement of Immunization
SN 7–518,719—Aminoalkylcarbamyl Derivatives of Forskolin As Intermediates for the Synthesis of Useful Forskolin Derivatives
SN 7–522,182—Improved Pseudomonas Exotoxins of Low Animal Toxicity and High Cytocidal Activity
SN 7–522,555—Improved Pseudomonas Chimeric Protein Cytotoxic to Human Cells Bearing IL2 Receptors
SN 7–522,563—Target-Specific, Cytotoxic, Recombinant Pseudomonas Exotoxin
SN 7–527,915—Bistriazenes As Chemotheratpeutic Agents
SN 7–530,562—An Antiviral Composition (Prostratin, A Novel Anti-HIV Agent)
SN 7–533,442—Flavone-8-Acetic Acid and Interleukin-2 For Cancer Therapy (Especially Renal Carcinoma)
SN 7–539,812—Eukaryotic Expression Vector System (Mammallan cDNA Phagamid Expression Vector System for Construction of Subtraction cDNA Expression Librariael)
SN 7–577,528—A2 Adenosine Receptor Agonists, Useful as Probes, Therapeutic Agents and Methods of Using

[FR Doc. 91–2350 Filed 1–31–91; 8:45 am]
BILLING CODE 3510–04–M

Patent and Trademark Office

Meetings; Trademark Affairs Public Advisory Committee

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. of February 26, 1991.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is as follows:

(1) Finance
(2) Automation
(3) Strategic Planning
(4) Current Trademark Office Practice Issues
(5) International Trademark Law

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, room CPK2–910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557–7464.

Harry F. Manbeck, Jr.,
Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91–2422 Filed 1–31–91; 8:45 am]
BILLING CODE 3510–16–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 4, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On November 26, December 7, 14 and 21, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 49101, 50577, 51463 and 52244) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified workshop to provide the services at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the services listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the services listed.

c. The action will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to the Procurement List:

Commissary Shelf Stocking & Custodial, Fort Riley, Kansas
Janitorial/Custodial, Federal Building, 110 Michigan Street, NW., Grand Rapids, Michigan
Janitorial/Custodial at the following Bismarck, North Dakota locations:
Federal Building, 304 Broadway
Federal Building, Post Office and Courthouse, 220 E. Rosser Avenue
Parking Lot, 1st and Thayer Streets
GSA Storage Building, 117 Main Street
Janitorial/Custodial, Navy Aviation Supply Office, Buildings 3A, 3B, 3C, 3D, 4A, 5A, 5B, 36/1, 36/2, 36/3, and 11 Trailers, Philadelphia, Pennsylvania
Mailroom Service, Food and Drug Administration, Federal Building 8, 200 C Street, SW., Washington, DC

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–2438 Filed 1–31–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 4, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 15, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 41741) of proposed addition to the Procurement List.

The union representing employees of the current contractor asked the Committee to consider adding to the Procurement List janitorial and custodial services at other Federal buildings in the same area as an alternative to the proposed addition to avoid displacing these minority employees of a minority contractor. While the Committee realizes that the proposed addition would displace these employees, it has determined that the creation of jobs for people with severe disabilities, a group which has extremely high unemployment rates, outweighs the loss of jobs for more employable people.

After consideration of the material presented to it concerning the capability of a qualified workshop to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, A.A. Ribicoff Federal Building, 450 Main Street, Hartford, Connecticut

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–2439 Filed 1–31–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, applicable form, and applicable OMB control number: Dependency Information—Parents, Air Force Form 1868, OMB Control No. 0701–0108.

Type of request: Revision.

Average burden hours/minutes per response: 42 minutes.

Responses per respondent: 1.

Number of respondents: 4,248.

Annual burden hours: 2,976.

Annual responses: 4,248.

Needs and uses: Used to certify dependency or obtain information from parents or parents-in-law to determine dependency upon the service member, retired member, or deceased member, for entitlement to basic allowance for quarters with-dependents rate, travel, or Uniformed Services Identification and Privilege Card.

Affected public: Individuals or households.

Frequency: Annually.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Sprehe at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: January 29, 1991.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–2441 Filed 1–31–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 6 February 1991 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Public Law 92–463, the "Federal

Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: January 29, 1991.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-2442 Filed 1-31-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on the Directed Energy Weapons for Delay & Denial Security Systems will meet on 12 February 1991, at Brooks AFB, Texas, from 8 a.m. to 5 p.m. and on 13–14 February 1991 at Kirtland AFB, New Mexico from 8 a.m. to 5 p.m.

The purpose of this meeting is to obtain information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-2351 Filed 1-31-91; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA 84.060A]

Indian Education Program; Formula Grants; Local Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of extension of closing date for transmittal of applications for new awards for fiscal year 1991 under the Formula Grant Program, Indian Education Act of 1988, subpart 1.

SUMMARY: This notice extends the closing date of December 3, 1990 to February 8, 1991, for the transmittal of applications for new awards under the Formula Grant Program. The application notice for this program, published in the Federal Register on September 20, 1990 (55 FR 38737), provides detailed information concerning this program. A substantial number of eligible applicants did not receive the application packages or did not receive them in time to meet the December 3 closing date. The extension of the closing date to February 8, 1991 will provide these applicants sufficient time to submit their applications. The Intergovernmental Review date is also extended from February 4, 1991 to April 9, 1991.

FOR INFORMATION CONTACT: Irvin Jones, U.S. Department of Education, 400 Maryland Avenue SW., room 2177, Washington, DC 20202–6335. Telephone: (202) 401–1909. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Authority: 25 U.S.C. 2601–2606, 2651.

Dated: January 25, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91-2435 Filed 1-31-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement Under the Additional Agreement for Cooperation Between the U.S and the European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the transfer of 132 kilograms of plutonium from France to Belgonucleaire, Dessel, Belgium, for fabrication of mixed uranium-plutonium oxide fuel and subsequent retransfer of the fuel to Switzerland for sue at the Beznau power reactors. Retransfer documents RTD/SD(EU)–56, 57, and 58 have been assigned to this subsequent arrangement.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical tot he common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

Dated: January 2, 1991.

For the Department of Energy.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91-2448 Filed 1-31-91; 8:45 am]

BILLING CODE 6450-01-M

Arthur D. Little, Inc.; Contract Award

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: In accordance with Department of Energy (DOE) Acquisition Regulations relating to organizational conflicts of interest, 48 CFR 909.570, DOE gives public notice that a contract has been awarded, recognizing the existence of potential organizational conflicts of interest, because it has been determined to be in the best interests of the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Larry S. James, Office of Energy Research, room F–330, 19901 Germantown Road, Germantown, Maryland 20874, (301) 353–5848.

Findings, Mitigation and Determination

Under section 19 of the Federal Nonnuclear Energy Research and Development Act, Public Law 93–577, and section 33 of the Federal Energy Act of 1974, Public Law 93–275, the Department of Energy is subject to strict requirements intended to avoid organizational conflicts of interest in the award and performance of contracts for technical and management support services. An organizational conflict of interest (OCI) is considered to exist when a contractor "has past, present, or currently planned interests, that, either directly or indirectly, through a client relationship, relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, techically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage" (DOE Acquisition Regulations, 48 CFR 909.570–3). Pursuant to these statutory provisions, a contract may not be awarded unless the Secretary or his

designee has made a determination that it is unlikely that an OCI would exist, or that a conflict has been avoided after inclusion of appropriate conditions in the contract. If an OCI is determined to exist and cannot be avoided, the contract may be awarded only if the Secretary or his designee determines that award would be in the best interest of the United States and includes appropriate provisions in the contract to mitigate the OCI.

Based on the following findings and determination, the contract described below has been awarded, after taking into account the existence of an OCI, because the contract is determined to be in the best interests of the United States, pursuant to the authority of DOE Acquisition Regulation 48 CFR 909.570. Any comments should be provided within 5 days after publication of this notice.

Findings

1. The Office of Energy Research is established as a component of the Department of Energy (DOE) by section 209 of Public Law 95–91 (Department of Energy Organization Act.). The statutory functions stated in the Act which define the role of the Office, and of the Director of Energy Research, include, among other responsibilities, the following items:

(1) Monitoring the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs; and

(2) Carrying out such additional duties assigned to the Office by the Secretary relating to basic and applied research activities including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 202 of this Act, as the Secretary considers.

The Director, Office of Energy Research, functions in essence as a science and technology advisor to the Office of the Secretary with additional responsibilities consistent with the intent of the statute and is the principal advisor to the Secretary on matters relating to physical research programs of the Department, utilization of multipurpose laboratories, crossdiscipline research and development projects, and is assigned management responsibilities for major outlay programs in Basic Energy Sciences, High Energy and Nuclear Physics, Fusion Energy, and Health and Environmental Research.

2. Therefore, a competitive procurement (DE-RP0I-90ER30155, Research Needs Assessment of Energy Efficient Alternatives to Chlorofluorocarbons) was initiated in August 1989 to solicit support services to accomplish a specific Statement of Work.

Due to the potential adverse effects that CFC restrictions may have on the nation's energy security, the Department of Energy is conducting a multifaceted research program to accelerate the market acceptance and deployment of highly-efficient alternative insulations, refrigerants and processes. For alternative insulations, the Department is developing and testing rigid foam insulations made with alternative blowing agents, evaluating the use of reflective flake additives for improving the performance of foam insulations, and developing advanced vacuum insulation panels. For air conditioning and refrigeration processes, DOE is conducting research on developing thermophysical properties for leading alternative refrigerants, conducting research on nonazeotropic refrigerant mixtures and refrigerant blends, and designing, fabricating, and testing an innovative Stirling refrigerator concept and advanced absorption cycles. The Department also is conducting cooperative research with industry in developing alternative refrigerants and insulations for household refrigerators and in developing materials and lubricants compatible with the alternative refrigerants.

In support of these research objectives, an independent research needs assessment is to be undertaken in the area of energy efficient alternatives to chlorofluorocarbons (CFCs). The assessment will include a review of current research by DOE and others and will provide recommendations regarding near-term and long-term research paths to eliminate CFC use by replacing them with chemical substitutes or alternative refrigeration and insulating materials concepts. The assessment will include the major industrial concerns, research laboratories and academicians.

3. Based on a comprehensive evaluation of its technical and cost proposals, Arthur D. Little, Inc., has been recognized as possessing the required staffing and background experience for performing the Statement of Work.

4. Arthur D. Little, Inc., submitted the necessary OCI information as part of the required proposal package. The Arthur D. Little, Inc., statement certified that no OCI existed regarding the proposed work.

5. To adequately and competently address the full scope of the assessment's subject area of energy efficient alternatives to CFCs, at sufficient technical depth in all major topical areas, the contractor will need to convene a group of experts on the subject of energy efficient alternatives to CFCs. Arthur D. Little, Inc., proposed to use a number of expert panelists in its efforts to perform the needs assessment and proposes to engage in individual consulting agreements with each of them. Each of these consultants submitted OCI information as required.

6. Based on an evaluation of the facts contained in the OCI information submitted by some of these consulting experts, the Department of Energy believes that there is a minor conflict of interest under 48 CFR 909.570. As most of the consultants are experts in their respective fields of the technology being researched, each would potentially stand to benefit if their particular field were ultimately recommended by the prime contractor as an appropriate area for continued research. The potential benefit would manifest in such a situation in terms of future opportunities for the consultant to be awarded research contracts because he or she is a leading expert in that area. Therefore, the recommendations of such experts have the potential to be biased in favor of their own particular area of expertise.

Mitigation

The Department of Energy believes that the actual potential for conflict of interest is minor. Arthur D. Little, Inc., as the prime contractor, has selected a panel of experts to include representatives from each of the relevant areas of research in the field of energy efficient alternatives to CFCs. This balance in the panel should effectively level out potential bias toward any particular area. Further, the contract has been drafted to include numerous precautions that will detect bias and further mitigate the likelihood of bias and its potential impact. The contract requires:

(a) Attendance by the DOE Contracting Officer's Technical Representative at all meetings of the contractor and his experts;

(b) Cross review of all findings both within the group of experts and by a final group of peer reviewers;

(c) Submission of monthly progress reports which will include notification by the contractor of any efforts he has made to mitigate conflict or potential conflict of interest; and

(d) Inclusion in the contract of the organizational conflict of interest special clause entitled "Organizational Conflicts of Interest."

Determination

In light of the above Findings and Mitigations and in accordance with 48 CFR 909.570, continuation of the existing contact award is considered to be in the best interest of the United States.

Dated: January 3, 1991.

James F. Decker,

Acting Director Office of Energy Research.

[FR Doc. 91-2447 Filed 1-31-91; 8:45 am]

BILLING CODE 6450-01-M

Laser Fusion Research; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE).

ACTION: Grant solicitation announcement for Laser Fusion Research Applications.

SUMMARY: U.S. Department of Energy (DOE) San Francisco Operations Office (SAN) announces that it plans to conduct a technically competitive solicitation for basic research experiments in high energy density studies at the National Laser User's Facility (NLUF) located at the University of Rochester/Laboratory for Laser Energetics (UR/LLE). Universities or other higher education institutions, private sector not-for-profit or for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding expected to be available for the FY92 cycle of this program is $700,000 and multiple awards are anticipated.

GRANT SOLICITATION NUMBER: DE-PS03-91SF18892.

The actual work to be accomplished will be determined by the experiments that are selected for award. Proposed experiments will be evaluated and ranked through scientific peer review against predetermined, published and available criteria. Final selection for awards will be made by the DOE from among the top ranked applications. It is anticipated that multiple grants will be awarded within the available funding.

The unique resources of the NLUF are available to scientists for state-of-the-art experiments primarily in the area of inertial fusion and related plasma physics. Other areas such as spectroscopy of high ionized atoms, laboratory astrophysics, fundamental physics, materials science, and biology and chemistry will be considered on a second priority basis.

The LLE was established in 1970 to investigate the interaction of high power lasers with matter. Available at the LLE for NLUF researchers is the OMEGA laser, a 2.5 trillion watt, 24-beam laser system (at 0.35 um) and the Glass Development Laser (GDL), a 250 billion watt, singly beam prototype for OMEGA (at 0.35um). The NLUF offers the capability for laser-matter interaction experiments or for using short (100 picosecond) pulses of laser light, X-rays, or neutron for probing the structure of matter. More technical information about the facilities and potential collaboration at NLUF can be obtained from:

Dr. James Knauer, Manager, National Laser User's Facility, University of Rochester/LLE, 250 East River Road, Rochester, NY 14623.

The solicitation document contains all the information relative to this acquisition for prospective applicants. The solicitation is targeted for release in Mid-February 1991. Recipients of the NLUF solicitation during the last (FY91) cycle of the program will automatically be sent a copy of the solicitation. New interested parties can obtain copies of the solicitation documents by submitting a written request to:

James H. Solomon, U.S. Department of Energy, San Francisco Operations Office, Contracts Management Division, 1333 Broadway, Oakland, CA 94612.

Kathleen M. Day,

Director, Contracts Management Division.

[FR Doc. 91-2448 Filed 1-31-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP91-967-000]

Northern Border Pipeline Co., Application

January 25, 1991.

Take notice that on January 18, 1991, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-967-000, an application for certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act and the Commission's Regulations at 18 CFR 157, *et seq.* By such application, Northern Border requests authority to acquire, construct and operate certain pipeline and compression facilities as part of a revised proposal to expand and extend Northern Border's existing system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, the base case facilities for which certificate authorization is requested consist of: (1) Construction and operation of a total of 100,000 compressor horsepower at five compressor stations upstream of Ventura, Iowa; (2) acquisition and operation of 147 miles of 30-inch pipeline extending from the terminus of Northern Border near Ventura, Iowa to Natural Gas Pipeline Company of America's (Natural) Compressor Station 109 near Harper, Iowa (*i.e.* the Station 109 line); (3) construction and operation of 231 miles of 30-inch pipeline extending from Harper to Tuscola; (4) construction and operation of two 12,000 horsepower compressor stations on the pipeline between Ventura and Harper; (5) construction and operation of four 6,000 horsepower compressor stations on the proposed pipeline between Harper and Tuscola, Illinois; and (6) construction and operation of a meter station at the point of interconnection with Natural's Amarillo pipeline (Harper delivery point) and a meter station at the Tuscola delivery point. The scheduled in-service date of the facilities is November 1, 1992.

Northern Border states that the instant application supersedes an earlier "optional certificate" application (filed June 15, 1990, Docket No. CP90-1557-000) and is intended to implement a Settlement Agreement (dated December 6, 1990) reached between Northern Border and Natural resolving an interconnect dispute which was the subject of Northern Border's June 1, 1990, declaratory order petition in Docket No. CP90-1478-000. Under the terms of the Settlement Agreement, Natural will received an immediate interconnect at Ventura for its recently completed Station 109 line and rights to 250 MMcf/day of firm capacity in the Station 109 line, in exchange for which Northern Border will receive a purchase right on the Station 109 line, subject to receipt of acceptable regulatory approvals and other terms and conditions.

According to Northern Border, the Settlement Agreement with Natural also provides that, following Northern Border's acquisition of the Station 109 line, Natural will be entitled to market and qualify for firm transportation capacity in the Station 109 line subject to certain terms and conditions. Providing firm transportation capacity to Natural as part of the revised expansion/extension project will not, states Northern Border, displace any of the ten (10) expansion/extension shippers who qualified for service through the preliminary request procedures (set forth in Northern Border's CP90-1557-000 application) and who executed agreements for such service. The facilities Northern Border

proposes to acquire, install and operate are designed to accommodate the firm transportation of 404.25 MMcf/day of additional volumes through the existing pipeline and up to 750 MMcf/day through the pipeline extension, including the 147-mile Station 109 line.

Northern Border requests Commission approval of three variously configured alterntaive extension proposals, based upon the shippers' ultimate delivery point designation. According to Northern Border, Section 5 of the Settlement Agreement provides to all project shippers the right, within twenty days following the issuance of a certificate order (authorizing Northern Border's acquisition and operation of the Station 109 line), to designate deliveries at either, Harper, Iowa or Tuscola, Illinois (or points in between). Thus, states Northern Border, because delivery point designations will not be established until *after* issuance of the Commission's certificate order, facility (i.e., compression) requirements and billing determinations cannot be known at this time. Accordingly, Commission authorization is sought for three project alternatives, consistent with the approach followed by the Commission in *Mojave Pipeline Co.*, 47 FERC ¶ 61,200 (1989).

Northern Border is proposing to roll-in the costs of the new facilities with existing costs and to design unit charges on a cost-of-service basis. Northern Border states that the proposed rate structure produces uniform, non-discriminatory charges and effects a cost reduction for existing customers.

To mitigate any concerns regarding economic risk and the sharing of risk by existing customers, Northern Border states that it will voluntarily accept a condition, as part of any certificate authorization, which would ensure that existing customers are protected from any cost increases attributable to the proposed facilities. To this end, Northern Border has included in its application a proposed condition, similar to a condition approved by the Commission in *Northern Border Pipeline Co.*, 53 FERC ¶ 61,138 (1990), which requires all economic risk to be shared by Northern Border and the project shippers.

The estimated cost of the facilities proposed to be acquired and constructed is approximately $424 million. Northern Border proposes to finance this cost on a project basis of 25% equity and 75% debt financing.

The Commission advises all interested parties that its staff intends to hold a technical conference in this application to discuss any issues requiring Commission review that are raised by the application or by any interventions or comments in this docket. The technical conference will be held on March 14, 1991, at 810 First Street NE., Washington, DC 20426 at 10 a.m.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 14, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulation under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2348 Filed 1-31-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of December 3 Through December 7, 1990

During the week of December 3 through December 7, 1990, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Eason Oil Co., 12/6/90; HRO-0254

Eason Oil Company objected to a Proposed Remedial Order that was issued to it on September 14, 1984. In the PRO, the Economic Regulatory Administration (ERA) found that the firm had violated the price regulations pertaining to the sale of natural gas liquids as set forth in 10 CFR part 212, subparts E & K. The central issue in this case concerned whether Eason was a refiner of crude oil that was required to calculate its prices on a firmwide basis pursuant to subpart E or whether it could calculate its prices on a plant-by-plant basis. A substantial portion of the alleged overcharges derive from violations of the equal application rule resulting from the firm's use of plant-by-plant pricing.

In considering the firm's objections, the DOE found that the PRO was correct in concluding that Eason was a crude oil refiner which was required by Subpart E to calculate its prices on a firmwide basis. The DOE also found that delay in issuing an Interpretation requested by Eason to clarify the proper method of calculating its prices did not estop the agency from enforcing the equal application rule. Nonetheless, the DOE granted the firm's Statement of Objections with respect to (1) the use of imputed residue gas prices in calculating the amount of its natural gas shrinkage and (2) the application of the equal application rule to the period prior to September 1974. The Remedial Order directs the ERA to submit a revised schedule of overcharges that takes into account these modifications, after which a supplemental order will be issued to specify the amount of Eason's overcharges. As so modified, the PRO was issued as a final order.

Refund Applications

Central Cooperatives, Inc. Dodge County Cooperative, 12/5/90; RF272-24801, RF272-45282

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Central Cooperatives, Inc., and Dodge County Cooperative, based on their purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. A group of states and territories (the States) filed objections and comments concerning the applicants' refund claims. In their objections, the

States contended that cooperatives are not eligible for Subpart V crude oil refunds because they are not end-users of refined petroleum products but resellers. Thus, the States argued that a cooperative must submit detailed evidence of injury in order to receive a refund. The DOE rejected that argument and granted the Application, noting that applications filed by the cooperatives are regarded as claims filed on behalf of their members. To the extent that those members are end-users, the end-user presumption of injury is applicable to the claims, and no further evidence of injury is required. Accordingly, DOE granted Central Cooperatives, Inc., a refund in the amount of $29,696 and Dodge County Cooperative a refund in the amount of $29,047, on the condition that the cooperatives pass through the refunds to their members.

Delta Asphalt, Inc. Delta Asphalt of Arkansas, Inc., 12/7/90; RF272–31710, RF272–38417, RD272–31710

The DOE issued a Decision and Order concerning Applications for Refunds filed by two asphalt manufacturing and road construction firms in the subpart V crude oil special refund proceeding. A group of states and territories (States) objected to the Application submitted by Delta Asphalt, Inc., on the grounds that the applicant was able to pass through increased petroleum costs to consumers during the consent order period. The only evidence submitted by the States was an affidavit by an economist stating that, in general, road construction firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that both applicants should receive a refund. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut the applicant's presumption of injury. The sum of the refunds granted in this Decision is $30,919.

Exxon Corp. American Can Co., 12/5/90; RF307–10124

The DOE issued a Decision and Order concerning an Application for Refund filed by Primerica Corporation, formerly American Can Company (America), in the Exxon Corporation special refund proceeding. American, an end-user, purchased products directly from Exxon and was found to be eligible to receive a refund equal to its full allocable share. The sum of the refund granted in this Decision is $8,137 ($6,033 principal plus $2,104 interest).

Exxon Corporation/Coffey Service Station Mel's Car Care Center William F. Allen, 12/3/90; RF307–2056, RF307–7365, RF307–10034

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Exxon special refund proceeding. Each of the applicants submitted estimated figures indicating the gallonage it purchased from Exxon. However, none of the applicants could provide records to confirm that their purchases originated from Exxon or that their estimated figures were reasonable. Since the applicants had provided no reasonable evidence to indicate that they purchased Exxon products during the consent order period, the OHA concluded that granting the applicants a refund would be inappropriate. Consequently, the OHA denied the applicant's Applications.

Exxon Corporation/G & D Exxon et al. 12/6/90; RF307–2175 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Exxon special refund proceeding. The applicants, resellers of petroleum products, purchased directly from Exxon during the consent order period and sought to rely on the small claims presumption of injury. The Application on behalf of G & D Exxon was submitted by one of the partners which operated the station during the consent order period and who has subsequently acquired complete ownership of the station. Since this co-owner declined to submit information establishing that potential refunds were an asset which had been transferred to him, the OHA determined that he was entitled to only 50 percent of G & D's approved gallonage. The DOE determined that each of the applicants should receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision was $2,344, representing $1,739 in principal and $605 in interest.

Kaiser Steel Corp., 12/3/90; RF272–32806, RD272–32806

The DOE issued a Decision and Order concerning an Application for Refund filed by Kaiser Steel Corporation in the Subpart V crude oil special refund proceeding. The DOE rejected a challenge to Kaiser's refund claim filed by a consortium of States, finding that the State failed to support their assertion that Kaiser did not absorb the crude oil overcharges. The DOE also denied a Motion for Discovery filed by the States. Kaiser was granted a refund of $66,909.

Murphy Oil Corp./Allied Oil Co., 12/7/90; RF309–1122

The DOE issued a Decision and Order denying an Application for Refund in the Murphy Oil Corporation (Murphy) special refund proceeding. Allied Oil Company (Allied) purchased Murphy petroleum products on a sporadic basis and was primarily identified as a spot purchaser. Allied was not able to supply records indicating that it was a regular purchaser from Murphy, nor did it attempt to rebut the spot purchaser presumption of non-injury. Accordingly, Allied's refund Application was denied.

Gulf Oil Corp./Bilger & Sons, Inc., Selinsgrove Fuel Corp., Beavertown Oil Supply, Inc., 12/5/90; RF300–12759, RF300–12760, RF300–12761

The DOE issued a Supplemental Order concerning three Applications for Refund filed by Bilger & Sons, Inc., Selinsgrove Fuel Corp., and Beavertown Oil Supply, Inc., in the Gulf special refund proceeding. In a May 30, 1990 Decision and Order issued by the DOE, the three applicants were granted a consolidated refund amount of $7,031 because they were considered to be affiliated entities for the purposes of receiving a refund under the presumptions of injury.

However, the three applicants were incorrectly considered to be affiliates, and accordingly, the refund awarded in that Decision was rescinded in an October 3, 1990 Decision and Order. The claims were then reconsidered in the present Decision. It was found that Bilger and Selinsgrove were in fact consolidated entities and thus were considered together when applying the presumptions of injury. Beavertown, however, was considered an independent claim for the purposes of applying the presumptions. The sum of the refunds granted, which includes principal and interest, is $15,762.

Posillico Brothers Asphalt Co., 12/6/90; RA272–32

The DOE issued a Supplemental Order concerning a Decision and Order granting Posillico Brothers Asphalt Co. (Posillico) a refund in the subpart V crude oil special refund proceeding. The DOE discovered that it had misinterpreted Posillico's statement concerning the percentage of its purchases which were covered by cost escalation agreements and, thus, had understated Posillico's approved gallonage. Consequently, the OHA rescinded its earlier Decision and ordered the issuance of another refund check in the correct amount to Posillico.

Shell Oil Co./Edson, Inc., 12/5/90; RF315–10096

The DOE issued a Supplemental Order rescinding a Shell refund based on purchases of product by Edson, Inc., during the consent order period. That refund was granted to Motex, Inc., on November 6, 1990, because Motex had purchased all the corporate stock of Edson in 1985. Subsequently, the previous owner of Edson, whose Application had been denied, informed us that Edson had not been incorporated until 1978. The previous owner raised the issue of whether he was entitled to that part of the refund pertaining to the period before Edson was incorporated. Accordingly, the DOE rescinded the refund pending a final determination on this matter.

Shell Oil Co. Farnsworth Shell, Elmwood Shell, 12/3/90; RF315–5315, RF315–10035, RF315–10060, RF315–10061

The DOE issued a Supplemental Order which rescinding half of the refund granted to Bruce Kain on behalf of Farnsworth Shell, which was granted in a January 24, 1990 Decision and Order. *Shell Oil Company/Eton Shell Service, et al.*, Case Nos. RF315–7900, *et al.* Mr. Kain owned three Shell stations jointly with a partner, Conrad Kral. After examining the contract authorizing the dissolution of their partnership for two of the stations, OHA determining that Kain is the rightful recipient of the refund for these two stations. Conrad Kral's Applications for these two stations were accordingly denied. Kral clearly retained an interest in the their station, Farnsworth Shell, which was not included among the assets transferred to Kain when the partnership was dissolved in January 1982. Mr. Kain was therefore instructed to remit the sum of $141, and the Application for Refund filed by Conrad Kral on behalf of Farnsworth Shell was granted. The total of the refund granted to Kral was $151 ($115 principal and $36 interest).

Shell Oil Co., Hudson Van Oil Company, 12/5/90; RF315–10098

The DOE issued a Supplemental Order modifying an October 31, 1990 Decision and Order with respect to one refund Application. Specifically, the DOE determined that the refund of $6,523 granted to Hudson Van Oil Company (Hudson Van) on October 31, 1990, should not be disbursed to the applicant's Bankruptcy Trustee but should be placed in a separate escrow account. The refund will be held in that account pending the completion of (1) payments from the bankruptcy estates of Hudson Van's affiliates to the DOE for alleged regulatory violations and (2) litigation between the Bankruptcy Trustee and the DOE. After these two matters are resolved the DOE will issue a new determination with regard to the disposition of Hudson Van's refund.

Shell Oil Co., Valley Line Co. Wisconsin Barge Lines, 12/5/90; RF315–3310, RF315–3644

The DOE issued a Decision and Order granting two Applications for Refund filed in the Shell Oil Company special refund proceeding. The applicants purchased products indirectly from Shell and were end-users of the products they purchased. Neither of the applicants' suppliers had filed a claim indicating that it suffered disproportionate injury. The applicants were granted refunds equal to their full allocable shares plus a proportionate share of the interest that has accrued on the Shell escrow account. The total amount of the refunds granted in the Decision was $9,569 ($7,283 principal plus $2,286 interest).

Texaco Inc./Morania Oil Corp., 12/5/90; RF321–8024, RF321–10730

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding by Morania Oil Corporation. On July 19, 1990, the applicant filed its own Application, in which it certified that it had not authorized anyone to file on its behalf. Three months later, the applicant filed a second Application, this time through the filing service, in which it certified that it had not previously filed another refund Application. In view of thee false certifications, the DOE determined that both refund Applications should be denied.

United Paving, Robert H. O'Hair, 12/7/90; RF272–60215, RD272–60215, RF272–61048, RD272–61048

The DOE issued a Decision and Order granting refund monies from crude oil overcharge funds to the road paving companies, United Paving and Robert H. O'Hair, based on their purchases of petroleum products during the period August 19, 1973, through January 27, 1981. A group of State governments and two territories of the United States (the States) objected to both Applications and provided evidence concerning the construction industry as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that the two companies had been able to pass on crude oil overcharges to their customers and found that the States' evidence failed to properly address the individual situations of the applicants. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as United Paving and Robert H. O'Hair were injured by crude oil overcharges. The DOE granted United Paving a refund of $19,177, based on its approved purchases of 23, 971,840 gallons of refined petroleum products. Robert H. O'Hair was granted a refund of $24,079 based on its approved purchases of 30,098,197 gallons of petroleum products. In addition, the DOE denied the motions for discovery filed by the States in regard to these Applications.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Evergreen Stage Line, Inc. *et al.*	RF272–65523	12/03/90
Exxon Corporation/A. Johnson & Company, Inc.	RF307–9332	12/06/90
Carmichael's Exxon	RF307–10150	
Mack C. Colt, *et al*	RF272–61823	12/05/90
Ralph's Grocery Company.	RF272–70599	12/03/90
Ranger Construction Industries, Inc. *et al.*	RF272–26008	12/05/90
Shell Oil Company/ Angus I. Hines, Inc.	RF315–10099	12/05/90
Shell Oil Company/ Bean's Shell Service, *et al.*	RF315–1117	12/05/90
Shell Oil Company/ Gillespie Oil Co., Inc. *et al.*	RF315–1223	12/07/90
Shell Oil Company/ Kenneth C. Lavigne, *et al.*	RF315–70	12/07/90
Texaco Inc./Conwell Oil Corp.	RF321–11691	12/05/90
Texaco Inc./Denardi Texaco.	RF321–11729	12/05/90
Texaco Inc./Gilbert Peet Texaco, *et al.*	RF321–5394	12/03/90
Texaco Inc./ Goodwin's Texaco, *et al.*	RF321–302	12/03/90
Texaco Inc./Hall's Service Station.	RF321–9503	12/05/90
Hall's Service Station	RF321–10005	
Texaco Inc./Hinson Oil Co., *et al.*	RF321–2494	12/07/90
Texaco Inc./Nick's Marina, *et al.*	RF321–3684	12/06/90
Texaco Inc./Renny's Texaco, *et al.*	RF321–1791	12/06/90
Texaco Inc./Texaco Bulk Plant #132, *et al.*	RF321–1912	12/07/90
Walter F. Hamilton	RF321–3644	
Noyd Oil Co	RF321–3792	

Dismissals

The following submissions were dismissed:

Name	Case No.
A&M Service Station	RF315-7948
Agnew's Texaco	RF321-11539
Al's Texaco on Montgomery	RF321-740
Alberta Texaco	RF321-743
Albright's Texaco	RF321-2171
Allen Brown	RF315-86
Allen's Texaco	RF321-25
Alls & Son Texaco	RF321-11470
Arnold's Texaco	RF321-2160
Auburn Texaco	RF321-7176
Barclay Texaco	RF321-2155
Baseline Texaco	RF321-2188
Bert Rundle Texaco	RF321-821
Blossom Texaco	RF321-3733
Bob Ross Texaco, Inc	RF321-10543
Bob's Super Service	RF321-10396
Bob's Texaco	RF321-859
Bonacci Texaco Service	RF321-863
Borough of Fairview	RF272-83199
Breton Village Texaco	RF321-4506
Brookfield Texaco	RF321-4474
Buck Owens Texaco	RF321-902
Buckingham Sq. Texaco	RF321-10792
Bud & Walt's Service	RF315-7950
C.R. Chapman Grocery	RF321-927
Campbell's Texaco	RF321-10783
Capitol Texaco	RF321-939
Charlie's Texaco Service	RF321-11438
City of Greenfield	RF272-83896
City of Little Falls	RF272-83096
Clark's Texaco	RF321-10425
Coliseum Texaco	RF321-133
Coronado Trucking	RF272-83157
Curtis & Sons Texaco	RF321-5927
D.M. Browning's Texaco	RF321-3934
Diamond Hill Texaco	RF321-11458
Dick's Texaco	RF321-199
Don's Texaco	RF321-11541
Donley Oil Co., Inc	RF321-10701
Driftwood Texaco	RF321-7691
Edinburg Independent School	RF272-82970
Edward H. Hamilton	RF321-11109
Ellis Texaco	RF321-1033
Ellis Texaco	RF321-1032
Ellis Texaco Station	RF321-1034
Ernest L. Mullet	RF321-11680
F & K Texaco	RF321-11445
Ferguson Shell	RF315-306
Gallen's Texaco	RF321-3921
Getreu Texaco	RF321-1929
H. L. Benjamin Texaco	RF321-11396
Halifax Texaco	RF321-11587
Henry Falgout Texaco	RF321-8182
Holman Texaco	RF321-1052
Homer's Texaco Garage	RF321-6977
Honey Transport, Inc	RF272-70337
Hope Mill Gulf	RF300-11503
Hudson's Texaco	RF321-5655
Huling Texaco	RF321-9494
J.D. Seymour	RF321-4649
J.T. Garman Texaco	RF321-10061
Jay & Al's Texaco	RF321-10276
Jerry L. Dahl Texaco	RF321-10782
Jim's Texaco Service	RF321-1108
Jimmy's Texaco	RF321-10798
Joe Mele & Sons Texaco	RF321-1119
John Key Texaco	RF321-11111
John's Texaco	RF321-9051
Johnnie's Texaco	RF321-1132
Jordan Texaco	RF321-1144
Larry's Texaco & Tire Service	RF321-6912
Lauer's Texaco Service	RF321-1658
Lawrence Texaco	RF321-2102
Leiva's Texaco	RF321-3191
Leon's Shell	RF315-5212
Leroy Holmes	RF321-1849
Lou's Texaco Inc	RF321-4525
Luebke's Texaco	RF321-3194
Magnolia Truck Line, Inc	RF272-70332
Max Ker & Son Lumber Co	RF272-70348
McGown's Texaco	RF321-5229
McKee Amboy Texaco	RF321-8229
Mike's Ballard Texaco	RF321-1709
Mike's Texaco	RF321-3731
Minute Service, Inc	RF321-9885
Moore's Texaco	RF321-5926
Morin & Sons Texaco	RF321-384
Murphy's Alpine Texaco	RF321-7710
Nutley Street Exxon	RF307-10159
Occidental International Oil	RF272-61369
Osment's Texaco	RF321-2119
Overstreet's Texaco Station	RF321-11517
Parker's Exxon	RF307-7122
Parkridge Texaco	RF321-1162
Paul Wendling's Texaco	RF321-4471
Paul's Texaco	RF321-1174
Rayne's Texaco Station	RF321-10819
Peppler's Texaco	RF321-1182
Pete & Greg's Texaco	RF321-1756
Powell's Texaco	RF321-1208
Prestige Texaco, Inc	RF321-1209
Ray's Texaco	RF321-4135
Read's Texaco Service	RF321-10820
Red Star Texaco	RF321-2017
Reed Transportation	RF272-70349
Roberts Texaco	RF321-1768
Robertson's Texaco	RF321-1360
S&J Market No. 3	RF304-10191
Shell Service Center	RF315-937
Silver Spur Arco	RF304-11544
Sullivan County Oil Company	RF315-862
Super Chief Texaco	RF321-1313
Swink Texaco	RF321-11440
Ted's Texaco	RF321-1914
Town of Franklinton	RF272-83635
Vandergriff's Texaco	RF321-1446
Village of Manlius	RF272-83102
Wayne's Texaco	RF321-1483
West Frankfort Texaco	RF321-1985
West Park Texaco	RF321-11662
West Slope Texaco	RF321-1497
White Texaco	RF321-1272
White Texaco	RF321-1273
Willding Texaco	RF321-1282
Williams' Texaco	RF321-10548
Young Oil Company	RF315-895

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 25, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-2449 Filed 1-31-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of December 10 Through December 14, 1990

During the week of December 10 through December 14, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Morgan, Lewis & Bockius, 12/14/90; LFA-0087

The law firm of Morgan, Lewis & Bockius (MLB) filed an Appeal from a partial denial by the Richland Operations Office of the DOE of a request for information which the firm had submitted under the Freedom of Information Act. MLB had requested the winning proposals, winning subcontracts, and source evaluation board (SEB) reports of three companies: Booz, Allen & Hamilton (BAH), CH2M Hill, and ICF Corporation. Richland withheld the SEB reports pursuant to Exemption 5. It withheld portions of the winning proposals and winning subcontracts because the information was proprietary. Upon analysis of the documents at issue, the DOE ordered Richland to release the SEB reports in accordance with past DOE case law. The DOE also ordered Richland to release the table of contents and information regarding past DOE contracts contained in ICF's technical proposal. Finally, the DOE remanded CH2M Hill's and ICFs cost proposals for a further determination as to whether the information is proprietary. MLB's appeal was therefore granted in part and denied in part.

National Hazard Control Corp., 12/13/90; LFA-0084

National Hazard Control Corporation (NHCC) filed an Appeal from a denial by the Albuquerque Operations Office (AOO) of the DOE of a request for information which NHCC had submitted under the Freedom of Information Act (FOIA). NHCC had requested pricing information from a contract bid for asbestos abatement services submitted to Sandia National Laboratories. AOO released portions of the contract proposal but deleted the price schedule which appeared in the bid on the grounds that disclosure would cause substantial competitive harm. In considering the Appeal, the DOE found that release of the pricing data would cause the submitter substantial competitive harm and the information was therefore exempt from disclosure pursuant to Exemption 4. Accordingly, the NHCC Appeal was denied.

Robert E. Caddell, 12/10/90; LFA-0078

Robert E. Caddell filed an Appeal from a partial denial issued to him by the DOE's Richland Operations Office

concerning a request for information which he submitted under the Freedom of Information Act. In considering the Appeal, the DOE determined that the names of the DOE evaluators had been properly withheld pursuant to Exemption 5. The DOE also determined that the Crediting Plan for the Deputy Director position was properly withheld pursuant to Exemption 2. In addition, the DOE determined that the SF–171 resume forms of the unsuccessful candidates, the names of the candidates on the Certification List, and the names, comments, and total scores of the candidates on the Spread Sheet were properly withheld pursuant to Exemption 6. Accordingly, the Appeal was denied.

Implementation of Special Refund Procedures

Benton Pruet D/B/A P & R Trading Co., Trigon Exploration Co., Inc., 12/13/90; LEF–0018, LEF–0019

The DOE issued a Decision and Order implementing procedures for the distribution of $788,596.45, plus interest, in alleged crude oil overcharge funds obtained from Benton Pruet d/b/a P & R Trading Company and Trigon Exploration Company, Inc. The DOE determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the fund is to be divided equally between the states and the federal government, and 20 percent of the fund is to be reserved for direct restitution to injured parties submitting claims to the Office of Hearings and Appeals under 10 CFR part 205, subpart V. Applications for refund must be submitted by March 31, 1991. Applications should not be filed by applicants who have previously filed refund claims in the Subpart V crude oil special refund proceeding.

Refund Applications

Armrel-Byrnes Co., J.H. Shears' Sons, Inc., 12/11/90; RF272–48267, RD272–48267, RF272–49003, RD272–49003

Armerl-Byrnes Company and J.H. Shears' Sons, firms involved in road construction, filed Applications for Refund as end-users of refined petroleum products in the Subpart V crude oil special refund proceeding. A group of state governments and two territories of the United States (the States) filed objections to the Applications, including material concerning the construction industry as a whole, and filed Motions for Discovery. After considering that material, the DOE determined that the States had failed to produce any convincing evidence to show that Armrel-Byrnes and J.H. Shears's Sons had been able to pass on any crude oil overcharges to their customers. The DOE also found that the States' submissions failed to properly address the individual situations of the applicants. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Armrel-Byrnes or J. H. Shears' Sons were injured by crude oil overcharges. J. H. Shears' Sons indicated that exactly fifteen percent of its contracts included price escalator clauses and that fifteen percent of its liquid asphalt purchases were covered by price escalator clauses. Accordingly, the J. H. Shears' Sons liquid asphalt purchase volume was reduced. Armrel-Byrnes showed that it was unable to pass through any alleged overcharges through the use of price escalator clauses. The DOE granted Armrel-Byrnes a refund of $9,880, based on its approved purchases of 12,350,127 gallons of petroleum products. The DOE purchases of 12,350,127 gallons of petroleum products. The DOE granted J. H. Shears' Sons a refund of $30,268, based on its approved purchases of 37,835,146 gallons of petroleum products. The DOE denied the Motions for Discovery filed by the States.

Atlantic Richfield Co./Al & Manny's ARCO, Williams ARCO Service, Burleigh ARCO, 12/11/90; RF304–3969, RF304–11126, RF304–11188

The DOE issued a Decision and Order concerning applications for Refund filed in the Atlantic Richfield Company special refund proceeding by Al & Mann's Arco, Williams ARCO Service, and Burleigh ARCO. Each of the applicants is a reseller/retailer that has previously been granted a refund of less than $5,000 in principal. Two of the applicants filed two non-duplicate refund claims which would have been consolidated with the refunds previously granted but for the very substantial number of submissions in the ARCO proceeding. The third applicant submitted a second Application which documents purchases of ARCO refined products that were neither included as a basis for the prior refund nor included in the customer purchase data supplied to the DOE by ARCO. The total refund granted in this Decision is $1,947, representing $1,368 in principal and $579 in interest.

Collines & Aikman, Science & Science Division, 12/12/90; RF272–16210, RD272–16210

The DOE issued a Decision and Order denying an Application for Refund filed by Collins & Aikman, Science & Science Division (Collins), in the subpart V crude oil special refund proceeding. The DOE's denial was based on the fact that another division of Collins had applied for and had been granted a refund from the Surface Transporters Escrow and had, thereby, waived its right to a refund in crude oil proceeding. The DOE also dismissed as moot a Motion for Discovery filed by a consortium of states and two territories of the United States.

Globe Industries, Inc., Commonwealth Roofing Co., 12/11/90; RF272–38383, RD272–38383, RD272–57456, RF272–57456

The DOE issued a Decision and Order concerning two Applications for Refund filed on behalf of Globe Industries, Inc., and Commonwealth Roofing Company in the Subpart V crude oil special refund proceeding. The DOE determined that the refund claims were meritorious and granted refunds of $48,352. The DOE also denied Motions for Discovery filed by a consortium of states and two territories of the United States and rejected their challenge to the claims. The DOE denied the States' Objections, finding that the industry-wide econometric data submitted by the States did not rebut the presumption that the Applicants were injured by the crude oil overcharges.

J. Lauritzen A/S, 12/10/90; RF272–52847, RD272–52847

The DOE issued a Decision and Order concerning an Application for Refund filed in the subpart V crude oil special refund proceeding. The DOE determined that the refund claim was meritorious and granted a refund of $58,479. The DOE also denied a Motion for Discovery filed by a consortium of states and two territories of the United States and rejected their challenge to the claim. The DOE rejected the States' Objection, finding that foreign cargo carriers are eligible for a refund.

John J. Hudson, Inc., 12/14/90; RF272–21107, RD272–21107

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of John J. Hudson, Inc., in the subpart V crude oil special refund proceeding. The DOE determined that the refund claim should be denied, because the applicant was a reseller of the petroleum products for which it claimed a refund. The DOE also

dismissed as moot the Motion for Discovery filed by a consortium of states and two territories of the United States.

Mobil Oil Corp./the Atchison, Topeka & Santa Fe Railway Co., 12/14/90; RR225–40

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by the Atchison, Topeka and Santa Fe Railway Company (ATSF) in the Mobil refund proceeding. In a Decision and Order issued on December 5, 1988, the DOE had denied ATSF's claim that it was entitled to a refund in excess of the $0.000402 per gallon volumetric refund amount established in the Mobil proceeding. In considering the Motion, the DOE found that ATSF submitted persuasive evidence that from January 1, 1974, through June 30, 1976, Mobil violated the Mandatory Petroleum Price Regulations by charging ATSF prices for diesel fuel that were calculated on the basis of an incorrect May 15, 1973 (base period) price. Consequently, the DOE determined that ATSF was entitled to a refund equal to the difference between the correct May 15 price and the May 15 prices utilized by Mobil, multiplied by the number of gallons of diesel fuel purchased by ATSF during the January 1974—June 1976 period. The refund granted in this Decision was $4,210,881.24, including $1,939,948.57 in accrued interest.

Monroe Auto Equipment Co., 12/10/90; RF272–24450

The DOE issued a Decision and Order granting an Application for Refund filed in the Subpart V crude oil special refund proceeding. The applicant, a manufacturer of automotive parts, specifically shocks and struts, purchased 10,787,761 gallons of shock and strut oil. These oils are used as hydraulic fluid in the manufacturing and testing of struts and shocks. By investigating these products, we have determined that, like other motor oils, these fluids are products derived from crude oil and accordingly may form the basis for a refund claim. The applicant was therefore granted a refund of $8,630.

Murphy Oil Corp./Hudson Station, Inc., Hudson Oil Co., Hudson Oil Co., Inc., Station No. 801, 12/10/90; RF309–1393, RF309–1399, RF309–1400

The DOE issued a Decision and Order granting three Applications for Refund filed by Hudson Oil Company, Inc. (Hudson) and two affiliates in the Murphy Oil Corporation (Murphy) special refund proceeding. On the basis of the purchases of 31,653,900 gallons of Murphy petroleum products listed in the three applications, Hudson was granted a single refund of $13,681 ($10,345 in principal and $3,336 in interest). In the Decision, the DOE determined that this refund should not be disbursed to the applicants' Bankruptcy Trustee but should be placed in a separate escrow account. The refund will be held in that account pending the completion of (1) payment from the bankruptcy estates of Hudson and its affiliates to the DOE for alleged regulatory violations and (2) litigation between the Bankruptcy Trustee and the DOE. After these two matters are completed, the DOE will issue a further determination regarding the disposition of this refund.

Publicker Industries, Inc., 12/12/90; RF272–432, RD272–432

The DOE issued a Decision and Order to Publicker Industries, Inc., granting a refund from crude oil overcharge funds based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. A consortium of states and territories of the United States filed a Statement of Objections and a Motion for Discovery with respect to the applicant. The DOE found that these filings were insufficient to rebut the presumption of injury for end-users, and the Motion for Discovery was denied. The applicant was an end-user of the products for which it claimed a refund, was therefore presumed injured, and was granted a total refund of $150,598.

Texaco, Inc./D.E. Sanders, Consignee, D.E. Sanders Texaco, 12/10/90; RF321–5462, RF321–7916

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning two Applications for Refund filed by a consignee and a retail outlet owned by the consignee and supplied through the consigneeship. The applicants stated that they accepted to presumption of injury; accordingly, they were not required to demonstrate injury. Under the mid-level presumption of injury, the consigneeship was granted a refund of $12,055 ($10,000 principal and $2,055 interest). The Application on behalf of the retail outlet was denied, because applicants are entitled to only one refund for the same refined product purchases, and the volumes purchased by the retail outlet were included in calculating the refund amount due the consigneeship.

Texaco Inc./Richard Lucht, et al., 12/12/90; RF321–4928, et al.

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning six Applications for Refund filed by Texaco consignees, tank truck dealers, and jobbers. The DOE found that "tank truck dealers" were essentially consignees without their own bulk plant and that they should be granted refunds on the same basis as other consignees and resellers. The applicants stated that they accepted the presumption of injury; accordingly, they were not required to demonstrate injury. Under the mid-level presumption of injury, each applicant was granted a refund equal to the greater of $10,000 or 50% of its allocable share. The total refund amount granted in this Decision is $137,512 ($114,071 principal plus $23,441 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Co./Helga I. Coddington.	RF304–12156	12/12/90
Atlantic Richfield Co./Tim's ARCO *et al.*	RF304–9800	12/13/90
C.A. Brown & Sons, Inc. *et al.*	RF272–60193	12/14/90
China National Chartering Corp. *et al.*	RF272–14576	12/12/90
Danny Herman Trucking, Inc.	RF272–70303	12/14/90
Gogo's Co.	RF272–62994	12/12/90
Taylor Oil Company	RF272–63108	
Gulf Oil Corp./ Moore-King-Sullivan.	RF300–7044	12/13/90
Helene Curtis, Inc. *et al.*	RF272–58258	12/12/90
Jim Walter Corporation.	RF272–10664	12/11/90
Jim Walter Corporation.	RF272–67568	
Louisiana-Pacific Corporation.	RF272–62357	12/12/90
Adolph Coors Company.	RF272–62618	
East Penn Manufacturing Co. Inc.	RF272–63269	
Ketchikan Pulp Company.	RF272–66929	
Mobil Oil Corporation/Cantro Petroleum Corporation.	RF225–11095	12/10/90
Onward and Lillian Seger.	RC272–104	12/12/90
Shell Oil Company/ Charter International Oil Company.	RF315–0199	12/13/90
Shell Oil Company/ Dehart Shell Service.	RF315–4842	12/11/90
Luster General Store	RF315–4846	

Name	Case No.	Date
Shell Oil Company/ Farnsworth Shell.	RF315-10105	12/10/90
Shell Oil Company/ NAS Whidbey Island *et al.*	RF315-6445	12/10/90
Texaco Inc./Adan Bros. Texaco *et al.*	RF321-22	12/11/90
Texaco Inc./ Blakeslee Arpaia Champman, Inc. *et al.*	RF321-4300	12/10/90
Texaco Inc./Fletcher Petroleum, Inc. *et al.*	RF321-226	12/12/90
Texaco Inc./North Star Mall Texaco.	RF321-3896	12/10/90
Don R. Staglik	RF321-9709	

Dismissals

The following submissions were dismissed:

Name	Case No.
Abernathy Texaco	RF321-726
Big John's Texaco	RF321-5041
Canales Texaco	RF321-935
Carmichael Exxon	RF307-10160
Charlie Weaver Texaco	RF321-9053
City of Troy	RF272-84481
Dickerson Texaco	RF321-7623
Dow Corning Corporation	RD272-60665
Dunton Texaco & Markette	RF321-11593
Fortini's Texaco	RF321-236
Frank's Texaco	RF321-243
Glen Day Texaco	RF321-9915
Glen Day Texaco	RF321-295
Jiffy Car Wash	RF321-11223
Johnson's Shell	RF315-317
Lankford Texaco Service Station	RF321-11366
Louis Shell	RF315-9558
M.E. Anderson Texaco	RF321-4084
Mazon Verona-Kinsman C U Dist	RF272-81516
Musgrave Texaco	RF321-9986
Musgrave Texaco	RF321-2136
Robert Bauer	RF272-4211
Ron's Texaco	RF321-10257
Rulon Texaco Service	RF321-11669
S&F Texaco	RF321-9404
Schaner Oil Co	RF321-9654
Schaner Oil Co	RF321-9655
Shield's Shell Service	RF315-8655
Stinson's Texaco	RF321-11687
Sunflower Truck Stop	RF321-4640

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 25, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-2450 Filed 1-31-91; 8:45 am]

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Issuance of Decisions and Orders; Week of January 7 Through January 11, 1991

During the week of January 7 through January 11, 1991, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Independent School District No. 547, 01/09/91; RF272-84822

The DOE issued a Decision and Order concerning an Application for Refund filed in the subpart V crude oil refund proceeding by Independent School District No. 547. The petroleum products forming the basis for the refund were purchased by a private bus company. The DOE found that since there was an explicit fuel cost escalator provision in contract between the applicant and the bus company, the crude oil overcharges were borne by the applicant. The School District was therefore granted a refund of $176.

Mago Construction, 01/07/91; RF272-60495, RD272-60495

The DOE issued a Decision and Order granting refund monies from crude oil overcharge funds to Mago Construction. The applicant used the petroleum products in its highway and heavy construction business. The DOE rejected the objections filed by a consortium of 32 States and two territories (the States), finding them insufficient to rebut the presumption of injury. Therefore, the Application for Refund of Mago was granted. A Motion for Discovery filed by the States was denied. The refund granted to Mago was $41,693.

Payne & Dolan, Inc., 01/08/91; RF272-1921, RD272-1921

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Payne & Dolan, Inc., a road construction company that used the petroleum products in its business operations. A consortium of twenty-nine States and two territories filed a "Statement of Objection" and "Motion for Discovery" with respect to the applicant's refund claim. The DOE found that the States' filings were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Payne & Dolan, Inc., is $160,071.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Co./Mid Penn Refining Co.	RF304-8378	01/08/91
Exxon Corporation/ Bushek's Automotive S/C, Inc. *et al.*	RF307-1284	01/09/91
Exxon Corporation/ Santiago's Exxon Station *et al.*	RF307-1750	01/07/91
Leslie Eudell Robinson *et al.*	RF272-70081	01/09/91
Texaco Inc./Charlie Texaco Service Station *et al.*	RF321-3018	01/08/91
Texaco Inc./Farm & Home Oil Co. *et al.*	RF321-3398	01/09/91
Texaco Inc./Grigg's Texaco.	RF321-12516	01/08/91

The following submissions were dismissed:

Name	Case No.
Austintown Local School Dist	RF272-80237
Barnwell School District 45	RF272-83887
Bellefonte, PA	RF272-82863
Benton County Schools	RF272-83438
Birdville Independent School District.	RF272-83451
Brillion Coop	RF272-70796
Burbank Unified School District	RF272-79856
Burke's Texaco	RF321-913
Carl's Brighton Auto Service	RF304-6425
Central Soya	RD272-115
City of Madison Heights	RF272-84102
City of New London	RF272-84700
Clarke County School Dist	RF272-83356
D & H Oil Co	RF304-11992
D&D Distributors	RF272-70300
D'Andrea's Exxon	RF307-7067
Dairy Fresh Corporation	RF272-83435
Des Moines Texaco Service	RF321-3598
Des Moines Texaco Service	RF321-3600
Dick's Texaco	RF321-2625
Dowdy's Exxon	RF307-7071
Edgewood, PA	RF272-83783
Elizabethton City School Dist	RF272-78723
Glen Milner	LFA-0091
Grayson County Schools	RF272-79282
Hayes & Sons Texaco	RF321-2876
Hollis School District 328	RF272-58816
Hove Truckline, Inc	RF272-70339
J&M Trucking Company	RF272-70272
J.T. Sokolski	RF304-6914
KKW Trucking, Inc	RF272-55916
Ligonier Valley School Dist	RF272-79828
Medford, NJ	RF272-84378
Meier & Elhard Texaco	RF321-694
Milne truck Lines, Inc	RD272-33602
Mira Oil Co., Inc	RF304-9605
Mira Oil Co., Inc	RF304-9604

Name	Case No.
Modern Service Center, Inc	RF307-9359
Neshoba County School District	RF272-83130
Northwest School District 52-3	RF272-81815
Orange Grove ISD	RF272-84496
Paul Hobbs Texaco	RF321-1173
Robert W. Powell	RF307-9004
Scales Mound Comm. Unit School Dist.	RF272-81061
South Hampton Refining Company	RF304-9165
Super Value, Inc	RF304-9606
Switzerland of Ohio Local School District.	RF272-82512
Tailored Clothing Group of Faberge, Inc.	RF272-70753
Tideland Oil Company	RF315-1608
Walter's Texaco	RF321-1476
Wayne County Road Commission	RF272-79052

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 25, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-2451 Filed 1-31-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3901-4]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073.

Availability of Environmental Impact Statements Filed January 21, 1991 Through January 29, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910024, Draft EIS, AFS, MT, Western Vermiculite Open Pit Mine Project, Construction and Operation, Permit Approval, Bitteroot National Forest, Hamilton County, MT, Due: March 18, 1991, Contact: Winnie Schreiber (406) 821-3913.

EIS No. 910025, Draft EIS, BLM, AK, A-J Mine Project Reopening, Construction and Operation, Issuance of Right-of-Way Permit for Permanent Disposal of Tailings on federal lands in Sheep Creek Valley, Section 10 and 404 Permits, and NPDES Permit, City and Borough of Juneau, AK, Due: March 18, 1991, Contact: J. David Dorris (907) 271-4409.

EIS No. 910026, Draft EIS, IBR, CA, Salinas Valley Seawater Intrusion Program, Long-Term Water Supply, Funding, COE Section 10 and 404 Permits, Salinas River, Castroville, Marina and Fort Ord Areas, Salinas Valley, Monterey County, CA, Due: March 29, 1991, Contact: Richard Chelini (916) 978-5002.

EIS No. 910027, Final EIS, FHW, TN, Appalachian Corridor B1 to B3 Improvements, U.S. 23/TN-81 and TN-36, from Sams Gap at the North Carolina-Tennessee State Line to Erwin Bypass, Funding and Section 404 Permit, Unicoi County, TN Due: March 4, 1991, Contact: Dennis C. Cook (615) 736-5394.

EIS No. 910028, Draft EIS, AFS, MT, Flathead National Forest Noxious Weeds Management Project, Herbicide Use on Seven Sites, Bob Marshall Wilderness Area, Implementation, Spotted Bear and Hungry Horse Ranger Districts, Flathead County, MT, Due: March 18, 1991, Contact: Greg Warren (406) 387-5243.

EIS No. 910029, Final EIS, AFS, UT, Strawberry Ridge Timber Sale and Road Reconstruction, Implementation, Dixie National Forest, Cedar City Range District, Kane County, UT, Due: March 4, 1991, Contact: Ronald S. Wilson (801) 586-4462.

EIS No. 910030, Final EIS, USA, WA, Yakima Firing Center Expansion of Military Training Center Land Acquisition, 9th Infantry Division, Fort Lewis Military Installation, Yakima and Kittitas Counties, WA, Due: March 4, 1991, Contact: Gary Stedman (206) 967-5337.

Amended Notices

EIS No. 870013, Draft EIS, AFS, CA, Six Rivers National Forest Land and Resource Management Plan, Implementation, Humbolt, Del Norte, Siskiyou and Trinty Countie, CA.

Published FR 1-30-87—Officially Withdrawn by Preparing Agency.

Dated: January 29, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-2457 Filed 1-31-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3901-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 14, 1991 through January 18, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-AFS-K61106-CA Rating E02, North Fork of the Mokelumne River, Wild and Scenic River Study, Designation or Nondesignation into the National Wild and Scenic River System, Eldorado and Stanislaus National Forests, Amador and Calaveras Counties, CA.

Summary

EPA expressed environmental objections with the preferred alternative because it provided no wild/scenic river designation for segments of the streams containing outstanding ecological resources, including a wild trout fishery. Selection of the preferred alternative would also allow further consideration of the proposed Devil's Nose hydroelectric project, which would cause significant adverse impacts to water quality, riparian habitat, and fisheries. EPA recommended designation of all segments of the stream as wild or recreational.

ERP No. D-AFS-L67025-ID Rating EC2, Beartrack Open Pit Heap Leach Gold Mine Project, Construction and Operation, NPDES Permit and Section 404 Permit, Salmon National Forest, Lemhi County, ID.

Summary

EPA rated this project EC2 based on the potential for acid or toxic drainage impacts to the water quality of the south pit lake and the long term integrity of the heap pad encapsulation system. Additional information is needed describing the wetland communities and their functions and values. The basis for the conclusion that there will be no adverse effects on air quality should be included in the final EIS.

ERP No. D-COE-K36098-CA Rating EC2, Prado Dam Water Conservation Plan Implementation, Prado Flood Control Basin, Santa Ana River, Riverside and San Bernardino Counties, CA.

Summary

EPA believes due to the potential impacts to water quality and groundwater resources, and cumulative impacts, the Corps should more fully

assess alternatives to reduce water consumption and the demand for increased water supply. By reducing the demand, associated impacts to threatened and endangered species could be correspondingly reduced or eliminated.

ERP No. D–FAA–G51023–TX Rating E02, Dallas/Fort Worth International Airport, Construction and Operation, Runway 16/34 East and Runway 16/34 West, Airport Layout Plan, Approval and Funding, Cities of Dallas and Fort Worth, TX.

Summary

EPA expressed environmental objections to the preferred alternative based upon a lack of sufficient information and environmental analysis. The draft EIS limits the scope of analysis of the proposed action by excluding related projects to the extent that the document does not fully assess potentially significant environmental impacts of the entire Airport expansion. EPA requested that additional information, data and analyses be included in the final EIS.

ERP No. D–FHW–K40178–CA Rating 3, San Joaquin Hills Transportation Corridor Improvements, CA–73 Extension between I–5 in San Juan Capistrano City to Jamboree Road in Newport Beach City, Funding and Section 404 Permit, Orange County, CA.

Summary

EPA believes this document is inadequate due to the failure of the draft EIS to adequately assess potentially significant environment impacts. The draft EIS did not adequately explain the basic need for the project or its relation to two other major corridor proposals in Orange County, the Foothill and the Eastern Transportation Corridors. Additionally, the draft EIS did not adequately assess project impacts to air quality, water quality, wetlands and wildlife. EPA requested that the new information be included in a supplemental draft EIS.

ERP No. D–FHW–K40180–AS Rating EO2, Territorial Route 50 in Pago Pago Park, Construction, Funding, U.S. Coast Guard Bridge Permit, and COE Section 10 and 404 Permits, Island of Tutuila, AS.

Summary

EPA expressed environmental objections because of potential project impacts to waters of the U.S. under section 404 of the Clean Water Act and requested that the final EIS carefully weigh each of the five alternatives to determine which of them is the least damaging practicable alternative. In particular, EPA objected to the alternative that placed large amounts of fill in Pago Pago Harbor, and the alternative that requires the filling of Vaipito Stream.

ERP No. D–FHW–K50006–CA Rating EC2, CA–150/Rincon Creek Two Bridges Replacement, 1.0 mile east of CA–101 to 1.9 miles east of CA–101, Funding, Santa Barbara and Ventura Counties, CA.

Summary

EPA expressed environmental concerns because of potential impacts to wetlands and riparian resources. EPA requested that the final EIS contain more information on wetland impacts including the avoidance of adverse impacts to the aquatic ecosystem and the adoption of appropriate mitigation to reduce or eliminate adverse impacts. EPA also asked that the final EIS contain more information on the project's consistency with the Clean Air Act.

ERP No. DS–COE–E34013–00 Rating EC2, Richard B. Russell Dam and Lake Project, Implementation, Updated Information on Pumped Storage Operations, Fish Protection Alternatives, Section 404 Permits, Savannah District, Several Counties, GA and Several Counties, SC.

Summary

EPA feels additional study/evaluation will be necessary to determine the environmental feasibility of the overall proposal and the potential of this fishery mitigation measure.

Final EISs

ERP No. F–AFS–J02016–MT, Badger-Two Medicine Area Exploratory Oil and Gas Wells Drilling, Leasing and Permit, Lewis and Clark National Forest, Rocky Mountain Ranger District, Pondera and Glacier Counties, MT.

Summary

EPA believes although the Forest Service responded to several concerns that was raised on the draft EIS, additional details regarding monitoring and a long-term commitment to monitoring should be provided.

ERP No. F–BLM–J61052–WY, Rock Springs Dsitrict Wilderness Study Areas (WSAs), Wilderness Recommendations, Designation or Nondesignation, Fremont, Lincoln, Sublette and Sweetwater Counties, WY.

Summary

EPA requested additional information on salinity control practices on the proposed Devils Playground-Twin Buttes Wilderness Study Areas.

ERP No. F–COE–E36156–KY, Mayfield Creek Flood Damage Reduction Plan, Implementation, Graves, McCracken, Ballard and Carlisle Counties, KY.

Summary

EPA concludes that an interagency team has been established to resolve environmental issues, e.g. destruction of bottomland hardwoods from deposition of excavated material. Resolution is expected in the immediate future.

ERP No. F–USN–C11006–NJ, Naval Weapons Station Earle Trestle Replacement, Construction and Section 10 Permit, Sandy Hook Bay, Colts Neck, Monmouth County, NJ.

Summary

EPA feels the final EIS answers concerns that was raised in the draft on spill prevention, containment, and countermeasures (SPCC) requirements. EPA has no objections to implementation of this project.

Dated: January 29, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91–2458 Filed 1–31–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3900–9]

Open Meeting; February 28 to March 1, 1991; Science Advisory Board Environmental Health Committee

Under Public Law 92–463, notice is hereby given that a meeting of the Environmental Health Committee of the Science Advisory Board will be held on February 28–March 1, 1991 in Dallas, Texas at the Loews Anatole (Milan Room) Hotel. The meeting will start at 1 p.m. on February 28, and at 8:30 a.m. on March 1, and will adjourn no later than 5 p.m. both days. The main purpose of this meeting is to review a Health Research Strategy for Complex Mixtures and documents concerning complex exposures research strategy.

Copies of the complex mixtures strategy may be obtained from Dr. Robert Dyer, HERL, MD–51A, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 and copies of the complex exposures research strategy may be obtained from Dr. Chris De Rosa, ECAD, U.S. Environmental Protection Agency, Cincinnati, OH 45268.

An Agenda for the meeting is available from Mary Winston, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection

Agency, Washington, DC 20460 (202–382–2552). Members of the public desiring additional information should contact Dr. C. Richard Cothern, Executive Secretary, Environmental Health Committee, by telephone at the number noted above or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC no later than c.o.b. February 14, 1991. Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Cothern by the date noted above. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: January 24, 1991.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 91–2426 Filed 1–31–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3901–1]

Underground Injection Control Program; Approval of Oxygen Activation Method Mechanical Integrity Test for Injection Well Classes I–V

AGENCY: Environmental Protection Agency.

ACTION: Notice of alternative method.

SUMMARY: Notice is given today that the Director of the Office of Drinking Water, U.S. Environmental Protection Agency, is granting approval for use of the Oxygen Activation (OA) tool to test fluid migration adjacent to the injection well bore as an alternative to those tests specified in the Code of Federal Regulations under 40 CFR 146.8(c). The Agency intends that this approval will apply to all classes of injection wells. This test is designated the Oxygen Activation Method.

DATES: This approval will become final on March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Smith; Office of Drinking Water (WH–550E), U.S. EPA, Washington, DC 20460, (202) 382–5586, or Jerry Thornhill, Robert S. Kerr Research Lab, U.S. EPA, P.O. Box 1198, Ada, Oklahoma 74820, (405) 332–8800.

SUPPLEMENTARY INFORMATION

I. Background

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300h, *et seq.*) is intended to protect underground sources of drinking water (USDWs) from contamination by underground injection. One of the cornerstones of the Underground Injection Control (UIC) program is the mechanical integrity of wells. Mechanical Integrity (MI) is defined as the absence of significant leaks in the casing, tubing or packer, and the absence of significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore. This movement can occur from either the injection zone or from other zones or aquifers. Acceptable methods of evaluating mechanical integrity are specified in 40 CFR 146.8 for State programs administered by EPA (direct implementation), and in the program applications of the States with primary enforcement responsibility (Primacy) for injection wells. Section 146.8(d) states that the Director may allow alternative mechanical integrity tests if the Administrator approves the alternative.

EPA granted interim approval for this test methodology for a two year period (October 26, 1988–October 26, 1990) in order to obtain more data on tool reliability and accuracy. This interim approval was published in the **Federal Register** for Monday, September 26, 1988 (FRL–3453–3). Interested parties were given the opportunity to comment and submit reference data on the Oxygen Activation Method. All comments were to be delivered to the EPA on or before April 26, 1990. Comments were received from a total of three interested parties—the U.S. Department of Interior, American Petroleum Institute (API), and Mobil Exploration & Producing U.S. Inc. Both Mobil and API expressed concerns that immediate approval of this test methodology might be premature. One concern was that the OA tool was still in the development stage and had not seen widespread commercial application. Another expressed concern was that the test might replace other currently approved alternative test procedures that they believed were equally effective and less costly.

Analysis of data submitted from numerous commercial tests and thirteen independent, carefully monitored tests at the U.S. EPA Mechanical Integrity Testing and Training Facility verified that the OA method is an accurate, empirical diagnostic technique. Over 70 field tests of the OA tool were conducted during the past two years. Reference data on the OA tool is available for the EPA-sponsored field tests and from the geophysical logging companies offering the service.

The Oxygen Activation Method is intended as an addition to the current inventory of approved alternative mechanical integrity tests. It is not intended as a replacement for currently approved methodologies. The OA test gives the UIC Director another, reliable, test alternative for ascertaining that fluid migration adjacent to the well bore is not occurring and that USDWs will not be endangered.

II. Description of the Testing Method

Presently, there are four (4) national testing methods approved for demonstrating the mechanical integrity of an injection well pursuant to 40 CFR 146.8(a)(2); the Temperature Log, the Noise Log, the Radioactive Tracer Survey (when the injection zone is separated from the lowermost USDW by a single confining layer), and cementing records. The use of cementing records is restricted to Class II and some Class III wells. The temperature log can be used to detect flow channels by identifying differences in temperature which are not consistent with the local geothermal gradient. The noise log detects acoustic signals generated by liquid or gas flows behind casing. The radioactive tracer survey detects fluid movement behind the casing by tagging injection fluids with short half-life radioactive tracers.

The EPA believes that for injection wells, the Oxygen Activation (OA) Method affords an additional, reliable, state-of-the-art for confirming the absence of, or detecting the presence of significant fluid movement through vertical channels adjacent to the well bore. It is especially valuable for detecting interformational flow.

The OA Method employs a measurement technique in which the stable isotope of oxygen (^{16}O) is temporarily converted to an unstable isotope (^{16}N) with a short half-life (7.13 seconds). This unstable nitrogen isotope acts as a radioactive tracer to enable measurement of the flow of water-bearing fluid past a series of detectors located in the tool.

Field operations are conducted with standard wireline geophysical logging equipment. The OA logging tool is lowered into the well to a pre-determined depth and held in a stationary position while individual readings are taken. A pulsed neutron source located in the body of the tool then is activated to bombard the oxygen molecules in the fluid behind the casing with energetic neutrons. The oxygen molecules are then "excited" and temporarily converted to the nitrogen isotope. During this nuclear conversion process, gamma rays are released. The generated gamma rays are measured by a dual detector system located in the tool. Computerized statistical analysis of the gamma ray emission patterns

permits the calculation of fluid flow velocities. Analysis of the velocity-related data allows the logging engineer to determine whether flow is occurring and in what direction the fluid is moving.

The Agency has determined that in order for the test to be accurate, pertinent geologic and well construction data must be known. Information needed prior to testing may vary depending on how the well is constructed. At a minimum, specific lithologic data from the top of the injection zone to the surface is required. This data is used to evaluate the contribution of naturally occurring background radiation to the total gamma radiation count detected by the tool. This data may be obtained by running an initial baseline Gamma Ray Log prior to taking the stationary readings with the OA tool. This step is essential due to the different type of natural radiation which is emitted from various geologic formations or zones, and because the natural radiation may change slightly over time. Also, prior to taking stationary readings, the OA tool should be properly calibrated in a predetermined "no flow" condition in order to ensure accurate, repeatable tool response.

III. Basis for Approval

EPA initially approved this test after evaluation of preliminary test results conducted in an instrumental test well facility at the Robert S. Kerr Research Laboratory in Ada, Oklahoma. Additional supporting documentation came from test data obtained from OA logging runs on numerous industry wells used for the production of hydrocarbons and the injection of water for the purpose of enhanced oil recovery. Other data supporting the validity of the OA logging technique were provided in the following technical documents:

(1) "PDK–100: A New Generation Pulsed Neutron Logging System", R.R. Randall, D.W. Oliver and E.C. Hopkinson, Proceedings of the Tenth European Formation Symposium, Aberdeen, Scotland, April 22–25, 1986.

(2) "The PDK–100 Enhances Interpretation Capabilities or Pulsed Neutron Capture Logs", R.R. Randall, D.W. Oliver and W.H. Fertl, Transactions of the SPWLA Twenty-Seventh Annual Logging Symposium, Houston, Texas, June 9–13, 1986.

(3) "Measuring Behind Casing Water Flow", T.M. Williams, Underground Injection Practices Council International Symposium on Subsurface Injection of Oilfield Brines, New Orleans, Louisiana, May 5–7, 1987.

(4) "Quantitative Monitoring of Water Flow Behind and In Wellbore Casing", D.M. Arnold and H.J. Paap, Journal of Petroleum Technology, January 1979, pp. 121–130.

In addition to the above information, the following issues were considered and carefully evaluated by EPA technical and research personnel:

(1) Unlike other approved methods for demonstrating mechanical integrity, pursuant to 40 CFR 146.8(a)(2), that are subject to interpretational opinion, the Oxygen Activation Method yields a more direct method of confirming zone isolation or communication without need for intensive interpretation. Independent testing verified that the OA log represents a better evaluation technique where interpretational problems are of critical concern.

Although the tool has additional capabilities (e.g., measuring volumetric flow rates), EPA is approving only the fluid movement applicability of the test in this notice.

(2) The Oxygen Activation Method can be used in well Classes I–V and can confirm zone isolation or communication without removal of the injection well's tubing and packer, in most cases. In addition, the method can be used in small diameter wells that do not contain tubing and packer.

Over 70 additional wells were logged using the OA tool during the two year interim approval period. These field tests were run under a variety of geologic and operating conditions. Wells were logged in the States of OH, MI, MS, NM, KS, NE, WI, UT, CO, IL, IN, OK, and TX. Furthermore, thirteen additional test runs were conducted at the U.S. EPA Mechanical Integrity Testing and Training Facility in Ada, OK. These tests verified tool capabilities and yielded accurate, repeatable results. There were no noted adverse effects caused by the influence of specific lithologies (e.g. shales, sandstones and limestones) or flow rates. Two of the largest oil field service companies now offer OA logging services. Both companies use tools that are comparable and produce measurements that provide analogous results in detecting the presence (or absence) of fluid flow behind the outermost casing string.

IV. Special Conditions

A. Limitations for Conducting the Oxygen Activation Method Mechanical Integrity Test

As previously mentioned, extensive testing and evaluation of this logging technique has been conducted by the EPA. Based upon this analysis, the following are prescribed limitations for conducting the Oxygen Activation Method mechanical integrity test:

(1) The Oxygen Activation Method has only been perfected by a limited number of commercial geophysical logging companies. Only those companies providing logging tools capable of detecting flow velocities of at least three (3) feet per minute shall be employed in demonstrating mechanical integrity pursuant to 40 CFR 146.8(a)(2). Individual UIC Directors can supply interested parties with a list of companies that provide acceptable OA logging services.

(2) Determination of injection zone isolation and/or fluid flow behind the pipe (i.e., flow that is not directly related to injection) will require that readings be taken at a minimum of three stations. Three (3) readings lasting 3–5 minutes shall be taken at each stationary position. This allows enough information to be gathered so that more precise results will be obtained. In some cases where results are inconclusive, additional readings over longer time periods may be required by the UIC Director. If the repeat measurements are identical or within the normal range of statistical error for the tool, then the measurement shall be accepted as accurate and valid.

(3) Demonstration of injection zone isolation also will require that the three (3) stations be located far enough above the top of the injection zone (at least 10 feet) that turbulence does not affect the readings. All readings should be taken with the well injecting fluid at the normal rate. The injection should be continuous with minimum rate and pressure fluctuations.

(4) Determination of flow behind the pipe will require that the stations be located at the base of each USDW, adjacent to the confining layer which isolates injection fluids from the injection zone, and at some point between the two locations.

(5) If any significant flow indication (e.g., < 3 ft./minute) is observed, the well shall fail the test, i.e., it does not establish mechanical integrity pursuant to requirements stated in 40 CFR 146.8(a)(2).

(6) The Oxygen Activation Method shall not be used in wells with pipe diameters less than $1^{11}/_{16}$ inches (inside diameter).

(7) The Oxygen Activation Method shall be used only for pipe diameters up to $13^{3}/_{8}$ inches.

B. Determination

The Oxygen Activation Method, subject to the conditions and procedures discussed in this notice, provides the necessary information to demonstrate reliably whether a well has significant fluid movement through vertical channels adjacent to the well bore.

EPA is approving this test for well Classes I through V in all States.

Dated: January 24, 1991.

Michael B. Cook,

Director, Office of Drinking Water.

[FR Doc. 91–2425 Filed 1–31–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–891–DR]

Indiana; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–891–DR), dated January 5, 1991, and related determinations.

DATED: January 23, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Indiana, dated January 5, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 5, 1991:

Daviess County for Individual Assistance and Public Assistance; and

The counties of Bartholomew, Clinton, Fayette, Gibson, Newton, Owen, Pike, Posey, St. Joseph, Selby, Starke, Tippecanoe, and Warran for Public Assistance. (Previously designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–2414 Filed 1–31–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–891–DR]

Indiana; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–891–DR), dated January 5, 1991, and related determinations.

DATED: January 18, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Indiana, dated January 5, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 5, 1991:

The counties of Martin, Randolph, and Spencer for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–2415 Filed 1–31–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–891–DR]

Indiana; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–891–DR), dated January 5, 1991, and related determinations.

DATED: January 22, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective January 22, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–2416 Filed 1–31–91; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

BB&T Financial 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 February 25, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire Gate City Federal Savings and Loan Association, Greensboro, North Carolina, and thereby engage in the traditional deposit taking and loan making activities of a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Great Lakes Financial Resources, Inc., and Great Lakes Financial Resources, Inc. Employee Stock Ownership Plan, both of Homewood,

Illinois; to acquire Allied Mortgage Corporation, Chicago, Illinois, and thereby engage in the soliciting and accepting mortgage applications, originating mortgage loans and selling mortgage loans to purchasers in the secondary market pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2383 Filed 1-31-91; 8:45 am]

BILLING CODE 6210-01-F

Farmers and Merchants Investment Co.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Farmers and Merchants Investment Co., Watertown, South Dakota; to engage *de novo* in making and servicing loans or other extensions of credit for its own account pursuant to § 225.25(b)(1) of the Board's Regulation Y. Specifically, Applicant proposes primarily to (1) Make loans to fund insurance premiums due by customers to insurance underwriters on policies sold by or through Applicant within a 50-mile radius of Watertown, South Dakota, and (2) make interim operating loans to its affiliates in the states of Iowa, Nebraska, and South Dakota.

Board of Governors of the Federal Reserve System, January 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2384 Filed 1-31-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 15¾% for the quarter ended December 31, 1990. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 23, 1991.

Dennis J. Fisher,

Deputy Assistant Secretary, Finance.

[FR Doc. 91-2330 Filed 1-31-91; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 91N-0028]

Drug Export; OncoScint® CR103 With Sodium Acetate Solution, 0.5M

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cytogen Corp., has filed an application requesting approval for the export of the biological product OncoScint® CR103 with Sodium Acetate Solution, 0.5M to Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxembourg, The Netherlands, Spain, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cytogen Corp., 600 College Rd., East, Princeton, NJ 08540, has filed an application requesting approval for the export of the biological product OncoScint® CR103 with Sodium Acetate Solution, 0.5M to Belgium, Demark, Federal Republic of Germany, France,

Ireland, Italy, Luxembourg, The Netherlands, Spain, and The United Kingdom. OncoScint® CR103 with Sodium Acetate Solution, 0.5M is indicated as a diagnostic imaging agent for determining the presence and extent of malignant disease in patients with proven or suspected primary or recurrent colorectal adenocarcinoma. The application was received and filed in the Center for Biologics Evaluation and Research on December 19, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevent information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 11, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: January 23, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-2381 Filed 1-31-91; 8:45 am]

BILLING CODE 4160-01-M

Request for Nominations for Voting Members on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the medical devices advisory committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur during the next 18 months.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae for the panels shall be sent to Gordon C. Johnson, Center for Devices and Radiological Health (HFZ-70), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850.

All nominations and curricula vitae for the Device Good Manufacturing Practice Advisory Committee shall be sent to Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Kay Levin, Center for Devices and Radiological Health (HFZ-20), Food and Drug Administration, 12720 Twinbrook Pkwy., Rockville, MD 20857, 301-443-4016.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for vacancies listed below. If specific expertise is not indicated, individuals should have expertise relevant to the field of activity of the committee or panel.

1. *Anesthesiology and Respiratory Therapy Devices Panel:* One vacancy occurring December 1, 1991; anesthesiologists, neonatologists, or respiratory therapy experts.

2. *Circulatory System Devices Panel:* One vacancy occurring July 1, 1991, four vacancies occurring July 1, 1992; cardiologists with pacemaker experience, cardiothoracic surgeons, or vascular surgeons.

3. *Clinical Chemistry and Clinical Toxicology Devices Panel:* One vacancy occurring immediately, four vacancies occurring March 1, 1992; doctors of medicine or philosophy experienced with clinical chemistry, clinical toxicology, therapeutic drug monitoring, or genetic disease diagnostic devices.

4. *Dental Products Panel:* Two vacancies occurring immediately, two vacancies occurring November 1, 1991; individuals with expertise in dental devices and/or materials, oral microbiology, plaque-related periodontal disease, and dental plaque accumulation and control.

5. *Device Good Manufacturing Practice Advisory Committee:* One vacancy occurring June 1, 1991; one representative from Federal, State, or local government. Areas of committee interest include quality assurance in medical device manufacturing including application of the current good manufacturing practice regulation to the production of computerized devices and in vitro diagnostics as well as problems associated with the use of medical devices.

6. *Ear, Nose, and Throat Devices Panel:* One vacancy occurring immediately, one vacancy occurring November 1, 1991; audiologists or otolaryngologists with knowledge of cochlear implants, implantable hearing aids, and/or auditory electrophysiology.

7. *Gastroenterology-Urology Devices Panel:* One vacancy occurring immediately, three vacancies occurring January 1, 1992; rheumatologists, gastroenterologists, or urologists.

8. *General Hospital and Personal Use Devices Panel:* Two vacancies occurring January 1, 1992; neurosurgeons or surgical oncologists with experience in the use of implanted drug infusion devices (e.g., pumps, ports), general practitioners or internists, endocrinologists with experience in diabetes management.

9. *Hematology and Pathology Devices Panel:* Two vacancies occurring March 1, 1991, one vacancy occurring March 1, 1992; individuals involved in the practice of medicine or clinical laboratory science familiar with clinical hematology and biotechnology.

10. *Immunology Devices Panel:* One vacancy occurring immediately, two vacancies occurring March, 1991, two vacancies occurring March 1, 1992; immunologists with experience in allergies, or medical oncologists with experience in tumor diagnosis and treatment.

11. *Microbiology Devices Panel:* One vacancy occurring March 1, 1991, one vacancy occurring March 1, 1992; disease clinicians or individuals with expertise in antimicrobial susceptibility testing devices, and/or virology testing devices, and/or biotechnology.

12. *Neurological Devices Panel:* One vacancy occurring immediately, three vacancies occurring December 1, 1991; neurosurgeons with interest in medical devices or neurologists.

13. *Obstetrics-Gynecology Devices Panel:* Two vacancies occurring February 1, 1991, three vacancies occurring February 1, 1992; individuals with expertise in maternal-fetal medicine, instrumentation, contraceptive studies, laparoscopic and hysteroscopic procedures, and/or infertility procedures.

14. *Ophthalmic Devices Panel:* Two vacancies occurring November 1, 1991; ophthalmologists or optometrists.

15. *Orthopedic and Rehabilitation Devices Panel:* One vacancy occurring September 1, 1991; orthopedic surgeons with expertise in joint structure and function, prosthetic ligament devices, or joint biomechanics and implants, or spinal instrumentation physical therapists with experties in spinal cord injuries, neurophysiology, electrotherapy, and joint biomechanics.

16. *Radiological Devices Panel:* Two vacancies occurring immediately, three vacancies occurring February 1, 1991; radiologists, radiation oncologists, oncologists expert in hyperthermia, hyperthermia specialists, or physicists/researchers.

Functions

Medical Devices and Dental Products Panels

The functions of the panels are to (1) Review and evaluate available data concerning the safety and effectiveness of the marketed and investigational devices, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to heath associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

The Dental Products Panel will also function at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded. The panel also evaluates and recommends whether various prescription drug products should be changed to over-the-counter status. The panel also evaluates data and makes recommendations concerning the approval of new drug products of human use.

Device Good Manufacturing Practice Advisory Committee

The function of the Device Good Manufacturing Practice Advisory Committee is to review regulations for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines (e.g., Guideline on General Principles of Process Validation) developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Qualifications

Medical Devices and Dental Products Panels

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are shown above. The term of office is between 3 and 4 years, depending on the appointment date.

Device Good Manufacturing Practice Advisory Committee

Persons nominated for membership on the Device Good Manufacturing Practice Advisory Committee should have expertise in any one or more of the following areas: quality assurance concerning manufacturing of medical devices and/or sterilization of medical devices during the manufacturing process. In addition, nominees should have experience with the use and application of medical devices. The particular needs for this committee are shown above. The term of office is between 3 and 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees or panels. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR part 14, relating to advisory committees.

Dated: January 28, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–2379 Filed 1–31–91; 8:45 am]

BILLING CODE 4160–01–M

Request for Nominations for Representatives of Consumer and Industry Interests on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for consumer and industry representatives to serve on certain public advisory committees or panels in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and for those that will or may occur during the next 18 months. FDA has a special interest in ensuring that women, minority groups, the physically handicapped, and small businesses are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates, and nominations from small businesses that

manufacture medical devices subject to the regulations.

DATES: Nominations should be received by April 2, 1991, for vacancies listed in this notice.

ADDRESSES: All nominations and curricula vitae for consumer representatives shall be submitted in writing to Catherine P. Beck (address below).

All nominations and curricula vitae (which includes nominee's office address and telephone number) for industry representatives shall be submitted in writing to Kay Levin (address below).

FOR FURTHER INFORMATION CONTACT:

For Consumer Interests: Catherine P. Beck, Office of Consumer Affairs (HFE–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

For Industry Interests: Kay Levin, Center for Devices and Radiological Health (HFZ–20), Food and Drug Administration, 12720 Twinbrook Pkwy., Rockville, MD 20857, 301–443–4016.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members representing consumer and industry interests for the following vacancies listed below:

Committee or panel	Approximate date representative is needed	
	Consumer	Industry
1. Clinical Chemistry and Clinical Toxicology Devices Panel.	NV	Mar. 1, 1992.
2. Dental Products Panel:		
Nonprescription drugs.	NV	Nov. 1, 1991.
Comestic	NV	Nov. 1, 1991.
3. Device Good Manufacturing Practice Advisory Committee.	June 1, 1992	June 1, 1992.
4. Ear, Nose, and Throat Devices Panel.	NV	Nov. 1, 1991.
5. Gastroenterology-Urology Devices Panel.	NV	Jan. 1, 1992.
6. Hematology and Pathology Devices Panel.	NV	Mar. 1, 1992.
7. Immunology Devices Panel.	NV	Mar. 1, 1992.
8. Neurological Devices Panel.	NV	Dec. 1, 1991.

NV=No vacancy.

Function

Medical Devices and Dental Products Panels

The functions of the medical devices and dental products panels are to (1) review and evaluate available data concerning the safety and effectiveness of marketed and investigational devices, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

The Dental Products Panel will also function at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, including the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded. The panel also evaluates and recommends whether various prescription drug products should be changed to over-the-counter status. The panel also evaluates data and makes recommendations concerning the approval of new drug products for human use.

Device Good Manufacturing Practice Advisory Committee

The function of the Device Good Manufacturing Practice Advisory Committee is (1) to review regulations for promulgation regarding current good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and (2) to make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines (e.g., Guideline on General Principles of Process Validation) developed to assist the medical device industry in meeting the current good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Consumer and Industry Representation

Medical Devices and Dental Products Panels

Section 513 of the Medical Device Amendments of 1976 (21 U.S.C. 360c) provides that each medical devices panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the device manufacturing industry.

The charter for the Medical Devices Advisory Committee that was approved October 27, 1990, by the Acting Commissioner of Food and Drugs provides for three nonvoting industry representatives on the Dental Products Panel (one each to represent the medical device industry, the nonprescription drug industry, and the cosmetic industry). No more than one representative of industry interests shall participate in the panel review of a particular matter or application.

Device Good Manufacturing Practice Advisory Committee

Section 520 of the Medical Device Amendments of 1976 (21 U.S.C. 360j) provides that the Device Good Manufacturing Practice Advisory Committee include as members two voting representatives of the general public and two voting representatives of interests of the device manufacturing industry.

Nomination Procedures

Consumer Representatives

Any interested person may nominate one or more qualified persons as a

member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is between 3 and 4 years, depending on the appointment date.

Industry Representatives

Medical Devices and Dental Products Panels

Any organization in the medical device or dental products manufacturing industry ("industry interests") wishing to participate in the selection of an appropriate member of a particular panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industrial representatives for the panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process.

Nominees shall be full-time employees of firms that manufacture products that would come before the panel, trade associations, or consulting firms that represent manufacturers. Nominations shall include a complete curriculum vitae of each nominee. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is between 3 and 4 years, depending on the appointment date.

Device Good Manufacturing Practice Advisory Committee

Any interested person may nominate one or more qualified persons to represent industry interests on those committees as identified in this notice. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee. The term of office is between 3 and 4 years, depending on the appointment date.

Selection Procedures

Consumer Representatives

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for screening, interviewing, and recommending candidates for the agency's or department's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Industry Representatives

Medical Devices or Dental Products Panels

Regarding nominations for members representing the interests of industry on the medical devices or dental products panels, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for that particular panel within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

Device Good Manufacturing Practice Advisory Committee

Regarding nominations for persons to represent industry interests on these committees, they shall be forwarded to the office of the Commissioner of Food and Drug for final selection.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: January 28, 1991.

Alan L. Hoeting,

Acting Associate Commissioner, for Regulatory Affairs.

[FR Doc. 91-2380 Filed 1-31-91; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health National Advisory Board on Medical Rehabilitation Research; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6), the Acting Director, National Institutes of Health (NIH), announces the establishment of the National Advisory Board on Medical Rehabilitation Research.

This Board will advise the Director, NIH; Director, National Institute of Child Health and Human Development; and the Director, National Center for Medical Rehabilitation Research on matters and policies relating to the Center's medical rehabilitation research and training programs. The Board will review and assess Federal research priorities, activities, and findings regarding medical rehabilitation research and shall advise on the provisions of the statute-required comprehensive plan for the conduct and support of medical rehabilitation research.

Unless renewed by appropriate action prior to its expiration, the National Advisory Board on Medical Rehabilitation Research will terminate two years from the date of establishment.

Dated: January 28, 1991.

Joseph E. Rall,

Acting Director, National Institutes of Health.

[FR Doc. 91-2459 Filed 1-31-91; 8:45 am]

BILLING CODE 4140-01-M

Establishment of the National Toxicology Program Board of Scientific Counselors

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) and section 222 of the Public Health Service Act, as amended (42 U.S.C. 217a), the Acting Director, National Toxicology Program, announces the reestablishment by the Secretary, Department of Health and Human Services, of the National Toxicology Program Board of Scientific Counselors.

The National Toxicology Program Board of Scientific Counselors is a technical advisory body established to advise the National Toxicology Program Executive Committee and Program Director on matters relating to the scientific program content and to evaluate the scientific merits of the

intramural and collaborative programs of the National Toxicology Program.

Unless renewed by appropriate action prior to expiration, the National Toxicology Program Board of Scientific Counselors shall terminate two years from the reestablishment date.

Dated: January 28, 1991.

David G. Hoel,

Acting Director, National Toxicology Program.

[FR Doc. 91-2369 Filed 1-31-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of Basic Sciences II Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Basic Sciences II Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on February 26, 1991 at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

The meeting will be open to the public from 9 a.m. to 9:30 a.m. on February 26 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until adjournment on February 26. These applications, proposals, and discussions could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Responses, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Allen Stoolmiller, Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, Room 3A11, Bethesda, Maryland 20892, telephone (301-496-7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: January 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-2460 Filed 1-31-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of NIDR Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Special Grants Review Committee, National Institute of Dental Research, February 12-13, 1991, in Conference Room 8, Building 31C, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 8:30 to 9 a.m. on February 12 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on February 12, from 9 a.m. to recess and on February 13, from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Dr. Ethel B. Jackson, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, room 519, Bethesda, MD 20892, (telephone 301/496-7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13-122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13-845—Dental Research Institute; National Institutes of Health.)

Dated: January 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-2461 Filed 1-31-91; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 6-7, 1991, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on March 6 will be open to the public from 8:30 to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting on March 6 will be closed to the public for the review, discussion, and evaluation of individual grant applications from approximately 11 a.m. to 5 p.m., and on March 7, from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: January 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-2462 Filed 1-31-91; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on February 28-March 1, 1991, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Subcommittees will meet on February 27 as follows:

The Extramural Programs Subcommittee, 5th-floor Conference Room, Building 38A, 1:30 to approximately 3 p.m., and the Planning Subcommittee, Conference Room B, Building 38, 3 to approximately 4 p.m. The Extramural Programs Subcommittee will be closed to the public.

The meeting of the Board will be open to the public from 9 to approximately 4:35 p.m. on February 28 and fro 9 to adjournment on March 1 for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the entire meeting of the Extramural Programs Subcommittee on February 27 will be closed to the public, and the regular Board meeting on February 28 will be closed from approximately 4:35 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number : 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: January 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-2463 Filed 1-31-91; 8:45am]

BILLING CODE 4140-01-M

Public Health Service

Advisory Committee on the Food and Drug Administration; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Advisory Committee on the Food and Drug Administration (FDA) will hold a subcommittee meeting on Thursday, February 28, 1991, from 8 a.m. to 4 p.m. The meeting is open to the public and will be held in the Diplomat and Consulate rooms of the Embassy Suites Hotel located at 1250 22nd Street NW., Washington, DC 20037. Public registration will begin one half hour prior to the beginning of the meeting.

The Advisory Committee is under a mandate to present to the Secretary of Health and Human Services, and the Assistant Secretary for Health, a report on the mission, responsibilities, and structure of the Food and Drug Administration including recommendations for enhancing the Agency's effectiveness. The report is due no later than May 17, 1991.

During the February 28 meeting, the subcommittee responsible for preparing a discussion draft of the Committee's Final Report will review and revise draft chapters of that report. The topics slated for discussion include:

- FDA's Mission and Goals;
- New Legislative Demands on FDA;
- Authority and Status;
- Management Systems;
- Enforcement and Compliance;
- Resources (including personnel, facilities, and research); and
- Center-Specific Issues (including national uniformity and international harmonization).

The results of this meeting will be used to develop a draft report for consideration by the full Advisory Committee in mid-April.

FOR FURTHER INFORMATION CONTACT: Beth Schwartz, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, room 740-G, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Telephone number (202) 245-7305.

Dated: January 28, 1991.

Eric M. Katz,

Executive Secretary, Advisory Committee on the FDA.

[FR Doc. 91-2390 Filed 1-31-91; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on January 18, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package.)

1. Application for Special Age 72-or-Over Monthly Payments—0960-0096—The information on form SSA-19 is used by the Social Security Administration to determine if an individual is entitled to special age 72 payments. The respondents are claimants who are not eligible for regular Social Security benefits.

Number of Respondents: 250.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 41 hours.

2. You Can Make Your Payment By Credit Card, You Can Make Your Payment By Credit Card—0960-0462—The information collected on the forms SSA-4588/4589 is needed for the Social Security Administration and certain banks in order that title II debtors may repay overpayments via credit cards. The affected public is comprised of overpaid title II beneficiaries.

Number of Respondents: 160,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 13,333

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 25, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-2296 Filed 1-31-91; 8:45 am]

BILLING CODE 4910-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-10]

Federal Property Suitable as Facilities to Assist Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: February 1, 1991.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will not longer be available.

Second, if the landholding agency declares the property excess to the agency's need, the property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-,10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; room 1E671 Pentagon, Washington, DC 20360-2600; (202) 693-4583; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067. (These are not toll-free numbers.)

Dated: January 24, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable Land (by State)

Georgia

Tract L-1124
Portion of Jim Woodroff Reservoir
Lake Seminole, Cheney Griffin Park
Bainbridge, GA *Co:* Bainbridge,
Landholding agency: GSA
Property number: 549110003
Status: Excess
Comment: 3.67 acres; most recent use—city park; 40-year lease restriction with city.
GSA NO. 4-D-GA-570-B

New York

Glenmont Job Corp Center
Route 144
Glenmont, NY *Co:* Albany
Landholding agency: GSA
Property number: 549110004
Status: Excess
Comment: Approximately 100 acres of open land; potential utilities.
GSA NO. 2-L-NY-802

South Carolina

Marine Corps Recruit Depot
Route 281, State Route 802/281 at Battery Creek Park
Beaufort, SC *Co:* Beaufort
Landholding agency: GSA
Property number: 549110005
Status: Surplus
Comment: 6 acres with improvements; limited utilities; easement restrictions; most recent use—park.
GSA NO. 4-GR-SC-475-E

Suitable Buildings (by State)

Arkansas

Residence
101 Shore Drive
Hot Springs National Park
Hot Springs, AR *Co:* Garland
Landholding agency: GSA
Property number: 549110006
Status: Unutilized
Comment: 1213 sq. ft.; one story wood frame residence; off-site use only.
GSA NO. 7-I-AR-415-V

Residence
103 Ullman
Hot Springs National Park
Hot Springs, AR *Co:* Garland
Landholding agency: GSA
Property number: 549110007
Status: Unutilized
Comment: 616 sq. ft., one story wood frame residence; off-site use only.
GSA No. 7-I-AR-415-V

Residence
404 Pullman Avenue
Hot Springs National Park
Hot Springs, AR *Co:* Garland
Landholding agency: GSA

Property number: 549110008
Status: Unutilized
Comment: 1186 sq. ft.; one story wood frame residence; off-site use only.
GSA NO. 7–I–AR–415–V

Residence
126 Sleepy Valley Road
Hot Springs National Park
Hot Springs, AR *Co:* Garland
Landholding agency: GSA
Property number: 549110009
Status: Unutilized
Comment: 1124 sq. ft.; one story wood frame residence; off-site use only.
GSA NO. 7–I–AR–415–V

[FR Doc. 91–2202 Filed 1–31–91; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–968–4230–15; AA–6661–A, AA–6661–B, AA–6661–D, AA–6661–G]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision approving lands for conveyance to Eklutna, Inc., notice of which was published in the **Federal Register** on July 25, 1985, in vol. 50, No. 143, pp. 30306–30307, is modified by adding sec. 15, T. 16N., R. 1 E., Seward Meridian, to item No. 17 on page 10.

Notice of the modified decision will be published once a week, for our (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the modified decision may be obtained by contacting: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue #13, Anchorage, Alaska 99513–7599.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until March 4, 1991 to file an appeal on the issue in the modified decision. However, parties receiving service by certified mail shall have thirty days from the date of receipt to file an appeal.

Appeals must be filed with the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given July 25, 1985, is final.

Ramona Chinn,
Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 91–2352 Filed 1–31–91; 8:45 am]
BILLING CODE 4310–JA–M

[AK–968–4230–15; AA–6707–D]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision approving lands for conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Tyonek Native Corporation for approximately 8,708 acres. The lands involved are in T. 12N., R. 11 W., Seward Meridian, located in the vicinity of Tyonek, Alaska.

Notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until March 4, 1991 to file an appeal. However, parties receiving service by certified mail shall have thirty days from the date of receipt to file an appeal. Appeals must be filed with the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Ramona Chinn,
Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 91–2353 Filed 1–31–91; 8:45 am]
BILLING CODE 4310–JA–M

[NV–930–01–4212–24]

Emergency Closure of Public Lands; Churchill County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: This Notice supercedes emergency closure notices published in the **Federal Register** on November 20, 1989 and December 14, 1989, for the closure of approximately 31,720 acres of public lands adjacent to Bravo-16, Bravo-19 and Bravo-17 Bombing Ranges, respectively. These notices were issued to ensure public safety and to allow the U.S. Navy to conduct extensive surface sweeps of areas known to be contaminated by live and inert ordnance and areas suspected of being contaminated. This closure notice represents those lands that remain contaminated following the final sweep and disposal effort by the U.S. Navy. Notice therefore is hereby given that selected public lands adjacent to Bravo-16, Bravo-17 and Bravo-19 Bombing Ranges are closed to all public access to ensure public safety, until further notice.

DATES: This closure goes into effect on February 1, 1991, and shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Mike Phillips, Area Manager, Lahontan Resource Area, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6100.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8364.1. Any person who fails to comply with this closure order is subject to arrest and fine of up to $1,000.00 and/or imprisonment not to exceed 12 months. The public lands affected by this closure are described as follows:

Public Lands Adjacent to Bravo-16

Mt. Diablo Meridian

T. 17 N., R. 28 E.,
Sec. 21, all.
T. 18 N., R. 28 E.,
Sec. 30, lots 1–4, NE¼, E½NW¼, E½SW¼, SE¼;
Sec. 31, lots 1–4, NE¼, E½NW¼, E½SW¼, SE¼.

Aggregating Approximately 1889 Acres.

Public Lands Adjacent to Bravo-19

Mt. Diablo Meridian

T. 15 N., R. 30 E.,
Sec. 1, lots 2–4, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 2, lots 1–4, S½N½, S½;
Sec. 11, all;
Sec. 12, W½E½, W½;
Sec. 13, W½E½, W½;
Sec. 14, all;
Sec. 23, all;
Sec. 24, W½E½, W½.
T. 16 N., R. 30 E.,
Sec. 32, SE¼;
Sec. 33, S½;
Sec. 34, S½;
Sec. 35, S½.

Aggregating Approximately 5490 Acres.

Public Lands Adjacent to Bravo-17

Mt. Diablo Meridian

T. 15 N., R. 33 E.,
Secs. 1–4, all;
Sec. 5, NE¼, E½NW¼;
Sec. 9, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 10, N½, N½S½, E½SW¼SW¼, SE¼SW¼, S½SE¼;
Sec. 11, all;
Sec. 12, all;
Sec. 13, N½, N½S½, NE¼SE¼SW¼, N½S½SE¼, SE¼SW¼SE¼, S½SE¼ SE¼;
Sec. 14, NE¼, NE¼NW¼, N½NW¼ NW¼, N½SE¼NW¼, NE¼SE¼.
T. 16 N., R. 33 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, S½; that portion south of U.S. Hwy. 50;
Sec. 2, lots 1 and 2, S½N½, that portion south of U.S. Hwy. 50, E½SE¼;
Sec. 3, S½NE¼, that portion south of U.S. Hwy. 50;
Sec. 11, NE¼NE¼, E½NW¼NE¼;
Sec. 29, W½, SE¼;
Sec. 32, NE¼, NE¼SE¼;
Sec. 33, NW¼, N½SW¼, SE¼SW¼, SE¼.
T. 16 N., R. 33 ½ E.,
Sec. 1, that portion south of U.S. Hwy. 50.
T. 15 N., R. 34 E.,
Sec. 4, W½W½;
Secs. 5–8, all;
Sec. 9, W½W½;
Sec. 16, W½W½;
Secs. 17–18, all;
Sec. 19, NE¼, NE¼NW¼, N½NE¼SE¼, SE¼NE¼SE¼; NE¼NW¼SE¼;
Sec. 20, N½,SW¼, N½SE¼;
Sec. 21, W½NW¼, NW¼SW¼.
T. 16 N., R. 34 E.,
Sec. 4, W½, that portion south of U.S. Hwy. 50;
Sec. 5, that portion south of U.S. Hwy. 50;
Sec. 6, that portion south of U.S. Hwy. 50;
Sec. 8, E½, E½W½, E½E½W½W½, excepting therefrom any patented mining claims;
Sec. 9, W½, excepting therefrom any patented mining claims;
Sec. 16, W½, excepting therefrom any patented mining claims;
Sec. 17, E½NE¼, NW¼NE¼, N½NW¼, NE¼SW¼, S½SW¼, N½SE¼, excepting therefrom Navy withdrawn lands and any patented mining claims;
Sec. 20, W½NE¼, SE¼NE¼, E½W½, E½E½W½W½, SE¼, excepting therefrom any patented mining claims;
Sec. 21, E½W½, W½SW¼, excepting therefrom any patented mining claims;
Sec. 28, W½;
Sec. 29, E½, E½W½, E½E½W½W½;
Sec. 32, E½, E½W½, E½E½W½W½;
Sec. 33, W½.

Aggregating Approximately 17, 085 Acres.

Dated this 24th day of January 1991.

Kelly M. Madigan,

Acting District Manager, Carson City District.

[FR Doc. 91–2387 Filed 1–31–91; 8:45 am]

BILLING CODE 4310–HC–M

[ID–030–01–4212–13]

Intent to Prepare a Planning Amendment to the Big Desert Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Planning Amendment to the Big Desert Management Framework Plan.

SUMMARY: The following described public land in Bingham County, Idaho will be examined for possible disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T. 1 S., R. 36 E., sec. 34, lot 15.

Total Selected Public Land 3.69 acres.

If the lands are found to be suitable for disposal, the United States will acquire by exchange the following described private land of equal value from Jeff Stieglitz (IDI–27705):

Boise Meridian, Idaho

T. 2 S., R. 36 E.,
Sec. 3, Lot 4 (portion).

Total Offered Private Land 5.00 acres.

For a period of 30 days from the date of publication of this Notice, interested parties may submit comments to LeRoy Cook, Big Butte Area Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Dated: January 23, 1991.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 91–2354 Filed 1–31–91; 8:45 am]

BILLING CODE 4310–GG–M

[ID–030–01–4212–13]

Intent To Prepare a Planning Amendment to the Little Lost/Birch Creek Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Planning Amendment to the Little Lost/Birch Creek Management Framework Plan.

SUMMARY: The following described public land in Butte County, Idaho will be examined for possible disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T. 8 N., R. 28 E.,
Sec. 31, lots 3 and 4, E½SW¼.
T. 7 N., R. 27 E.,
Sec. 1, lots 1 to 5, inclusive, S½N½.
T. 7 N., R. 28 E.,
Sec. 5, W½SW¼;
Sec. 6, lots 1 to 5, inclusive, SE¼NW¼, S½ NE¼, NE¼SE¼;
T. 5 N., R. 29 E.,
Sec. 5, SE¼NE¼;
Sec. 14, S½SE¼.

Total Selected Public Lands 1037.16 acres.

If the lands are found to be suitable for disposal, the United States will acquire by exchange the following described private land of equal value from Jerry Pancheri (IDI–27422):

Boise Meridian, Idaho

T. 9 N., R. 27 E.,
Sec. 20, NE¼NE¼;
Sec. 28, NW¼NE¼.
T. 9 N., R. 26 E.,
Sec. 19, SE¼;
Sec. 20, SW¼;
Sec. 30, NE¼, NE¼SE¼.
T. 11 N., R. 26 E.,
Sec. 33, W½NE¼, NE¼NW¼, SE¼;
Sec. 32, NE¼.

Total Offered Private Land 1040 acres.

For a period of 30 days from the date of publication of this Notice, interested parties may submit comments to LeRoy Cook, Big Butte Area Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Dated: January 18, 1991.

Gary L. Bliss,

Acting District Manager.

[FR Doc. 91–2355 Filed 1–31–91; 8:45 am]

BILLING CODE 4310–GG–M

[CA–060–01–4410–04–ADVB]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session Thursday, February 21, 1991 from 8 a.m. to 5 p.m., and Saturday, February 23, 1991, from 8 a.m. to 5 p.m., in the Comfort Inn meeting room at 8000 Parkway Drive in La Mesa, California.

Agenda items for the meeting will include:

—Introduction of the new Desert District Advisory Council members and election of Council Chairperson and Vice Chairperson.
—Desert tortoise issues, including an update on sheep and cattle grazing section 7 consultation. (The California Desert District Advisory Council functions as the Desert Tortoise Coordinating Committee during this portion of the meeting).

—An update from the California Desert District's Futuring Committee, including a utility corridor report.
—A report on and discussion of the Draft South Coast Resource Management Plan, the major focal point for this Advisory Council meeting.
—A briefing on the content of and schedule for the California Desert Conservation Area Plan Amendments Environmental Assessment; and on the Recreation and Desert Tortoise Management Amendments Environmental Impact Statement.

On Wednesday, February 20, members of the Council may take part in an optional field tour, which will depart from the California Desert District office in Riverside (1695 Spruce Street) at 8 a.m. Participants will travel on back roads through Riverside County to review issues related to recreation, livestock grazing, Recreation and Public Purposes Act leases, and land development. The tour will conclude in La Mesa at approximately 5 p.m.

On Friday, February 22, from 7:30 a.m. to 5 p.m., Council members will participate in an additional field tour of the South Coast region. This tour will focus on the border region of San Diego County, including the large block of public land at Otay Mountain. The tour will assemble at the Comfort Inn, 8000 Parkway Drive in La Mesa on Friday morning at 7:15 a.m.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

The public is welcome to participate in the field tours, but should plan on providing their own transportation, drinks, and lunch. Anyone interested in participating in the tours should contact BLM as (714) 276–6383 for more information.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 1695 Spruce Street, Riverside, California 92507; (714) 726–6383.

Dated: January 24, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91–2356 Filed 1–31–91; 8:45 am]

BILLING CODE 4310–40–M

[AZ–020–4332–02]

Phoenix District Advisory Council, Lower Gila-Phoenix Grazing Advisory Board and Kingman Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of tour scheduled for Phoenix District Advisory Council, Lower Gila-Phoenix Grazing Advisory Board, Kingman Grazing Advisory Board.

DATES: March 8, 1991.

ADDRESSES: 2015 West Deer Valley Road, Phoenix, Arizona

SUMMARY: The Phoenix District Advisory Council, Lower Gila-Phoenix Grazing Advisory Board and Kingman Grazing Advisory Board of the Bureau of Land Management will meet March 8 at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, at 7:30 a.m. From there they will depart for a tour of the Santa Maria Ranch Allotment, located approximately 30 miles north of Wickenburg, Arizona.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management welcomes the participation of any interested member of the public. Members of the public wishing to join the tour should contact Anna Maria Adamo of the Phoenix District Office at (602) 863–4464 for more information. Depending upon how many people request to attend the tour, interested persons may be asked to provide their own transportation.

Dated: January 22, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91–2388 Filed 1–31–91; 8:45 am]

BILLING CODE 4310–32–M

[Docket No. CA–050–09–4212–11; CA 26594]

Realty Action Shasta County, CA; Correction

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Correction to Notice of Realty Action; Realty Action; Shasta County, California.

SUMMARY: The Notice of Realty Action published on Friday, November 23, 1990, in Volume 55, No. 226 of the **Federal Register**, Page 48916, is hereby corrected as follows:

The legal description should read "Sec. 14, lot 16, portion of; lots 17, 20, 21 * * *" instead of "* * * Sec. 14, lot 16; portion of lots 17, 20, 21, * * *." Also, the first aliquot part description in line 6 of the legal description should read "E1/2SE1/4" not "E1/4SE1/2".

FOR FURTHER INFORMATION CONTACT: Mark Morse, Area Manager, (916) 246–5325.

Mark T. Morse,

Area Manager.

[FR Doc. 91–2357 Filed 1–31–91; 8:45 am]

BILLING CODE 4310–40–M

[ID–030–01–4212–11]

Intent To Prepare a Planning Amendment to the Pocatello Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Pocatello Resource Management Plan.

SUMMARY: The following described lands in Bannock County, Idaho were returned to federal ownership (BLM) from the State of Idaho, Department of Parks and Recreation. The Bureau of Land Management will prepare a plan amendment for the long-term management of the newly acquired lands.

Boise Meridian, Idaho

T. 7 S., R. 36 E.,
  Sec. 34, E½SE¼.
T. 8 S., R. 36 E.,
  Sec. 2, lot 4, SW¼NW¼, W½SW¼;
  Sec. 3, lot 1, S½NE¼, E½SE¼SW¼, SE¼;
  Sec. 10 NE¼, E½E½NW¼, N½SE¼, E½SW¼SE¼, SE¼SE¼;
  Sec. 11, W½W½;
  Sec. 14, W½;
  Sec. 15, NE¼NE¼, E½SE¼NE¼, E½E½SE¼;
  Sec. 22, E½NE¼NE¼, SE¼NE¼, E½SE¼, E½NW¼SE¼;
  Sec. 23, NW¼, W½SW¼;
  Sec. 26, NW¼NW¼, S½NW¼, SW¼;
  Sec. 27, E½NE¼;
  Sec. 34, SE¼NE¼, NE¼SE¼, N½SE¼SE¼, SE¼SE¼SE¼;
  Sec. 35, W½, SW¼NE¼, W½SE¼.
T. 9 S., R. 36 E.,
  Sec. 2, lots 3, 4, and 5, S½N½, SE¼SW¼, N½SW¼.

Total Acquired Public Lands 3,137.54 acres.

Among the management options to be addressed is a Recreation & Public Purpose application from the Boy Scouts of America (IDI–27984) for 668 acres in the following described public lands.

Boise Meridian, Idaho.

T. 8 S., R. 36 E.,
  Sec. 26, W½W½SW¼;
  Sec. 27, E½SE¼;
  Sec. 34, E½E½;

Sec. 35, W½W½, SE¼SW¼.
T. 9 S., R. 36 E.,
Sec. 2, lot 5, SW¼NW¼, SW¼SW¼, E½ W½;
Sec. 3, lot 1.

For a period of 30 days from the date of publication of this Notice, interested parties may submit comments to Wallace Evans, Pacatello Area Manager, Bureau of Land Management, Federal Building, 250 South 4th, room 172, Pocatello, Idaho 83201.

Dated: January 22, 1991.

Lloyd H Ferguson,

District Manager.

[FR Doc. 91–2358 Filed 1–31–91; 8:45 am]

BILLING CODE 4310–GG–M

[G–910–G1–0411–4214–11; NMNM 1004]

Proposed Continuation of Withdrawal, Amendment; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notice.

SUMMARY: The Proposed Continuation of Withdrawal of 620.39 acres for the Bureau of Reclamation published in the **Federal Register** on May 14, 1985, is amended as outlined in the supplementary information listed below.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504, 505–988–6071.

SUPPLEMENTARY INFORMATION: The **Federal Register** notice appearing in **Federal Register** Document 85–11557, published at Page 20137 in the issue of Tuesday, May 14, 1985 (Vol. 50, No. 93), is hereby amended to show the term of the continuation from 5 to 20 years as follows:

The fourth line in the summary which reads "Reclamation continue for an additional 5" is hereby corrected to read "Reclamation continue for an additional 20."

The fifth line in the second paragraph after the title "For Further Information Contact," which reads "a period of 5 years pursuant to section" is hereby corrected to read "a period of 20 years pursuant to section."

Dated: January 23, 1991.

Monte G. Jordan,

Associate State Director.

[FR Doc. 91–2359 Filed 1–31–91; 8:45 am]

BILLING CODE 4310–FB–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31819]

Exemption; Massachusetts Central Railroad Corporation—Trackage Rights Exemption—Central Vermont Railway, Inc.

Central Vermont railway, Inc., has agreed to grant overhead trackage rights for intermodal traffic to Massachusetts central Railroad Corporation over its line between milepost 63.0 (Palmer Subdivision) at palmer, MA, and milepost 2.6 (Swanton Subdivision) at St. Albans, VT, a distance of 241.85 miles. The trackage rights were to become effective on or after January 24, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: James E. Howard, Kirkpatrick & Lockhart, One International Place, Boston, MA 02110.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: January 28, 1991.

By the commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–2420 Filed 1–31–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89–57]

Edward V. Avakian, Jr., Ph.D.; Revocation of Registration

On June 27, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Edward V. Avakian, Jr., Ph.D. (Respondent), of University of the Pacific School of Pharmacy, 751 Bookside Road, Stockton, California, seeking to revoke DEA Certificate of Registration RA0111345, as a researcher in Schedules II and IV, and to deny any pending applications for renewal of such registration. The statutory basis for seeking the revocation of Respondent's DEA Certification of Registration was that his continued registration was inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing session was held before Judge Young in San Francisco, California, on January 9, 10 and 11, 1990. On March 20, 1990, the administrative law judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, Government counsel filed exceptions to Judge Young's opinion and recommended ruling and Respondent filed a response to these exceptions. On May 18, 1990, Judge Young transmitted the record of these proceedings, including the Government's exceptions and Respondent's response thereto, to the Administrator.

On June 21, 1990, and Immediate Suspension of Edward V. Avakian's registration was issued. The Immediate Suspension was based on relevant information that came to the attention of the Drug Enforcement Administration after the hearing. Following the suspension, the file was sent back to the Office of the Administrative Law Judges, for further proceedings relating to the immediate suspension. On July 6, 1990, Administrative Law Judge Mary Ellen Bittner issued an order for prehearing statements. The Government timely filed a prehearing statement, but Respondent did not file any response to the July 6, 1990 order. On August 27, 1990, Judge Bittner issued an order providing the parties to October 1, 1990, to file affidavits or other documents. Again Respondent failed to respond; however, by letter dated September 11, 1990, Franklin Stephenson, Esquire, who had represented Respondent in the proceedings before Judge Young, informed Judge bittner that he no longer represented Edward Avakian. On October 11, 1990, Judge bittner transmitted the record of these proceedings to the Administrator.

In his opinion, Administrative Law Judge Francis Young found that Edward V. Avakian was registered with the Drug Enforcement Administration as a researcher in Schedules II and IV. Responsent's research concerned the effects of prolonged use of cocaine on the heart and involved the injection of solutions containing pharmaceutical cocaine into rats and rabbits. On July 7, 1987, DEA investigators met with

Respondent to conduct an audit of his records. Respondent's records were complex, messy and illegible, and the investigators were unable to ascertain with any reasonable degree of certainty, how much cocaine Respondent used during the period selected for audit. Respondent stated that he did not record the quantities of cocaine used in certain training demonstrations and did not always record the quantity of cocaine that he used when he was sacrificing one of his experimental animals. Respondent was told then, in 1987, that he should modify his record keeping to comply with the applicable DEA regulations. Avakian alleged that he had been unaware of the DEA regulations prior to the visit of the investigators.

On or about October 10, 1988, Respondent telephoned a detective in the local sheriff's office who lived near Respondent's home and reported that someone has stolen some pharmaceutical cocaine from his home. Respondent told the detective that there had been no windows or doors broken but that there were holes in the screen which would allow people to enter his home. The only thing that was missing from the house was the small amount of cocaine. Respondent told the detective that he kept only one gram of this cocaine at his residence for medicinal purposes although he had no authorization to keep cocaine at his home. Respondent never filed the required theft report with DEA in connection with this theft of cocaine from his home.

On January 17, 1989, DEA investigators conducted another audit. Again Respondent's records were incomplete and imprecise. The audit revealed a shortage in Respondent's inventory of 100.487 grams of pharmacetucial cocaine; 15.95 percent of the total quantity for which Respondent was accountable during the period covered by the audit. The audit also revealed a lack of security in Avakian's office.

Based on the evidence presented at the hearing, Judge Young believed that Respondent's failures and shortcomings in the past were not sufficient to require outright revocation of his DEA registration. The administrative law judge recommended that Respondent's registration be extended conditionally for a period of six months and that DEA investigators be directed to reinspect Respondent's records without advance notice. The judge further recommended that if Respondent's records and security were not found in accordance with DEA regulations, he should be required to surrender his DEA registration. Judge Young forwarded his opinion to the Administrator on May 18, 1990.

On March 20, April 4, 17 and 30, and May 25 and 30, 1990, Respondent made purchases of cocaine hydrochloride, far in excess of the amount necessary to meet his research needs. The purchases made on April 17 and 30, and May 25 and 30, were not authorized by the University and furthermore, the purchases on April 17 and 30 were made using falsified requisition numbers. Also on or about June 6, 1990, Respondent attempted to place an order for 10 grams of cocaine hydrochloride with Sigma Chemical Company, using a falsified requisition number. Sigma personnel requested Respondent to provide them with a copy of his DEA Certificate of Registration. In complying with this, Edward Avakian provided a copy of his certificate on which the expiration date, June 30, 1989, had been altered to read June 30, 1990.

On June 24, 1990, Dr. Avakian obtained a quantity of pharmaceutical cocaine, pursuant to his research registration, from a nearby hospital pharmacy. The cocaine was taken to Respondent's home, as opposed to his laboratory or office. On June 25, 1990, administrative inspection and search warrants were executed at both the residence and the office. Evidence found at Respondent's home indicates that the cocaine which he obtained the previous afternoon had been consumed for other than research purposes. Respondent was arrested and was subsequently indicted by a Grand Jury of the United States District Court for the Eastern District of California. Dr. Avakian was charged with obtaining controlled substances by misrepresentation, fraud, forgery, deception or subterfuge in violation of 21 U.S.C. 843(a)(3); attempting to obtain controlled substances by subterfuge in violation of 21 U.S.C. 843(a)(3) and 846; and use of a communication facility in committing, causing or facilitating the commision of a controlled substance felony in violation of 21 U.S.C. 843(b). Respondent has entered a plea to lesser included charges and awaits sentencing.

The Administrator may revoke a DEA Certificate of Registration and deny any application for such registration if he determines that the continued registration of the registrant would be inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f), the Administrator considers the following factors in determining the public interest: (1) The recommendation of the appropriate state licensing board or professional disciplinary authority; (2) the applicant's experience in dispensing or conducting research with respect to controlled substances; (3) the applicant's conviction record under Federal or state laws relating to the manufacture, distribution or dispensing of controlled substances; (4) compliance with applicable state, Federal or local laws relating to controlled substances; and (5) such other conduct which may threaten the public health and safety. The Administrator may rely on any one or a combination of those enumerated factors. He may give such factors the weight he deems appropriate in determining whether a registration should be revoked or an application denied. See, Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87-47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86069, 53 FR 5326 (1988).

The Administrator concludes that there is ample evidence to indicate that the continued registration of Edward V. Avakian, Jr., is inconsistent with the public interest. 21 U.S.C. 823(f). Edward Avakian, on numerous occasions, failed to: (1) Keep a biennial inventory; (2) account for cocaine used in research; (3) keep complete and accurate records of cocaine used in research; (4) provide adequate security for his controlled substance inventory; and (5) take adequate steps to guard against diversion of his controlled substance inventory. Also, Respondent made purchases of cocaine hydrochloride in excess of the amount necessary for his research and altered the expiration date of his DEA Certificate of Registration from June 30, 1989 to June 30, 1990. There is ample evidence to support a conclusion that the excess cocaine was used for non-medicinal purposes by Dr. Avakian. Edward Avakian has engaged in conduct which threatens the public health and safety. Therefore, the Administrator concludes that the registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration RA0111435, previously issued to Edward V. Avakian, Jr., Ph.D., be, and it hereby is, revoked, and any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective February 1, 1991.

When the Immediate Suspension was served on Edward Avakian, all controlled substances possessed by him

under the authority of his suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until March 4, 1991 or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e)

Dated: January 24, 1991.

Robert C. Bonner,

Administrator.

[FR Doc. 91–2333 Filed 1–31–91; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 90–33]

John E. Baldoni, D.D.S., Cranston, RI; Hearing

Notice is hereby given that on April 10, 1990, the Drug Enforcement Administration, Department of Justice, issued to John E. Baldoni, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AB6535364, and deny any pending applications for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on February 14, 1991, commencing at 9:30 a.m., at the U.S. Tax Court, Boston Federal Office Building, 10 Causeway Street, Courtroom 1013, Boston, Massachusetts.

Dated: January 24, 1991.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91–2335 Filed 1–31–91; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 90–32]

Irwin Gittleman, R.Ph./Sidwin Chemists, Ltd.; Revocation of Registration

On March 26, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Irwin Gittleman, R.Ph./Sidwin Chemists, Ltd. (Registrant), at 133 East 58th Street, suite 711, New York, New York 10022, proposing to revoke DEA Certificate of Registration, AS1876359, under 21 U.S.C. 823(f) and 824(a)(4). Mr. Gittleman is the owner of the pharmacy. The proposed action was predicated on Mr. Gittleman's felony conviction relating to controlled substances. In addition, the Order to Show Cause alleged that he had diverted large quantities of controlled substances. The Registrant was also unable to account for large shortages of controlled substances, resulting in the suspension of Mr. Gittleman's state pharmacist's license and a fine.

By letter dated April 25, 1990, Mr. Gittleman filed his written objections and requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of an administrative law judge. By letter dated July 17, 1990, Mr. Gittleman withdrew his objections and request for a hearing. By order dated August 15, 1990, the presiding administrative law judge terminated the administrative proceedings before her in this matter.

Under 21 CFR 1301.54, a registrant has thirty days from the date of receipt of the Order to Show Cause in which to file a written request for a hearing. In the alternative, a registrant may file a waiver of the opportunity for a hearing together with a written response to the allegations contained in the Order to Show Cause. 21 CFR 1301.54(c). If, however, one fails to timely request a hearing, he shall be deemed to have waived his request for a hearing, unless he shows good cause for such failure. When a registrant is deemed to have waived his opportunity for a hearing, the Administrator may issue his final order without a hearing pursuant to 21 CFR 1301.57. 21 CFR 1301.54(d), (e).

In that Mr. Gittleman withdrew his request for a hearing on the issues raised in the Order to Show Cause, he is deemed to have waived his opportunity for a hearing, and the Administrator hereby enters his final order in this matter based upon the investigative file before him. 21 CFR 1301.57.

The Administrator finds that in 1976, following a hearing before the New York State Health Department, the Registrant was fined $2,500.00 based on an audit and subsequent investigation which showed that the pharmacy filled several forged prescriptions for controlled substances and also could not account for large shortages of controlled substances. In 1978, the state subsequently suspended Mr. Gittleman's pharmacist's license for one year, and stayed all but three months of the suspension.

In 1979, Mr. Gittleman illegally sold controlled substances to individuals, including undercover officers, for other than legitimate medical purposes and outside the scope of the pharmacy's legitimate practice. For approximately a year and a half, a cooperating individual conducted illegal controlled substance transactions with Mr. Gittleman at his pharmacy. He often had prescriptions for controlled substances filled for no legitimate medical purpose two or three times a week at the pharmacy. Mr. Gittleman never questioned the different names of the purported prescribing physicians on the prescriptions even when the cooperating individual admitted he had obtained these names from a telephone book.

Another cooperating individual admitted that he prepared forged prescriptions for controlled substances for Mr. Gittleman, who had asked for them to cover his illegal sales of controlled substances to other individuals.

With the information received from these cooperating individuals, a DEA Special Agent made three undercover buys, totalling 1,050 tablets of Dilaudid, at the pharmacy. On June 15, 1983, a DEA Special Agent gave a pharmacist at the subject pharmacy two New York triplicate prescriptions and $2,400.00, and received 300 Dilaudid 4 mg. tablets in return. On July 1, 1983, the DEA Special Agent presented two New York triplicate prescriptions with different patient names and $2,400.00 to the same pharmacist, Cary Levine, and received 300 Dilaudid 4 mg. tablets. On July 11, 1983, the DEA Special Agent presented three New York triplicate prescriptions bearing different patient names and $3,400.00. In exchange, Mr. Levine gave the Agent 450 Dilaudid 4 mg. tablets. When these prescriptions were recovered later, they bore different dispensing dates and listed Mr. Gittleman as the dispensing pharmacist.

The DEA investigation, which included the three undercover buys, revealed that Mr. Gittleman and others at the subject pharmacy diverted more than 90,000 dosage units of Dilaudid 4 mg. tablets in five months. During this time, large quantities of other controlled substances were also diverted from the pharmacy, including Quaalude and Lotusate. The diversion included the illegal sale of the drugs and the unlawful filling of fraudulent and forged prescriptions. This investigation resulted in Mr. Gittleman's conviction on November 13, 1989, in the United States District Court for the Southern District of New York, by plea of guilty, on one count of conspiracy to distribute

controlled substances, in violation of 21 U.S.C. 846, 812, 841(a)(1) and (b)(1)(A), and 843(a)(4)(A). He was placed on probation for two years, ordered to perform 150 hours of community service and to pay a fine of $25,000.00.

Based upon the above-described conviction and underlying acts, as well as the previous state action taken against Mr. Gittleman and the pharmacy and those underlying acts, the Administrator concludes the continued registration of Irwin Gittleman d/b/a Sidwin Chemists is inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4) and 823(f), and, therefore, it must be revoked.

Pursuant to the authority vested in him by 21 U.S.C. 824 and 823 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration hereby orders that the registration of Irwin Gittleman, R.Ph., d/b/a Sidwin Chemists be, and it is hereby, revoked. This order is effective on February 1, 1991.

Dated: January 24, 1991.

Robert C. Bonner,

Administrator.

[FR Doc. 91-2334 Filed 1-31-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-27]

Wyeth Hardy Worley, D.D.S.; Granting of Restricted Registration

On March 30, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Wyeth Hardy Worley, D.D.S. (Respondent) of 2160 B Airline Drive, Bossier City, Louisiana 71111, proposing to deny his application, executed on September 21, 1988, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Dallas, Texas on October 31, 1989. On September 28, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed, and on November 5, 1990, Judge Bittner transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent is an oral and maxillofacial surgeon and has been licensed by the Louisiana State Board of Dentistry since 1963. Respondent had a 20-year history of controlled substance abuse, which included abuse of Desoxyn and Dilaudid. He ordered large quantities of controlled substances for office use in 1984, 1985, and 1986. In 1985, Respondent was investigated by the Louisiana State Police because of his unusually large purchases of Schedule II controlled substances, including Desoxyn, a stimulant drug containing methamphetamine. This is not a drug used by dentists in legitimate dental practice. The Louisiana State Police referred their investigative findings to the Vice President of the Louisiana State Board of Dentistry. The Vice President of the dental board told Respondent to cease dispensing Desoxyn and write prescriptions for his patients if necessary. Respondent continued to purchase large quantities of Desoxyn.

In January 1987, DEA Diversion Investigators went to Respondent's office to inspect his records and stocks of controlled substances. Respondent told investigators he had no inventory or dispensing records. He also told the investigators that he intended to take all the controlled substances on hand with him to Mexico the following day for use in his work with the Indians. Respondent indicated that he transported controlled substances to Mexico on many occasions in order to treat the Indians, and had no records of the controlled substances he took out of the country. Respondent was not registered by DEA as an exporter nor did he file any of the required declarations or permits prior to exporting controlled substances.

Respondent was addicted to Dilaudid and Desoxyn and was admitted to a treatment program, of his own volition, in February 1987. Respondent left this program against medical advice and was admitted to another program in Louisiana. He ultimately successfully completed 90 days of intensive treatment.

On June 24, 1987, the Deputy Assistant Administrator, Office of Diversion Control of the DEA, issued an Order to Show Cause proposing to revoke Respondent's previous DEA Certificate of Registration. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest. Respondent requested a hearing, which was held in New Orleans, Louisiana, on November 17, 1987. On March 25, 1988, Administrative Law Judge Francis L. Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending to the then-Administrator that Respondent's registration be revoked because of Respondent's history of controlled substance abuse and the "relatively short 'track record' of (Respondent's) verified drug-free condition." Judge Young also noted that Respondent's explanation of the extent of his drug use did not account for the very large quantities of Desoxyn he purchased.

The then-Administrator adopted Judge Young's opinion and recommended decision in its entirety, concluding that "Respondent's long history of personal drug abuse in contrast to a short period of rehabilitation and his failure to maintain records and to properly handle controlled substances in his practice" required revocation of Respondent's DEA registration. Accordingly, Respondent's DEA registration was revoked effective August 15, 1988. See, Wyeth Hardy Worley, D.D.S., Docket No. 87-57, 53 FR 26899 (1988).

Subsequent to the revocation of Respondent's previous DEA Certificate of Registration, on January 23, 1988, Respondent entered into a formal consent agreement with the Louisiana State Board of Dentistry. This consent agreement imposed a five-year probationary period upon Respondent and stipulated that if he either failed to comply with its terms or was formally charged with a controlled substance-related offense, his dental license would automatically be revoked for the balance of the probationary period. The agreement also required Respondent to continue: (1) His participation in and regular attendance at aftercare sessions; (2) regular random urine screens; and (3) attendance at a minimum of three Alcoholics Anonymous meetings or Narcotics Anonymous meetings per week for a period of two years. At the hearing in this matter, Respondent testified that he has been drug-free since his admission into the treatment program on February 6, 1987, and that he intends to remain drug-free. He further stated that he intends to continue to attend Caduceus Club meetings, which are designed to assist health care professionals who are addicted to controlled substances and/or alcohol. In addition, Respondent introduced testimony, as well as affidavits, from various individuals familiar with Respondent's dental practice and his problems with drugs. All of these individuals stated that they believed

that Respondent could be trusted with a DEA Certificate of Registration.

Respondent testified at the hearing in this matter that a DEA registration is necessary for the normal practice of an oral and maxillofacial surgeon, because a critical concern in his practice is the ability to alleviate pain. Respondent further testified that since he cannot handle controlled substances, he is unable to administer general anesthetics or sedate patients for procedures to be performed in his office and, as a result, turns away approximately four to five patients per week. Also, due to his lack of DEA registration, Respondent cannot handle night emergency or trauma calls and cannot cover for other dentists. Additionally, Respondent testified that he must rely on other dentists to write prescriptions for post-surgery pain medication for his patients.

The Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See, Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87-47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86-69, 53 FR 5326 (1988).

The administrative law judge concluded that the record clearly indicates that Respondent has a history of controlled substance abuse, and that in the past he both handled controlled substances improperly and failed to maintain proper records of his controlled substance handling. Judge Bittner further concluded, however, that in light of Respondent's rehabilitative efforts, as well as his recognition and acceptance of the responsibilities that accompany DEA registration, Respondent's registration would be in the public interest. Accordingly, the administrative law judge recommended that the Administrator grant Respondent's application for registration, subject to the following restrictions:

(1) Respondent shall maintain in his office only a sufficient quantity of controlled substances to administer to patients for legitimate medical purposes.

(2) Respondent shall not dispense any controlled substances other than by administration or prescription and shall not prescribe or otherwise dispense any controlled substances for himself or any member of his immediate family.

(3) Respondent shall maintain a log of all controlled substances prescribed or administered and shall provide that log to DEA personnel upon request.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. When Respondent's previous DEA Certificate of Registration was revoked, Respondent had been drug-free for less than one year. As of the date of the hearing in this proceeding, Respondent had been drug-free for more than two and a half years. The Administrator concludes that Respondent has demonstrated a desire to be drug free and conform with the responsibilities attendant to DEA registration. Further, there is no evidence of diversion of drugs by Respondent to anyone other than himself and the restrictions recommended by the administrative law judge should be sufficient to preclude a repetition of the behavior which led to these proceedings.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for registration, executed on September 21, 1988, by Wyeth Hardy Worley, D.D.S., be, and it hereby is, granted subject to the restrictions recommended by the administrative law judge.

Dated: January 24, 1991.

Robert C. Bonner,

Administrator.

[FR Doc. 91-2336 Filed 1-31-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-30]

Jane W. Wuchinich, M.D.; Granting of Modified Registration

On March 29, 1989, the Deputy Assistant Administrator, Office of Diversion Control, of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jane W. Wuchinich, M.D. (Respondent), of 36 Washburn Road, Mt. Kisco, New York 10549, proposing to deny her application, executed on August 2, 1988, for registration with the DEA as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on:

(1) Respondent's excessive purchases of controlled substances; and

(2) Respondent's subsequent surrender of her DEA registration and her license to practice medicine in the State of Wyoming in order to avoid further sanctions. Respondent, through counsel, timely filed a request for a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Denver, Colorado on February 27, 1990. Administrative Law Judge Mary Ellen Bittner presided. On September 28, 1990, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On October 17, 1990, Government counsel filed exceptions to Judge Bittner's recommended ruling pursuant to 21 CFR 1316.66. On November 5, 1990, the administrative law judge transmitted the record of these proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent is a general practice physician who was chemically dependent on controlled drugs for eighteen years, from 1970 to early 1988. In fact, Respondent was using her DEA number of obtain the controlled substances she abused. In 1987, DEA's Automated Registration of Reports and Consolidated Order Systems (ARCOS) reported that Respondent was an excessive purchaser of controlled substances. Specifically, between 1986 and 1987, Respondent had purchased approximately 11,500 dosage units of acetaminophen with codeine, twelve one-fluid-ounce bottles of hydrocodone, 14,500 dosage units of diazepam 10 mg., 3,200 dosage units of diazepam 10 mg., and 25,000 dosage units of phendimetrazine.

On December 8, 1987, DEA Investigator Michael Yasenchak visited and questioned Respondent in her office in Limon, Wyoming. At that time, Respondent stated that she had not purchased any codeine-based controlled

substances in the last four years. However, on March 15, 1988, during another inspection by Investigator Yasenchak, Respondent admitted that she had ordered controlled substances, including some containing codeine. Respondent was then asked to produce inventory records for these controlled substances, but was only able to supply one invoice. Respondent then admitted to Investigator Yasenchak that she had ordered the controlled substances for her personal use. She surrendered her DEA registration. Respondent also surrendered her State of Wyoming medical license on March 25, 1987, and did not practice medicine in Wyoming from that date until after her license was reinstated in February 1990. On June 5, 1988, Respondent appeared before the Wyoming Board of Medical Examiners to report on the status of her rehabilitative efforts. The Board had established certain criteria Respondent was to meet in order to obtain relicensure. One of these was that she pass Component II of the FLEX examination, which tests a physician's knowledge and competence to practice medicine. Respondent passed this examination in December 1989. In February 1990, the Board reinstated her medical license with a stipulation that she submit to a random urine screening at least twice a year, attend the Impaired Physician Group meetings regularly, and provide quarterly progress reports from her therapist.

During the hearing, Respondent credibly testified that she has not taken any controlled substances or alcohol since March of 1988. Respondent voluntarily entered the in-patient substance abuse program at the Wyoming State Hospital, where she was treated from March 16, 1989 to June 16, 1989. On September 15, 1989, Respondent was admitted to Charter Hospital in Fort Collins, Colorado, where she was diagnosed as suffering from major depression. Richard A. Malek, director of Charter Hospital, who diagnosed and treated Respondent, testified that: "My impression is that [Respondent] is very serious about giving up abusing substances and is very motivated to help herself." Bertrand Toews, M.D., Medical Director of the Chemical Dependency Program at Crestview Hospital in Casper, Wyoming, and Chairman of the Wyoming Medical Society's Committee for Impaired Physicians, described Respondent's prognosis for a long-term recovery. Dr. Toews testified that Respondent had regularly attended meetings of the Impaired Physicians Group since May 1989. He believes that Respondent is highly motivated and the prognosis for continued abstinence is good.

The administrative law judge found that Respondent abused drugs daily for eighteen years and abused her privileges as a DEA registrant by ordering controlled substances for her personal use. Respondent also suffers from chronic depression, and will always be a recovering addict. The administrative law judge thus found a basis for denying Respondent's application. The administrative law judge further stated, however, that the essential issue in this case is whether it is now in the public interest to grant Respondent a limited DEA registration.

The administrative law judge concluded that the Government had not shown by a preponderance of the evidence that the limited DEA registration sought by Respondent is not in the public interest. In reaching this conclusion Judge Bittner relied primarily on the record evidence that Respondent has remained sober for nearly two years as of the date of the hearing and that the likelihood of recovery continuing without relapse increases exponentially with time.

Judge Bittner also relied on the evidence that Respondent recognizes here addiction, and seems highly motivated to rehabilitate herself. She is helped in this regard by the monitoring imposed by the Wyoming Board of Medical Examiners as a condition to the reinstatement of her medical license. The Committee for Impaired Physicians will also observe Respondent's compliance with the conditions on her medical license and report any violations to the Wyoming Board of Medical Examiners.

Further, Respondent proffered credible evidence that her depression can be treated and managed effectively, and that she is indeed effectively managing her condition. Finally, and significantly, Respondent now recognizes and accepts the responsibilities accompanying a DEA registration.

Judge Bittner concluded that Respondent has demonstrated that she should be given the opportunity to handle those controlled substances she requires in her practice, limited to Schedules III, IV and V. The administrative law judge thus recommended that the Administrator grant Respondent's application for DEA registration in those schedules, subject to the following restrictions:

1. Respondent's controlled substance handling authority shall be limited to the writing of prescriptions only;

2. Respondent shall not possess or store any controlled substance in her office or home, or dispense any controlled substance from her office or home;

3. Respondent shall not write any prescription for any controlled substances for herself or any member of her family, and shall not obtain or possess for her own use any controlled substance except upon the written prescription of another licensed physician, unless such substance is legitimately available without a prescription. In the event another physician prescribes a controlled substance for Respondent, Respondent shall notify the Special Agent in Charge of the DEA's nearest office, or his designee: (a) That she is about to obtain a controlled substance for her own use and (b) the purpose for the controlled substance prescription;

4. Respondent shall not ingest or otherwise personally use any controlled substance, except as specified above; and

5. For at least two years from the date of the entry of a final order in this proceeding, Respondent:

(a) Shall continue to submit to random drug testing under the auspices of the Wyoming Board of Medical Examiners;

(b) Shall continue her participation in the Impaired Physician's Group/ Caduceus Club;

(c) Shall attend meetings of Alcoholics Anonymous, Narcotics Anonymous or a similar organization at least weekly; and

(d) Shall submit to the Special Agent in Charge of the DEA's nearest office, or his designee, every calendar quarter a log listing all the controlled substances Respondent has prescribed during the previous quarter period.

The Government filed exceptions to the findings of the administrative law judge, stating that the proposed registration of Respondent would not be in the public interest. Respondent's two-year period of rehabilitation efforts, vis-a-vis her 18-year history of substance abuse, is not a sufficient demonstration of rehabilitation. Further, Respondent has and continues to suffer from chronic depression, which contributed substantially to her substance abuse.

The Administrator, having considered the entire record, including the Government's exceptions, adopts the administrative law judge's findings of fact, conclusions of law and recommendations in their entirety. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application of

Jane W. Wuchinich, M.D., executed on August 2, 1988, for registration under the Controlled Substances Act be, and it hereby is, granted, subject to the conditions outlined above. This order is effective February 1, 1991.

Dated: January 24, 1991.

Robert C. Bonner,

Administrator.

[FR Doc. 91–2337 Filed 1–31–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Contractor-Subcontractor Issues in the Petrochemical Industry, Additional Surveys

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of expedited information collection clearance under the Paperwork Reduction Act.

SUMMARY: The Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR 1320 [53 FR 16618, May 19, 1988]), is submitting a request for approval to the Office of Management and Budget for an additional survey and related data gathering to support an OSHA study of contractor-subcontractor issues in the Petrochemical industry. This will be a one time only survey. This survey, and the two employee surveys that were recently approved by OMB, will act to supplement the original ongoing OSHA survey of petrochemical industry managers.

DATE: OSHA has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review has been requested to be completed by March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the survey or reporting burden should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., room N1301, Washington, DC 20210 ([202) 523–6331).

Comments should also be sent to the Office of Information and Regulatory Affairs. Attn: OMB Desk Officer for OSHA, Office of Management and Budget, room 3001, Washington, DC 20503 ([202) 395–6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Average Burden Hours/Minutes Per Response: 0.50 hr

Frequency of Response: (one time only)

Number of Respondents: 300

Annual Burden Hours: 150

Affected Public: Individuals/households; Businesses or other for-profit; small businesses or organizations

Respondents Obligation to Reply: (voluntary)

Signed at Washington, DC this 29th day of January 1991.

Paul E. Larson,

Departmental Clearance Officer.

BILLING CODE 4510–26–M

Standard Form 83
(Rev September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request

U.S. Department of Labor
Occupational Safety and Health Administration
Directorate of Policy

2. Agency code: 1218

3. Name of person who can best answer questions regarding this request

Frank Frodyma, Deputy Director, Directorate of Policy

Telephone number: (202) 523-8021

4. Title of information collection or rulemaking

OSHA study of contractor issues in the petrochemical industry -- an additional survey to supplement the original survey of petrochemical plant management. This survey is aimed at contract employers.

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*

29 USC 655(b)(5) or Executive Order 12291

6. Affected public *(check all that apply)*

1 [X] Individuals or households
2 [ ] State or local governments
3 [ ] Farms
4 [X] Businesses or other for-profit
5 [ ] Federal agencies or employees
6 [ ] Non-profit institutions
7 [X] Small businesses or organizations

PART II.—Complete This Part Only If the Request Is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)

___ ___ ___ ___ — ___ ___ ___ ___, or, None assigned [ ]

8. Type of submission *(check one in each category)*

Classification
1 [ ] Major
2 [ ] Nonmajor

Stage of development
1 [ ] Proposed or draft
2 [ ] Final or interim final, with prior proposal
3 [ ] Final or interim final, without prior proposal

Type of review requested
1 [ ] Standard
2 [ ] Pending
3 [ ] Emergency
4 [ ] Statutory or judicial deadline

9. CFR section affected

_____ CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? [ ] Yes [ ] No

11. If a major rule, is there a regulatory impact analysis attached? 1 [ ] Yes 2 [ ] No

If "No," did OMB waive the analysis? 3 [ ] Yes 4 [ ] No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

Previous editions obsolete — 83-108 — Standard Form 83 (Rev

PART III.—Complete This Part Only If the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320. 'petrochemical''surveys'

13. Abstract—Describe needs, uses and affected public in 50 words or less In response to the Phillips 66 explosion on Oct. 23, 1989 that killed 23 workers and injured 100 more, Secretary Dole promised President Bush a complete formal investigation would be held. To conduct this investigation, a study of safety and health issues as they relate to contract employers in the petrochemical industry must be performed. The survey in this submission will help determine the extent to which contracting or its management process affects the safety and health of workers in this industry.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 [X] Regular submission
2 [ ] Emergency submission *(certification attached)*

Information collections contained in rules

3 [ ] Existing regulation *(no change proposed)*
4 [ ] Notice of proposed rulemaking (NPRM)
5 [ ] Final, NPRM was previously published
6 Final or interim final without prior NPRM
A [ ] Regular submission
B [ ] Emergency submission *(certification attached)*

7. Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*

1 [X] New collection
2 [ ] Revision of a currently approved collection
3 [ ] Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 [ ] Reinstatement of a previously approved collection for which approval has expired
5 [ ] Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

17. Annual reporting or disclosure burden

1 Number of respondents	300
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	300
4 Hours per response	0.5
5 Total hours *(line 3 times line 4)*	150

18. Annual recordkeeping burden

1 Number of recordkeepers	
2 Annual hours per recordkeeper	
3 Total recordkeeping hours *(line 1 times line 2)*	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	150
2 In current OMB inventory	0
3 Difference *(line 1 less line 2)*	150
Explanation of difference	
4 Program change	150
5 Adjustment	

20. Current *(most recent)* OMB control number or comment number

21. Requested expiration date
May 30, 1991

22. Purpose of information collection *(check as many as apply)*

1 [ ] Application for benefits
2 [ ] Program evaluation
3 [ ] General purpose statistics
4 [ ] Regulatory or compliance
5 [ ] Program planning or management
6 [X] Research
7 [ ] Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 [ ] Recordkeeping
Reporting
2 [ ] On occasion
3 [ ] Weekly
4 [ ] Monthly
5 [ ] Quarterly
6 [ ] Semi-annually
7 [ ] Annually
8 [ ] Biennially
9 [X] Other *(describe)*: non-recurring

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 [X] Voluntary
2 [ ] Required to obtain or retain a benefit
3 [ ] Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? [ ] Yes [X] No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? [X] Yes [ ] No

27. Regulatory authority for the information collection

_____ CFR _____ ; or _____ FR _____ ; or, Other *(specify)*: _____

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official	Date
Virginia E. Allen	12/18/90
Signature of agency head, the senior official or an authorized representative	**Date**
Theresa M O'Malley for Paul E. Larson	1/29/91

BILLING CODE 4510-26-C

SUPPORTING STATEMENT FOR SURVEYS AND RELATED DATA GATHERING TO SUPPORT AN OSHA STUDY OF CONTRACTOR-SUBCONTRACTOR ISSUES IN THE PETROCHEMICAL INDUSTRY

1. Necessity of Data Collection

The Occupational Safety and Health Administration (OSHA) has awarded a grant to the John Gray Institute of Lamar University in Beaumont, Texas to conduct a national study of safety and health issues as they relate to contractor and direct hire employees in the petrochemical industry. This study was initiated in response to the catastrophic explosion and fire at the Phillips 66 Houston Chemical Complex in Pasadena, Texas on October 23, 1989. The Phillips explosion took the lives of 23 workers and injured over 100 others. This industrial accident, one of the nation's worst, prompted former Secretary of Labor Dole to promise President Bush that OSHA would coordinate a complete federal investigation of the accident and submit a formal report to him within six months.

More recent accidents have contributed to the urgency with which OSHA continues to pursue safety and health issues in this industry. A July 5, 1990 explosion at the ARCO facility in Houston killed 17 workers and injured two more. On July 20, 1990, an explosion at BASF in Cincinnati resulted in one fatality and 72 injuries. As recent as August 24, 1990 a fire at Shell Oil Company injured 4 workers, but no fatalities were reported.

Congress has shown a great deal of interest in this issue, and accordingly convened a hearing on the ARCO explosion specifically and petrochemical facility accidents in general on July 23, 1990. An oversight hearing held on August 1, 1990 also resulted in several questions concerning OSHA's activities in the chemical and petrochemical industry.

An initial survey of petrochemical industry managers was approved by OMB on March 1, 1990 and the data collection process has been completed. During review of the original survey, two additional surveys were also proposed to supplement the information gathered at that time. Those supplemental surveys (the direct-hire and contract employee surveys) were recently approved by OMB on November 15, 1990 and are currently underway. During review of the employee surveys, a fourth survey was proposed that would focus on contractor management. It is this final contractor management survey that is included in this submission. Much of the justification for this additional survey parallels that the initial survey. Using a questionnaire formatted similarly to the plant manager survey, the survey enclosed in this submission is targeted for contractors who have employees working at the same petrochemical plants that participated in the original survey of plant managers.

One critical component of the report that will include all four surveys will be an examination of the extent to which petrochemical companies contract out hazardous work such as construction, maintenance and waste removal, and the extent to which this contracting, or its management process, affects the safety and health of workers. This will be part of an ongoing effort to determine ways to improve safety and health in the petrochemical industry. The results will be used to provide one source of information for possible approaches that employers can take in protecting workers at petrochemical plants where contractors are used and may also be used by OSHA in subsequent rulemaking.

A steering committee has been formed to provide guidance and input to the John Gray Institute on the scope and direction of the study. The committee is comprised equally of representatives of organized labor, representatives from the petrochemical industry and impartial experts from such fields as chemical engineering, occupational medicine and industrial relations.

At the time the original survey of plant managers was being proposed by the Steering Committee, it became clear that surveying other involved parties outside of plant management would add a valuable perspective that could not be gained from the original survey alone. The Steering Committee, comprised of diverse membership, deliberated that the most appropriate way to gain this perspective was to survey direct-hire and contract employees, as well as contractor management, directly. OSHA fully concurs that this tripartite perspective is vital to the outcome of this study.

OSHA's Congressional mandate stipulates that the agency carefully design and study its regulatory proposals. Section 6(b)(5) of the OSH Act U.S.C. 655(b)(5) mandates that regulations promulgated by the Agency shall most adequately assure worker safety and health "to the extent feasible on the basis of the best available evidence." They are to be based on "research and the latest available scientific data." Section 6(f) of the Act requires regulations to be justified by "substantial evidence in the record" and authorizes the Secretary of Labor "to enter into contracts, agreements or other arrangements with appropriate public agencies or private organizations for the purposes of conducting studies related to his responsibilities under the Act." Thus OSHA is obligated to gather data on the consequences of future actions.

Executive Order 12291 reiterates this obligation by requiring the preparation of preliminary and final regulatory impact analyses. The Regulatory Flexibility Act also requires that an analysis be conducted on the impact of any proposed rules on small entities.

In order to fulfill the Congressional and Presidential mandates and to evaluate the impact of proposed recommendations on proposed rules, OSHA requires a data base that includes current industry practices and identifies situations where potential hazards exists. As discussed below, none of the available data sources are adequate for this purpose.

SCHEDULE FOR SURVEY DESIGN AND COMPLETION

Submit information collection plan to OMB.	January, 1991.
Publish in Federal Register notice of survey submission to OMB and survey instruments.	January, 1991.
Receive OMB approval	(30 days after FR notice is published)
Subcontractor delivers report to Contractor.	(6 weeks after OMB approval)
Contractor submits final report to OSHA.	(8 weeks after OMB approval)

2. Use of the Information

The data collected through this effort will be used by OSHA (and its contractors) to prepare a report on the use of contractors in the petrochemical industry and their relationship, if any, to the safety and health of workers in this industry. The data may be used in the finalization of rulemaking addressing process safety management.

The following issues and questions are examples of the types of information the surveys will provide:

—Contract employers' perception of management's commitment to safety and health in the workplace
—Specific safety practices for high risk activities
—Need to obtain authorization before work is initiated
—The frequency that plant management reviews the safety and health performance of contract employees
—Provide insight into the extent to which contractors are used in this industry.
—What materials (ie. safety records) did the contract employer submit to the plant management when bidding for a contract
—What measures plant management uses to measure and enforce safety compliance among its contractors.

While many of the questions appear to ask respondent opinions that may or may not be based on facts, it is necessary and critical to the goals of this study to determine exactly this distinction between contract employers' perceptions of plant safety and health and the actual management practices.

Perceptual questions will only be used to supplement factual responses from other sources including this survey and may provide indications of where management practices may need to be modified. Because OSHA views issues of safety and health in the petrochemical industry with the utmost concern, OSHA feels it critical to incorporate information from every possible source. Response to perceptual questions are only a small segment of the information that OSHA is gathering on this issue.

The research is to be conducted by a mail survey, which is attached to this document. Respondents are advised that their participation is completely voluntary and that their responses will be kept completely confidential. Respondents will also be told that they are not expected to do extensive

review of their records to answer the survey questions.

3. Use of Technology to Reduce Burden

The effort will be in the form of a mail questionnaire with respondents. If the respondent can not be reached the first time, three follow-up telephone calls will be made to the respondent, attempting to vary the time and day of week the calls are made to maximize the response rate.

Following a letter from the Assistant Secretary for OSHA requesting their cooperation in this important research endeavor, follow-up phone calls will be made to these establishments if the response rate is insufficient or not within the necessary time frame.

4. Identification and Duplication of Information

Significant effort has been expended in collecting and examining existing sources of information relating to the use of contractors in the petrochemical industry. This has been used to guide the contractor in their construction of the survey instruments. OSHA's Integrated Management Information System (IMIS) has been searched for inspection and accident histories. The data was used to provide background to the contractor. The Bureau of Labor Statistics (BLS) provided information on overall injury incidence rates, wage rates, and other associated studies in the industries of interest.

5. Inadequacy of Existing Data Sources

None of the existing data sources provide information on the number of contractors in the petrochemical industry. Specifically, BLS injury incidence rates do not reflect the degree of hazards in particular industries. As a result, the injury records of individual contract employers are not reflected in the data for the entire petrochemical industry. Therefore, these surveys will collect data on the practices of all employers at a particular petrochemical site. Data on accident and injury histories for each employer at a site will be collected to facilitate a study of both overall rates between prime employers and contractors at the same site.

6. Minimizing Burden on Small Business

This data collection effort involves the collection of information from both large and small firms. Every effort has been made to minimize respondents burden. The survey instruments have been designed to allow the respondents to provide estimates and approximations rather than detailed information of the type which would lengthen response time. Respondent burden will be limited by avoiding requests which require extensive file or record review.

7. Recurrent Survey Consequences

These efforts are one-time, non-recurring surveys. The consequences associated with less frequent collection are not applicable.

8. Consistency With 5 CFR 1320.6

This request is consistent with the guidelines in 5 CFR 1320.6.

9. Expert Review of the Survey Questionnaires

The steering committee has had numerous discussions with the contractor in order to assess the substance of the survey questions. The clarity of instructions and other specific survey design elements have been reviewed by the contractor's survey experts, OSHA personnel and by expert safety consultants in industry and with unions.

A. The survey instrument has been reviewed by:

Steering Committee Members

Dr. Eugene Kremer III, Steering Committee Chairman, Occupational Physicians' Service
Mr. Dan Bennett, Vice-President Associated Builders and Contractors
Dr. John Hoffman, CSP, Safety Engineering Laboratories, Inc.
Dr. Thomas A. Kochan, Professor of Management, Massachusetts Institute of Technology
Mr. Bob Wages, Vice-President, Oil, Chemical & Atomic Workers International Union
Mr. Bob McCormick, President, National Contractors Association
Mr. William J. Mottel, Director, Safety and Occupational Health, DuPont Co.
Mr. Don Helin, Chemical Manufacturers Association
Mr. David Ortlieb/ Mr. Walter Fluharty, Director, Health and Safety Department, International Chemical Workers Union
Mr. S.C. Pierce, Manager, Refining & Transportation Engineering, Amoco Oil Company
Mr. C.T. Saywer, Vice-President, American Petroleum Institute
Mr. Jim Valenti, United Steel Workers of America
Mr. Gale Van Hoy, Executive Secretary, Texas Building Trades
Mr. W.G. Bell, Senior Vice-President & Director, Bechtel Group, Inc.
Mr. Joe M. Stevens, Jr., Vice President Employee Relations & Corporate Affairs, Brown & Root, Inc.

Also Reviewed by

John Wells, President, John Gray Institute
Michal Smith, John Gray Institute

Department of Labor Review

Alan McMillan, Deputy Assistant Secretary, Occupational Safety and Health Administration
Frank Frodyma, Deputy Directory, Directorate of Policy, Occupational Safety and Health Administration
Bob Casady, Office of Research and Evaluation, Bureau of Labor Statistics

B. Problems that arose during this review were resolved by DOL, OSHA and BLS representatives.

C. Public comment will be solicited through the **Federal Register** notice for the study.

10. Confidentiality

Procedures have been developed to protect the confidentiality of the collected data. These measures are summarized below:

A. All OSHA contractor and subcontractor personnel will be given instructions regarding the importance of keeping all information they obtain from the respondents confidential.

B. Strict coding will be maintained during the coding procedure.

C. Diskettes containing completed survey data will be stored in locked file cabinets at the contractor's office.

D. Publication of study results will be of a statistical nature only. Respondents will never be identified in any publication or presentation, nor will their names be made available to other individuals or groups.

11. Sensitive Questions

The proposed survey instrument does not contain sensitive questions.

12. Costs

The total one-time cost to the government of the proposed data collection is approximately $75,000. This estimate includes costs incurred by contractors for administration and operation of the data collection, tabulation of survey results, and subsequent analyses (including benefit and cost estimates, small entity impacts, etc.).

13. Estimates of Burden

This survey was not included in the agency's ICB as the need arose as a result of the Phillips 66 catastrophe.

Every effort will be made to minimize respondent burden. This survey instrument have been designed to allow the respondent to provide reports of actual experiences. Respondents are not expected to compile new data.

The completion time for each questionnaire will vary, depending upon the respondent. It is estimated that a fully completed survey will require not more than 30 minutes on average. The following table summarizes the burden for respondents:

RESPONDENT BURDEN ESTIMATES

Type of respondent	Number of respondents	Completion time (min.)	Total burden (hrs.)
Contract employer response *	300	30	150
Total	300		150

* In the previous submission to OMB, a burden to contractors was estimated to account for the burden originating from an OSHA request to obtain lists of their employees for the contract employee survey. The burden depicted above represents the amount of time needed for contractors to respond to their own survey.

14. Changes in Anticipated Burden

These are one-time data collection efforts and represent a program increase from that represented in the ICB.

15. Plans for Tabulation of the Data

The survey data will be analyzed and presented to OSHA in a final report by the contractors. Estimates will be derived to determine the relative hazards in the petrochemical industry. This information needed to make these estimates was

determined in the first phase of the study (from the plant management survey). These derivations are a component of the final report that the contractor will be presenting OSHA after all the surveys have been completed, and are not necessarily the objective of the additional survey enclosed here.

These additional surveys will also generate data on the use of contractors by process in the petrochemical industry data and on the injuries and illnesses associated with these processes. These data will help establish a data base on the distribution of worker hazards among industries, and within industrial facilities. The data will also be correlated with information gathered in the survey on the training and safety programs of respondents. OSHA expects to cross-tabulate the data to determine the relationships among these various components of worker safety conditions.

For this segment of the research, funding limitations dictate that the results from this contract employer survey produced by the subcontractor will be treated as a "stand-alone" document, and will not be statistically correlated with the results of the employee surveys. The survey results will, however, be used in conjunction with the earlier surveys to prepare a final report on the role of contractors in the petrochemical industry.

Statistical Methods Employed

OSHA has contracted for an additional survey of contract employers to supplement an original survey conducted on petrochemical plant management. Two surveys are currently being conducted with direct-hire and contract employees in this industry. This section describes the methodology which will be used to select the sample for the *survey of contractor employers*. A description of the survey populations for the plant management, direct hire and contract employees is also included, in order to best depict the overall relationship between study populations, and give a comprehensive overview of the petrochemical study as a whole.

1. Sample Design for Plant Manager and Employee Surveys

This section describes both the total universe from which the original survey was chosen, and the subpopulation (those 304 plants that responded to the first survey) from which was chosen the 60 plants needed to conduct the direct-hire and contract employee surveys and contractor employer survey. The first stage of the survey design calls for a probability proportional to employment size sample of 60 plants from the 304 plants whose managers were surveyed in the earlier research. The 304 plants were selected as a probability sample of the total universe. The design is intended to produce data about two categories of employees (direct hire and contract) working in the plants sampled as a whole and employers of these contract employees.

The plant management survey was designed to be representative of the petrochemical industry as a whole. The contractor employer survey in this submission is designed to be representative of the contractors whose employees work at the 304 petrochemical plants.

The universe which was represented by the original survey of plant management was all direct-hire and contract employees in all plants in SIC codes 2821, 2822, 2869, 2911 and 1321, which are repsectively, Plastics, Rubber, Organic Chemicals, Petroleum Refining, and Gas Processing. The object of studying these plants is to determine the extent to which they use contractors and the nature of the safety and health practices of these contractors' employees compared to the plants' regular direct-hire employees. OSHA's mandate is clearly to make the workplace safe for employees, so the study is more interested in plants with more employees. A sampling design which samples plants with probability roughly proportional to the number of employees would seem to be appropriate. OSHA supports the choice of this sample design because the larger firms are more likely to hire contract employees and it is primarily the safety and health practices of these types of firms that result in catastrophic releases and explosions.

In choosing a population for the direct hire and contract employee surveys, a decision was made to sample from among the 304 plants that responded to the original plant management survey performed by the John Gray Institute earlier this year. The justification for this decision was that this sample represents petrochemical companies that are likely to respond to further surveys on safety and health practices (therefore securing a fairly high response rate) and that the 304 plants are a representative sample of the universe of the specified SIC codes as a whole. The use of these same 304 plants as the population for the employee surveys will enable the analysis to compare the responses of plant managers and employees.

Accordingly, the following tables have been compiled to depict the composition of both the underlying universe from which the original 304 plants were first chosen, and the methods that will be used to choose 60 plants from among the 304 plants used in the original study. It is expected that 45 responses will be received from the 60 plants that are sent surveys. Following a letter from the Assistant Secretary for OSHA requesting lists of names of their direct-hire and contractor employees, follow-up phone calls will be made to these establishments if the response rate is insufficient or not within the necessary time frame. Although rigorous follow-up will be made to contact nonresponders and refusals, a supplemental list of 15 plants has been developed should the need arise to contact additional firms. These firms will be selected in a manner consistent with the original selection of firms and will keep OSHA's response rate well within the acceptable rates.

Table 1 shows the number of plants that comprise the underlying universe of the all plants in the specified SIC codes, as reported in the Dun and Bradstreet listing from which this information was obtained.

TABLE 1.—DUN AND BRADSTREET LISTING OF PLANTS BY SIC AND NO. OF EMPLOYEES (UNDERLYING UNIVERSE)

SIC	Description	1-19	20-99	100-249	250+	Total
2821	Plastics	663	482	136	90	1371
2822	Rubber	74	71	14	19	178
2869	Organic chemical	631	254	79	83	1047
2911	Petroleum reference	618	245	102	146	1111
1321	Gas processing	156	74	9	1	240
	Total established	2142	1126	340	339	3,947

Table 2 shows the number of employees found in each of the cells represented in Table 1 for the "No. of Employees" groupings for the entire universe of the specified SIC codes.

TABLE 2.—ESTIMATED NUMBERS OF EMPLOYEES IN UNIVERSE PROVIDED BY DUN AND BRADSTREET LISTING

SIC	Description	1-19	20-99	100-249	250+	Total
2821	Plastics	5,079	21,912	26,009	55,900	102,900
2822	Rubber	533	3,153	2,105	11,615	17,406
2869	Organic chemicals	3,959	11,806	11,626	87,972	115,363
2911	Petroleum refining	3,888	10,273	16,215	141,400	171,776

TABLE 2.—ESTIMATED NUMBERS OF EMPLOYEES IN UNIVERSE PROVIDED BY DUN AND BRADSTREET LISTING—Continued

SIC	Description	1–19	20–99	100–249	250+	Total
1321	Gas processing	4,540	12,600	1,575	350	19,065
	Total employment	17,999	59,744	51,530	297,237	426,510

Table 3 shows the number of plants among the 304 responding plants found in each of the specified SIC categories broken down by number of employees reported in the Dun and Bradstreet listing.

TABLE 3.—LIST OF RESPONDING PLANTS BY SIC AND NO. OF EMPLOYEES

SIC	Description	1–19	20–99	100–249	250+	Total
2821	Plastics	2	15	15	50	82
2822	Rubber	3	5	3	14	25
2869	Organic chemicals	0	5	13	41	59
2911	Petroleum refining	5	10	17	77	109
1321	Gas processing	4	11	3	1	19
	SIC Not identified	1	3	1	5	10
	Total Establishments	15	49	52	188	304

* Several respondents turned in completed surveys without identifying their SIC codes. These responses have been included in the totals because they represent a complete set of valid responses.

Table 4 represents a breakdown of the number of employees at the 304 plants who responded to the survey. These numbers correspond to Table 3.

TABLE 4.—ESTIMATED NO. EMPLOYEES AT 304 PLANTS RESPONDING TO SURVEY

SIC Description	1–19	20–99	100–249	250+	Total
2821 Plastics	15	664	2,126	33,517	36,322
2822 Rubber	19	251	490	9,004	9,764
2869 Organic Chem	0	320	2,078	48,478	50,877
2911 Petroleum Ref	25	540	2,968	69,661	73,193
1321 Gas Processing	31	422	533	950	1,936
Total Employment	90	2,197	8,195	161,610	172,092

A systematic probability proportional to size design was used to select 60 plants from among the 304 plants in the original survey. The results of this selection are found in Table 5.

TABLE 5.—SELECTION OF 60 PLANTS FOR EMPLOYEE SURVEYS

SIC Code	<20 Empls.	20–99 Empls.	100–249 Empls.	250+ Empls.	Total
2821	0	3	3	8	14
2822	0	1	0	2	3
2869	0	2	2	13	17
2911	1	2	3	20	26
1321	0	0	0	0	0
Total	1	8	8	43	60

The current design has the advantages of representing each plant in the universe with probability proportional to the number of its employees.

2. Selection of Contractor Employers

The universe of contractor employers to be interviewed for this census survey will include all contractors whose employees worked at any of the 45 plants (described in earlier sections) during April and May, 1990. This universe is comprised of contractors who had employees working in petrochemical plants during April and May, 1990 that are from the five specified SIC codes and from the five specified areas of contracting. The five specified SIC codes (as shown in Tables 1–4) are Plastics (2821), Rubber (2822), Organic Chemicals (2869), Petroleum refining (2911), and Gas Processing (1321). The five areas of contracting that the survey universe is based on are: major renovation, turnaround, maintenance/repair, specialty, and operations. Contract employers who have employees that do this type of contracting work in these 45 plants define the scope of the sample population for this survey.

From this universe, it is expected that 400 contractor employers will be identified as having employees who worked in the five stipulated SIC codes at one or more of the 45 plants during the stipulated time period. Approximately 300 employers are expected to respond to the survey that will be mailed to these identified contractors.

For Office Use Only:

Questionnaire No.: _____

5-6-7-8

Louis Harris and Associates, Inc.

630 Fifth Avenue, New York, New York 10111

Study No. 902039 (Contractors)

January 16, 1991

Petrochemical Industry Safety Survey of Contractors

This survey is being conducted to help the Occupational Safety and Health Administration (OSHA) assess the activities relating to the safety and health of workers in the petro-chemical industry. While you may choose not to answer any questions, the information you give us is protected under the Privacy Act of 1974. All answers regarding each plant and contractor and your company's identity will be kept strictly confidential.

Questions which reference "HOST PLANT" are referring to the _____ plant at which some of your employees worked in one or more of five areas—major renovation, turnaround, maintenance/repair, specialty, and operations—during the months of April and May 1990.

Several questions refer to "the last 12 months". If you can't answer for that period, please answer for 1989 instead.

Note:

Public Law 95-573, called the Privacy Act of 1974, requires that you be informed of the purpose and uses to be made of the information that is collected.

Providing information in this questionnaire is voluntary. You do not have to answer particular questions if you choose not to.

The information collected in the survey will be used to assess petro-chemical industry safety practices.

We estimate that it will take an average of 30 minutes to complete this information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. If you have any comments regarding these estimates or any other aspect of this survey, including suggestions for reducing this burden, send them to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Avenue NW., Washington, DC 20210. And to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

BILLING CODE 4510-26-M

S1. What percentage of your 1989 onsite contract labor force was employed in each of the following categories?

A. ____% **Major Renovation**
B. ____% **Turnaround**
C. ____% **Maintenance/Repair**
D. ____% **Specialty**
E. ____% **Operations**
F. _____% Other:_____
(please specify)
100% (Total onsite contract force)

S3. As of (MONTH SAMPLE WAS DRAWN), how long had your company been working on-site at (HOST PLANT) -- less than a year, 1-2 years, 2-3 years, or more than 3 years?

Less than a year.....((____-1 (ASK Q.S4)

1-2 years.....____-2 (SKIP TO Q.S5)
2-3 years.....____-3
More than 3.....____-4
Not sure.....____-5

S4. How many months had your company been working on-site?

/___/___/ Months
(-)

Not sure.....((____-1

EVERYONE ANSWER

S5. Is your work at (HOST PLANT) as a maintenance contractor, a specialty contractor, an operations contractor, or as a subcontractor? MARK AS MANY AS APPLY

Maintenance contractor.....((____-1
Specialty contractor.....((____-1
Operations contractor.....((____-1
Subcontractor.....((____-1
Not sure.....____-2

S6. Does your company work at (HOST PLANT) only during turnaround periods, or does it work there at other times also?

Turnaround only.....((____-1
Turnaround and other times.....____-2
Not sure.....____-3

-1- CARD 902039

A. Contractors' Provision of Onsite Contract Employees in 1989

Please keep in mind that the questions refer only to contract employees in five categories working at the (HOST PLANT). They do not refer to employees working on new construction or other functions. The five categories of employees are: Maintenance, Field/Technical Support, Renovation and Turnaround, Specialty, and Operations.

A1. In your experience, is the safety and health performance of your company in these five categories periodically reviewed by the host plant always, usually, sometimes, rarely, or never?

Always.....((____-1
Usually.....____-2
Sometimes.....____-3
Rarely.....____-4
Never.....____-5
Not sure.....____-6

READ Q.A2 AND Q.A3 IN SEQUENCE.

A2. Would you estimate that contract workers as a proportion of the total work force has increased, decreased, or remained about the same since 1985?

	Increased	Decreased	About the Same	Not Sure
a. In the petrochemical industry as a whole.	(____-1	____-2	____-3	____-4
b. At this site	(____-1	____-2	____-3	____-4
c. For this company	(____-1	____-2	____-3	____-4

A3. Would you estimate that contract workers as a proportion of the total work force has increased, decreased, or remained about the same in the last 12 months?

	Increased	Decreased	About the Same	Not Sure
a. In the petrochemical industry as a whole.	(____-1	____-2	____-3	____-4
b. At this site	(____-1	____-2	____-3	____-4
c. For this company	(____-1	____-2	____-3	____-4

B. Contractor Selection

B1. Here are some safety measures. When you bid for the contract for (HOST PLANT), did you submit any of these measures as an indicator of your safety record, or not?

		Yes, Did	No, Didn't	Not Sure
a.	Workers Comp E.M.R.....	(____-1	____-2	____-3
b.	Injury/illness performance (OSHA 200 Log).....	(____-1	____-2	____-3
c.	Contractor safety and health programs.....	(____-1	____-2	____-3

IF YES TO Q.B1b, ASK Q.B2. OTHERS SKIP TO Q.B3.

B2. Did the OSHA 200 log you provided cover your company's prior experience or work you performed only at this worksite, only for this company, only within this industry, or in all industries you work in?

Only at this worksite.....((____-1
Only for this company.....____-2
Only within this industry.....____-3
In all industries.....____-4
Not sure.....____-5

EVERYONE ANSWER

B3. Did plant management communicate to you which, if any, of these indicators of contractor safety would be used in the selection process?

Yes.....((____-1
No.....____-2
Not sure.....____-3

B4. Here are some criteria for the selection of contractors. In general, is each of the criteria much more important, somewhat more important, equally important, somewhat less important or much less important than safety in the selection of contractors?

ROTATE -- START AT "X"	Much More Important	Somewhat More Important	Equally Important	Somewhat Less Important	Much Less Important	Not Sure
( ) 1. Price.....	(___-1	____-2	____-3	____-4	____-5	____-6
( ) 2. Ability to perform the job on time.....	(___-1	____-2	____-3	____-4	____-5	____-6
( ) 3 The quality of work..	(___-1	____-2	____-3	____-4	____-5	____-6

B5. At this plant, for this job, to whom did you supply prebid safety data? Was it someone at the plant level, division level, or the corporate level?

Plant level.....((____-1
Division level.....____-2
Corporate level.....____-3
Not sure.....____-4

B6. In the last year, did your company ever choose not to bid on a contract because of safety considerations about the host plant?

Yes.....((____-1

No.....____-2
Not sure.....____-3

C. Monitoring Safety and Health Performance

C1a. Here are some methods of measuring and enforcing safety compliance. In order to monitor and enforce your company's compliance with health and safety requirements does plant management at (HOST PLANT) normally use each of these methods, or not?

C1b. Please rank order these procedures from most effective (#1) to least effective (#7).

	Q.C1a Yes, Uses	Q.C1a Doesn't Use	Q.C1a Not Sure	Q.C1b Rank Order
a. Periodic meetings and reviews.....	(____-1	____-2	____-3	(-)../___/
b. Jobsite correction.....	(____-1	____-2	____-3	(-)../___/
c. Worker sanctions per contract.....	(____-1	____-2	____-3	(-)../___/
d. Job shutdown and correction.....	(____-1	____-2	____-3	(-)../___/
e. Contract termination.....	(____-1	____-2	____-3	(-)../___/
f. Removal from the bidder list for future work.....	(____-1	____-2	____-3	(-)../___/
g. Discipline or removal of an individual.....	(____-1	____-2	____-3	(-)../___/
h. Monetary incentives or penalties....	(____-1	____-2	____-3	(-)../___/
i. Anything else (PLEASE WRITE IN):				
_____..	(____-1	____-2	____-3	XXXXXXXXXXXX
Not sure.....	XXXXXXXXXX	XXXXXX	XXXXXX	____-1

C2. What is the total number of your company's employee hours worked at (HOST PLANT) in 1989?

/___/___/___/___/ ,000.00
(-)

Not sure.....((___-1

C3. Here are some consequences of accidents on the job. Using 1989's OSHA No. 200 LOG, how many of each item did you have at this plant of employees working on-site in 1989?

a. Fatalities...../___/___/___/....Not sure..((___-1
(-)

b. Lost workday cases...../___/___/___/....Not sure..((___-1
(-)

c. Number of injuries without lost workdays...../___/___/___/....Not sure..((___-1
(-)

d. Total number of lost workdays..../___/___/___/....Not sure..((___-1
(-)

C4. What is the total number of employee hours worked in the petrochemical industry in 1989?

/___/___/___/___/ ,000.00
(-)

Not sure.....((___-1

C5. Here are some consequences of accidents on the job. Using 1989's OSHA No. 200 LOG, how many of each item did you have of employees working in the petrochemical industry in 1989?

a. Fatalities...../___/___/___/....Not sure..((___-1
(-)

b. Lost workday cases...../___/___/___/....Not sure..((___-1
(-)

c. Number of injuries without lost workdays...../___/___/___/....Not sure..((___-1
(-)

d. Total number of lost workdays..../___/___/___/....Not sure..((___-1
(-)

-8- CARD 902039

D. Safety and Health Programs/Requirements

D1. At (HOST PLANT) does plant management have a formal work authorization system for contractor work involving existing process facilities?

Yes.....((____-1 (ASK Q.D2)

No.....____-2
Not sure.....____-3 (SKIP TO Q.D4)

D2. Here are various types of work performed at a petrochemical refinery. Prior to performing each of these types of work at (HOST PLANT) do you have to obtain specific written authorization, specific verbal authorization, both or neither?

	Written	Verbal	Both	Neither	Not Sure
a. Any on-site work.....(	(____-1	____-2	____-3	____-4	____-5
b. Confined space entry...(	(____-1	____-2	____-3	____-4	____-5
c. Hot work.....(	(____-1	____-2	____-3	____-4	____-5
d. Excavations.....(	(____-1	____-2	____-3	____-4	____-5
e. Work involving process.(	(____-1	____-2	____-3	____-4	____-5

D3. Does your company hold health and safety meetings for your on-site employees during normal working hours, or not?

Yes.....((____-1
No.....____-2
Not sure.....____-3

EVERYONE ANSWER

D4. Does your company have its own written health and safety program, or not?

Yes.....((____-1
No.....____-2
Not sure.....____-3

D5. Is a full-time, a part-time, or no safety professional from your company assigned to (HOST PLANT)?

Full-time.....((____-1
Part-time.....____-2
Neither (None).....____-3
Not sure.....____-4

D5a. What is your criteria for determining the assignment of full-time safety professionals to the work site? (For example, does it involve the number of people, complexity of work, or length of time on-site?) PLEASE WRITE IN

_____

_____

_____

D6. Are safety inspections done on this site by your company?

Yes.....((____-1 (ASK Q.D6a)
No.....____-2 (SKIP TO Q.D7)
Not Sure.....____-3

D6a. How frequently are safety inspections done on this site by your company? Is it weekly, monthly, several times a year, once a year, or not at all?

Weekly.....((____-1
Monthly.....____-2
Several times a year...____-3
Once a year.....____-4
Not at all.....____-5
Not sure.....____-6

D6b. Please describe your on-site safety inspections. (For example, does it involve reviewing lock out procedures, checking equipment, reviewing injury statistics, field inspections of facilities, or reviewing communications about hazards?) PLEASE WRITE IN

_____

_____

_____

EVERYONE ANSWER

D7. How many hours of safety training have your supervisors on this site received in the past year?

/____/____/____/____/ Hours
(-)

Not sure.....((____-1

E. Owner's Communication and Response Requirements

E1. Here are some ways of communicating safety information. As part of the safety orientation at (HOST PLANT) does anyone present any of these items to your employees, or not?

IF "YES" TO Q.E1, ASK Q.E1a IN SEQUENCE.

E1a. Is each of the following items presented by the host plant, the contractor, or jointly?

	Q.E1			Q.E1a			
	Yes Presents	No Does Not Present	Not Sure	Host Plant	Con-tractor	Jointly	Not Sure
a. A talk.....	(___-1	___-2	___-3	(___-1	___-2	___-3	___-4
b. A tour of the work area....	(___-1	___-2	___-3	(___-1	___-2	___-3	___-4
c. A film.....	(___-1	___-2	___-3	(___-1	___-2	___-3	___-4
d. An interactive discussion..	(___-1	___-2	___-3	(___-1	___-2	___-3	___-4
e. A test on the safety-related material....	(___-1	___-2	___-3	(___-1	___-2	___-3	___-4

E2. Does (HOST PLANT) have a labor/management safety and health committee which includes contractors, or not?

Yes.....((___-1 (ASK Q.E3)

No.....___-2
Not sure.....___-3 (SKIP TO Q.E5)

E3. When your workers last worked at (HOST PLANT) did this committee meet at least weekly, monthly, quarterly, or less often than that?

Weekly.....((___-1
Monthly.....___-2
Quarterly.....___-3
Less often than that.....___-4
Not sure.....___-5

E4. How many walkaround inspections were conducted by this committee at (HOST PLANT) while you worked there during the last year?

/___/___/___/ Inspections
(-)

Not sure.....((___-1

EVERYONE ANSWER

E5. As a contractor, do you have your own labor management safety and health committee at (HOST PLANT) or not?

Yes.....((____-1 (ASK Q.E6)
No.....____-2 (SKIP TO Q.G1)
Not Sure.....____-3

E6. When your workers last worked at (HOST PLANT) did this committee meet at least weekly, monthly, quarterly, or less often than that?

Weekly.....((____-1
Monthly.....____-2
Quarterly.....____-3
Less often than that.....____-4
Not sure.....____-5

E7. How many walkaround inspections were conducted by this committee at (HOST PLANT) while you worked there during the last year?

/____/____/____/ Inspections
(-)

Not sure.....((____-1

-12- CARD 902039

G. Training of Contractors' Employees

EVERYONE ANSWER

G1. In general, who is primarily responsible for the safety and health training for your employees who are working on-site -- your company, plant management, the union, or someone else? IF SOMEONE ELSE: Who is it? RECORD BELOW

Your Company.....((____-1
Plant management.....____-2
Union.....____-3
Someone else: PLEASE WRITE IN

_____.____-4
Not sure.....____-5

G2. About how many hours of initial on-site safety and health training do your employees usually receive when working on-site at (HOST PLANT)?

/___/___/___/
(-)

Not sure.....((____-1

G3. About how many ongoing hours per months of safety and health training do your employees usually receive when working on-site at (HOST PLANT)?

/___/___/___/
(-)

Not sure.....((____-1

G4. Prior to going into any petrochemical plants do your workers receive off-site basic safety training or not?

Yes.....((____-1
No.....____-2
Not sure.....____-3

G5. Prior to going to work at (HOST PLANT) did your workers receive off-site pre-employment site-specific safety training, or not?

Yes.....((____-1
No.....____-2
Not sure.....____-3

H1. Did your company's work at (HOST PLANT) bring your workers into regular contact with direct-hire employees, or not?

Yes, regular contact.....((____-1 (ASK Q.H1)

No, not regular contact.....____-2
Not sure.....____-3 (SKIP TO Q.F1)

H2. When your company worked at (HOST PLANT) was there evidence of information about hazards not being shared between (HOST PLANT) employees and your company's employees often, sometimes, rarely, or never?

Often.....((____-1
Sometimes.....____-2
Rarely.....____-3
Never.....____-4
Not sure.....____-5

H3. When your company worked at (HOST PLANT), was there evidence of tension or conflict between your company's employees and direct-hire workers at the plant often, sometimes, rarely, or never?

Often.....((____-1
Sometimes.....____-2
Rarely.....____-3
Never.....____-4
Not sure.....____-5

-14- CARD 902039

F. Demographics

EVERYONE ANSWER

F1. Are your employees at (HOST PLANT) covered by a collective bargaining agreement or not?

Yes.....((____-1
No.....____-2
Some but not all (vol.)..____-3
Not sure.....____-4

F2. How many employees do you currently have working on-site in the job categories we've been discussing?

/___/___/___/___/ Employees
(-)

Not sure.....((____-1

F3. What was the peak number of employees you ever had doing contract work in these categories on-site within one 24-hour period in the last year?

/___/___/___/ Employees
(-)

Not sure.....((____-1

F4. Estimate the percent of your employees working at (HOST PLANT) who do not speak English?

/___/___/___/ %
(-)

Not sure.....((____-1

F5. Estimate the percentage of your employees working at (HOST PLANT) who cannot read English?

/___/___/___/ %
(-)

Not sure.....((____-1

F6. Of the workers presently on-site at (HOST PLANT), what percent have worked for you at this site for each of the following time periods?

a. Less than one month...../___/___/___/ %....Not sure...((___-1
(-)

b. One month to 3 months...../___/___/___/ %....Not sure...((___-1
(-)

c. Three months to one year../___/___/___/ %....Not sure...((___-1
(-)

d. More than one year...../___/___/___/ %....Not sure...((___-1
(-)

F7. Of the workers presently on-site at (HOST PLANT) what percent have worked for your company for each of the following time periods?

a. Less than one month...../___/___/___/ %....Not sure...((___-1
(-)

b. One month to 3 months...../___/___/___/ %....Not sure...((___-1
(-)

c. Three months to one year../___/___/___/ %....Not sure...((___-1
(-)

d. More than one year...../___/___/___/ %....Not sure...((___-1
(-)

That completes the survey. Thank you very much for your cooperation!

[FR Doc. 91-2515 Filed 1-31-91; 8:45 am]
BILLING CODE 4510-26-C

All Items Consumer Price Index for All Urban Consumers United States City Average

Pursuant to section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94–283, 2 U.S.C. 441a), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 165.0 percent from its 1974 annual average of 147.7 to its 1990 annual average of 391.4. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 165.0 percent from its 1974 annual average of 100 to its 1990 annual average of 265.0.

Signed at Washington, DC, on the 24th day of January 1991.

Roderick A. DeArment,

Acting Secretary of Labor.

[FR Doc. 91–2432 Filed 1–31–91; 8:45 am]

BILLING CODE 4510–24–M

Wage and Hour Division, Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination, decisions and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issues, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administation, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

New Jersey, NJ90–2 (Jan. 5, 1990). p. 665
pp. 667,674

Volume II:

Illinois, IL90–1 (Jan. 5, 1990).... p. 59
p. 67

Volume III:

Arizona, AZ90–1 (Jan. 5, 1990). p. 9
pp. 10–11
California, CA90–2 (Jan. 5, 1990). p. 41
pp. 42–66
Colorado:
CO90–1 (Jan. 5, 1990)..... p. 107
p. 108
CO90–2 (Jan. 5, 1990)..... p. 117
p. 118
CO90–4 (Jan. 5, 1990)..... p. 125
p. 126
CO90–5 (Jan. 5, 1990)..... p. 132a
p. 132b
CO90–6 (Jan. 5, 1990)..... p. 132e
p. 132f
CO90–7 (Jan. 5, 1990)..... p. 132i
p. 132j
CO90–8 (Jan. 5, 1990)..... p. 132k
p. 132l–132m
CO90–9 (Jan. 5, 1990)..... p. 132o
p. 132p
Hawaii, HI90–1 (Jan. 5, 1990)... p. 137
pp. 138–139
Oregon, OR90–1 (Jan. 5, 1990). p. 309
pp. 314–326
Utah, UT90–9 (Jan. 5, 1990)..... p. 368m

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year,

regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 25th Day of January 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-2164 Filed 1-31-91; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-90-21-M]

Magma Copper Co.; Petition for Modification of Application of Mandatory Safety Standard

Magma Cooper Company, P.O. Box 37, Superior, Arizona 85273 has filed a petition to modify the application of 30 CFR 57.11059 (respirable atmosphere for hoist operators underground) to its Magma Mine (I.D. No. 02-00152) located in Pinal County, Arizona. 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 the hoist operator be provided with a respirable atmosphere completely independent of the mine atmosphere. This independent ventilation system should convert without contamination, to an approved and properly maintained 2-hour self-contained breathing apparatus to provide a safe means of escape for the hoist operator after the hoisting duties have been completed.

2. Presently the mine uses a 60 minute 4500 PSI compressed air breathing apparatus. This unit is directly attached to the 24 hour cascade system. When all personnel are out of the mine the hoistman activates his compressed air backpack tank, then disconnects from the cascade system and exists the mine.

3. In support of this petition, petitioner states that—

(a) It takes 10 to 15 minutes to walk the #9 shaft and 5 minutes to be hoisted out of the mine. The possibility of not being able to exit the mine would be rare because the shaft is concrete and steel;

(b) There are trained mine rescue people capable of manning the hoists in the event of a complete evacuation; and

(c) The mine is supplied with 24 hours of compressed air, and 1 hour self-contained breathing apparatus to ensure a safe atmosphere for the hoistman to completely evacuate and to exit the mine safely.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (March 4, 1991). Copies of the petition are available for inspection at that address.

Dated: January 24, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-2428 Filed 1-31-91; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-91-02-C]

Western Fuels-Utah, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Western Fuels-Utah, Inc., P.O. Box 1067, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Deserado Mine (I.D. No. 05-03505) located in Rio Blanco County, Colorado. 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 except where permissible power connection units are used, all power connection points inby the last open crosscut shall be in intake air.

2. The petitioner requests a modification of the existing standard to permit the use of nonpermissible pumps in a borehole in a sump area of its mine.

3. As an alternate method, petitioner proposes to drill a borehole from the surface into a sump adjacent to a longwall panel. A nonpermissible submersible pump will be installed in the borehole to dewater the sump. Five feet of water will be kept above the pump's motor at all times, with the inlet of the pump located above the pump motor, making it impossible for water to be pumped down to expose the motor. The water level will be monitored by the use of electrode type probes. The power circuit for the pump will be designed and installed, as described in the petition.

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 4, 1991. Copies of the petition are available for inspection at that address.

Dated: January 24, 1991

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-2429 Filed 1-31-91; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-91-01-C]

Wolf-Creek Collieries Co.; Petition for Modification of Application of Mandatory Safety Standard

Wolf-Creek Collieries Company, Caller 802, Lovely, Kentucky 41231, has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its No. 4 Mine (I.D. No. 15-04020) located in Martin 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 low- and medium-voltage resistance grounded systems include a fail safe ground check circuit or other no less effective device to monitor continuously the grounding circuit.

2. As an alternate method, petitioner proposes to use contractors in lieu of the required circuit breaker.

3. In support of this request, petitioner states that:

(a) Only pump starting equipment would be affected by this petition;

(b) Pump power contactors would be built into or permanently affixed to the transformer enclosure, separated and isolated from the other components of the unit;

(c) Ground continuity would be monitored at all times with an approved type monitor;

(d) Upon loss of ground or pilot wire, the monitor would drop out all contactors that provide power to the pump unit and all related equipment;

(e) Frequent examinations would be made by a qualified person, recorded and made available for examination at all times;

(f) An audible alarm would be sounded prior to each start up.

4. The alternate method will at all times guarantee no less than the same

measure of protection as that afforded 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 4, 1991. Copies of the petition are available for inspection at that address.

Dated: January 24, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-2430 Filed 1-31-91; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 91-1]

Request for Information; Study on Resale Royalties for Works of Art

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of inquiry.

SUMMARY: This Notice of Inquiry advises the public that the Copyright Office is conducting a study on the feasibility of legislation requiring purchasers of works of art to pay to the artist a percentage of the resale price of the art work. This notice invites comments and information that will assist the Office in understanding the issues involved in such a requirement. The Office particularly invites comment from groups or individuals involved in the creation, exhibition, dissemination, and preservation of works of art, including artists, art dealers, auction houses, investment advisors, collectors of fine art, and curators of art museums.

DATES: Initial comments should be received by June 1, 1991. Reply comments should be received by August 1, 1991.

ADDRESSES: Interested persons should submit ten copies of their written comments to Office of the Register of Copyrights, Copyright Office, James Madison Building, room 403, First and Independence Avenue, SE., Washington, DC 20559.

FOR FURTHER INFORMATION CONTACT: William Patry, Policy Planning Advisor to the Register of Copyrights, Copyrights Office, Library of Congress, Washington, DC 20559. Telephone: (202) 707-8350.

SUPPLEMENTARY INFORMATION: On December 1, 1990, President Bush signed into law Public Law 101-650. Title VI of this legislation contained provisions according certain rights of attribution and integrity to works of the visual arts. The title is generally effective on June 1, 1991. Section 608(b) of the legislation also mandated that

> (1) The Register of Copyrights, in consultation with the Chair of the National Endowment for the Arts, shall conduct a study on the feasibility of implementing—
>
> (A) A requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and
>
> (B) Other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work.

The report is to be presented to Congress 18 months after the date of enactment (June 1, 1992). The present notice is designed to assist the Copyright Office is fulfilling this mandate.

Droit De Suite

Resale royalty rights, commonly called *droit de suite*, were developed in Europe as a method of permitting artists to share in the increased value of their works. The Berne Convention permits member countries to extend *droit de suite*, but does not require them to do so. Article 14*ter*. Few countries have *droit de suite* regimes. In the United States, federal copyright law does not provide a resale royalty right, and among the states, only California has enacted a *droit de suite* provision. There are a number of different approaches to *droit de suite*, taking into account factors such as the type of work, the sales price, who is selling the work, and whether the sale is public or private. The effectiveness of the laws in achieving their desired goals has been the subject of dispute.

During the 100th Congress, hearings were held on H.R. 3221 and S. 1619, predecessors of Public Law 101-650. Section 3 of the bills contained a *droit de suite* provision. Due to opposition to the provision, it was dropped from subsequent bills with the understanding that the present study would be undertaken.

In order to assist it in completing the study, the Copyright Office seeks comments on the following questions:

1. Would resale royalty legislation promote or discourage the creation of new works of art, and if so, how? How would the legislation affect the marketplace for works of art subject to such a requirement?

2. If resale royalty legislation is appropriate, what form should it take? For example, what categories of works of art should it cover? Should there be a threshold value for works to be subject to the requirement, and, if so, what should that amount be? Should there be a threshold requirement for an increase in value for the requirement, and, if so, what should the increased amount be? What should the amount of the resale royalty be and how should it be measured; by a percentage of the resaler's profit, the net sales differential, or some other measurement? Should the net sale differential be adjusted for inflation?

3. Who should benefit from the requirment? For example, should it be limited to works created in the United States, or should it also include works of foreign origin sold in the United States? What are the international implications of such decisions? How is the issue handled in foreign countries and in California?

4. What should the term of any resale requirement be? Should it be coextensive with the copyright in the work? Should the right be descendible? Should or can the right be applied retroactively to works in existence at the date of enactment of any legislation?

5. Should there be any enforcement mechanisms, central collecting societies, or registration requirements? What are the experiences in foreign countries and in California with these problems? Who should record the initial and subsequent sales price? How will the system work if a work of art is presented as a gift, donated, or exchanged in a barter transaction?

6. Should the right be waivable or alienable?

7. Should the California law be preempted in the event of a federal law?

Interested parties are free to comment on other issues not raised in these questions.

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, in room 401, James Madison Memorial Building, Library of Congress, First and Independence Avenue, SE., Washington, DC 20559.

Dated: January 24, 1991.

Ralph Oman,

Register of Copyrights.

[FR Doc. 91-2419 Filed 1-31-91; 8:45 am]

BILLING CODE 1410-07-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Literature Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Audience Development Section) to the National Council on the Arts will be held on February 20–21, 1991 from 9 a.m.–6:30 p.m. and February 22 from 9–4 in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 22 from 1 p.m.–4 p.m. The topic will be policy discussion.

The remaining portions of this meeting on February 20–21 from 9 a.m.–6:30 p.m. and February 22 from 9 a.m. to 1 p.m. 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 information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting wil be permitted to participate in the panel's discussions at the descretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endownment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endownment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 25, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endownment for the Arts.

[FR Doc. 91–2360 Filed 1–31–91; 8:45 am]

BILLING CODE 7537–01–M

Meeting of the Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Professional Training Section) to the National Council on the Arts will be held on February 20, 1991 from 9 a.m.–5:30 p.m. and on February 21 from 9 a.m.–5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 21 from 4 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on February 20 from 9 a.m.–5:30 p.m. and February 21 from 9 a.m.–4 p.m. 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 information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 25, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–2361 Filed 1–31–91; 8:45 am]

BILLING CODE 7537–01–M

National Council on the Arts; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice of an ad hoc meeting of the National Council on the Arts (January 29, 1991, 56 FR 3287) being held on February 1, 1991 from 5:45 p.m.–6:15 p.m. has been changed.

The portion of the notice which reads "This session will be closed to the public pursuant to subsections (6) and (9)(B) of section 552b of title 5, United States Code, and the determination of the Chairman of December 11, 1990, as amended"; should read "This session will be closed to the public pursuant to subsections (c)(6) and (9)(B) of section 552b of title 5, United States Code, and the determination of the Chairman of January 29, 1991."

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 29, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–2526 Filed 1–30–91; 12:19 pm]

BILLING CODE 7537–01–M

National Council on the Arts; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice of a meeting of the National Council on the Arts (January 29, 1991, 56 FR 3287) being held on February 1, 1991, from 9 a.m.–5:45 p.m. and on February 2 from 9 a.m.–6:15 p.m. has been changed.

The portion of the notice which reads "Such closure would be in accordance with the determination of the Chairman

of December 11, 1990" should read "Such closure would be in accordance with the determination of the Chairman of January 29, 1991."

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 29, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–2527 Filed 1–30–91; 12:19 pm]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30870–OM ASLBP No. 91–629–01–OM (Byproduct Material License)]

Fewell Geotechnical Engineering, Ltd., (Thomas E. Murray, Radiographer); Hearing

January 28, 1991.

Please take notice that an evidentiary hearing on the above proceeding will be held on Tuesday, February 12, 1991 at the District Court, 1111 Alakea Street, Honolulu, Hawaii, beginning at 9 a.m.

Issued at Bethesda, Maryland, this 28th day of January, 1991.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

[Docket No. 50–423]

Issuance of Amendment to Facility Operating License; Northeast Nuclear Energy Co.

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 59 to Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company, which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to allow an increase in the normal containment pressure range. The revised containment pressure range is 10.6 psia to 14.0 psia.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 16, 1990 (55 FR 14149). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see (1) the application for amendment dated February 26, 1990, as supplemented April 30, December 6, and 19, 1990, (2) Amendment No. 59 to License No. NPF–49, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland, this 25th day of January 1991.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–2409 filed 1–31–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Nonconforming Products and Materials; Draft Policy Letter

AGENCY: Office of Federal Procurement Policy (OFPP).

ACTION: Solicitation of public comment on a draft OFPP Policy Letter requiring the reporting of nonconforming products and materials.

SUMMARY: The proposed Policy Letter establishes Government-wide policies and procedures for using a central system for exchanging information among agencies about nonconforming products and materials acquired under Federal contracts. The use of a central system will enhance communications among agencies and help eliminate instances where individual agencies or their contractors acquire products and materials previously identified as nonconforming by other agencies.

COMMENT DATE: Comments must be received on or before March 4, 1991.

ADDRESS AND INFORMATION CONTACT: Comments should be sent to Charles W. Clark, Deputy Associate Administrator, Office of Federal Procurement Policy, Office of Management and Budget, room 9013, 725 17th Street, NW., Washington, DC 20503. Information or questions may be addressed to Mr. Clark on (202) 395–6803.

Dated: January 30, 1991.

Allen V. Burman,

Administrator.

Policy Letter No. 91–X

To the Heads of Executive Departments and Establishments

Subject: Reporitng Nonconforming Products and Materials

1. Purpose. This Policy Letter establishes policies and procedures for using a Government-wide system for exchanging information among agencies about nonconforming products and materials acquired under Federal contracts. The use of a central system will enhance communications among agenices. Specifically, it will help eliminate instances whre individual agencies or their contractors acquire products and materials previously identified as nonconforming by other agencies.

2. Definition. A nonconforming product, process or material (nonconforming product) is a product that does not meet manufacturing specifications, design, composition or other contract requirements.

3. Background. Recent General Accounting Office (GAO) and Inspectors Genral (IG) reports indicate that nonconforming products are a common problem. A July 1990 survey report of 22 Federal agencies by the President's Council on Integrity and Efficiency (PCIE) reveals that approximately 40 percent of Government personnel involved in the procurement process have had recent experience with nonconforming products. In comparison, 85 percent of the employees who perform quality assurance/quality control responsibilities or receive or use products are aware of recent product substitution problems. The PCIE survey found that instances of nonconforming products occur most frequently in the construction equipment and materials area. Office equipment and supplies are second in frequency and electronic equipment is third.

The Federal Acquisition Regulation (FAR) part 46.407 requires that contracting officers oridinarily reject nonconforming products when the nonconformance adversely affects safety, health, reliability, durability, performance, interchangeability, or other contract objectives. Such products, if not detected, can compromise defense and other agency missions, result in unanticipated replacement, repair or maintenance costs, and jeopardize public safety and health.

Nonconforming products often result from the failure of suppliers to adequately control quality and in some instances from criminal intent.

4. Policy. Agencies shall review existing programs or, where necessary, establish new programs to assure the quality of purchased products and materials. Information shall be exchanged among agencies about products or materials that fail to meet performance requirements or are rejected prior to acceptance by the Government. The existing Government—Industry Data Exchange Program (GIDEP) operated by the Department of Defense will serve as the central data base for receiving and disseminating information about such products. Information that would not benefit other agencies or protect the public should not be transmitted to GIDEP.

Each agency, as part of its periodic internal controls reviews under Office of Management and Budget Circular A–123, shall assess its programs for indentifying and preventing the acquisition of nonconforming products. As a minimum, this assessment should address:

—The impact such products have on the agency's mission and on the health and safety of agency employees and the public, and

—The agency's procedures for assuring the quality of acquired products and materials and, where appropriate, recommendations for improving those procedures.

New assessments of agency programs for controlling nonconforming products are not required in those agencies where such assessments have been made within the past 18 months.

5. Required Practices. Agencies not currently participating in GIDEP shall commence participating within 45 days of the date of this Policy Letter. Agencies are required to participate only in the "Failure Experiences" data interchange. Participation in the other GIDEP data bases is elective and shall be determined by each agency. An application for GIDEP participation is attached (Attachment 1). The application shall be completed and mailed to the GIDEP Operations Center, Corona, California 91720–5000. The Operations Center will provide additional information to each agency applicant about using GIDEP.

a. Safety and Health Considerations. Information about any nonconforming product that could be harmful to employees or to public safety and health should be promptly transmitted to GIDEP. Cases of fraud or suspected fraud should be referred to the appropriate authorities in accordance with existing agency procedures. Defective or ambiguous specifications should be referred to appropriate agency officials or to the Government's specifications manager. Other causes for nonconformance should be directed to the contractor through the contracting officer.

b. Screening of Sensitive Information. Agencies shall work through their respective Inspectors General and establish specific procedures and processes for receiving and disseminating sensitive information. Sensitive information concerns any person or entity that is under investigation or being considered for investigation as a result of the submission of nonconforming products to an agency. These procedures shall ensure the timely preparation and release of sensitive information about nonconforming products to GIDEP while assuring that such information is screened prior to release to prevent (1) compromising ongoing and future criminal/civil investigations and prosecutions, or (2) the release of privileged grand jury information or information under seal by a court. The requirements of this section do not supersede existing agency regulations concerning the release of sensitive information.

c. Notifying the Supplier. In addition to the actions specified in FAR part 46.407, GIDEP procedures shall be followed regarding notification of suppliers of rejected or other nonconforming products that have been referred to GIDEP. Generally, these procedures require that the specific nonconforming features of a product be identified in writing and provided by letter to the supplier of the item. The supplier is given 15 days to respond to the agency notice. Within five days of the receipt of the supplier's response, notice of the nonconforming product together with the supplier's response is transmitted to GIDEP. GIDEP will disseminate the information to all agency and private industry contact points.

6. GIDEP Waiver. If any agency because of the small size of its procurement program or for other specific agency unique reasons believes that participating in GIDEP would not be appropriate, the rationale for not participating shall be provided by letter from the agency's Senior Procurement Executive to the Administrator for Federal Procurement Policy. The Administrator will review such requests on a case-by-case basis.

7. Use of GIDEP Information. The initiation of any suspension or debarment action resulting from nonconforming products shall continue to be governed by part 9.4 of the FAR. Contracting officer decisions to accept nonconforming products shall continue in accordance with part 46 of the FAR.

8. Effective Date. This Policy Letter is effective upon issuance.

9. Information. Questions or inquiries about this Policy Letter should be directed to Charles W. Clark, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503, telephone (202) 395–6803.

Allan V. Burman,

Administrator.

Attachment.

Agency Application for GIDEP Participation

We hereby apply for participation in the Government-Industry Data Exchange Program (GIDEP).

We agree to govern our participation in accordance with current requirements as set forth in the GIDEP Policies and Procedures Manual.

Our initial participation will be in the Failure Experience Data Interchange.

Our agency title is: _____

Our appointed GIDEP representative is:

Name (including middle initial): _____

Phone number (including area code): _____

FAX number (including area code): _____

Mailing Address: _____

Participation in GIDEP is requested by:

Name: _____

Phone: _____

Title: _____

Signature: _____

Date: _____

If you have any questions please contact:

GIDEP Operations Center at (714) 736–4677 (Autovon 933–4677)

GIDEP Program Manager at (703) 602–2369 (Autovon 332–2369)

[FR Doc. 91–2575 Filed 1–31–91; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology (PCAST); Meeting

The President's Council of Advisors on Science and Technology will meet on February 7–8, 1991. The meeting will begin at 9 a.m. in the Conference Room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Briefing of the Council on the current activities of Office of Science and Technology Policy.

2. Briefing of the Council on current federal activities and policies in science and technology.

3. Discussion of progress working group panels.

4. Discussion of composition of future working groups.

Portions of the February 7–8 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of materials that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel

procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to *5 U.S.C. 552b(c)(1), (2), and (9)(B).*

A portion of the discussion of panel composition will necessitate disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to *5 U.S.C. 552b(c)(6).*

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Ms. Sally Sherman (202) 395–3902, prior to 3 p.m. on February 6, 1991. Ms. Sherman is also available to provide specific information regarding time, place and agenda for the open session.

Dated: January 25, 1991.

Ms. Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91–2445 Filed 1–31–91; 8:45 am]

BILLING CODE 3170–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

Extension

Rule 6e–2
File No. 270–177
Rule 24f–1
File No. 270–130

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 6e–2 [17 CFR 270.6e–2] and Rule 24f–1 [17 CFR 270.24f–1] under the Investment Company Act of 1940.

Rule 6e–2 [17 CFR 270.6e–2] grants investments companies offering scheduled premium variable life insurance contracts exemptions from the Investment Company Act of 1940. The rule requires a reporting burden of about 666 annual burden hours per respondent.

Rule 24f–1 [17 CFR 270.24f–1] permits certain investment companies that inadvertently sold more shares than are registered to register the oversold shares under the Securities Act of 1933. The reporting burden under the rule is about 2 hours per respondent.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Projects 3235–0177 [Rule 6e–2], and 3235–0155 [Rule 24f–1] room 3208 NEOB, Washington, DC 20503.

Dated: January 28, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2368 Filed 1–31–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28828; File No. SR–MSE–91–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Midwest Stock Exchange, Inc., Relating to Article XXXIV, Rule 17—Utilization of Exempt Credit

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 10, 1991, the Midwest Stock Exchange, Inc. ("MSE" 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 MSE proposes to amend section .01 of its Interpretations and Policies under Exchange Rule 17, Article XXXIV relating to the utilization of exempt credit for registered market makers on the Exchange floor. Specifically, the Exchange proposes to delete section .01, subsection 2 of the Interpretations and Policies which now requires that fifty percent (50%) of the quarterly share volume which creates or increases a position in a market maker account result from the transactions consummated on the MSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the purposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations 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

Purpose

The purpose of the proposed rule change is to delete section .01, subsection 2 of the Interpretations and Policies under Exchange Rule 17, Article XXXIV because the MSE considers subsection 2 to be an unnecessary policy. The 50% requirement set forth in subsection 2 was adopted in order to help assure exempt credit was being utilized by market makers conducting only bona fide market maker activity on the MSE floor. The Exchange no longer views the percentage requirement as necessary, however, because the Commission recently approved a proposal by the MSE to create a new rule requiring all orders received or originated on the MSE floor to clear the post before being sent to another market for execution.[1] Since all market maker activity (subject to certain exceptions[2]) now must clear the post, there is no compelling reason to require a market maker to consummate an arbitrary percentage of its business on the MSE floor to be eligible for exempt credit to finance market maker transactions.

[1] *See* Securities Exchange Act Release No. 28638 (November 21, 1990), 55 FR 49731 (order approving File No. SR–MSE–90–07).

[2] The Commission notes that such exceptions only occur where a customer specifically requests execution of a certain order in a particular market and such order is sent via means other than the Intermarket Trading System. *See* note 1, *supra.*

Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. 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 other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will;

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-91-06 and should be submitted by February 22, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 28, 1991.

[FR Doc. 91-2413 filed 1-31-91; 8:45am]

BILLING CODE 8010-01-M

[Release No. 34-28826; File No. SR-NASD-91-1]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Service Charge for the Review of Advertising or Other Material Submitted

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 17, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend section 13 of Schedule A to the NASD's By-Laws, relating to charges by the NASD for reviewing advertising material submitted by member firms, to charge $25.00 for reviewing pritned material, and $5.00 per page for each page in excess of 5 pages. The NASD is also proposing to charge $25.00 for reviewing video or audio tape, and $5.00 per minute for each each minute in excess of 5 minutes. Finally, the NASD is proposing to charge a fee of $200 per item where expedited review is requested.

The NASD is proposing to delay implementation of the proposed rule change until February 1, 1991 to provide time to disseminate notice of this rule change to the membership.

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

Schedule A, Section 13, of the NASD's By-Laws currently imposes a service charge of $25.00 for the review of each item of advertising or sales literature filed with or submitted to the NASD regardless of the length of the material submitted. The NASD is proposing to amend section 13 to increase the service charge for reviewing longer printed materials and to impose a charge for reviewing material on media other than printed media.

The proposed rule change would amend section 13 to charge $25.00 for reviewing printed material, and $5.00 per page for each page in excess of 5 pages. The NASD is also proposing to charge $25.00 for reviewing video or audio tape, and $5.00 per minute for each minute in excess of 5 minutes.

The NASD is also preparing to amend section 13 to add a fee for expedited review of items submitted to the Advertising Department. Expedited review would occur within three (3) business days of the receipt of the item by the Advertising Department unless the Advertising Department agreed to a shorter or longer period. The Advertising Department may also, in the sole discretion, refuse requests for expedited review.

The NASD believes that the changes to the service charges are necessary to more closely reflect the actual cost of reviewing material submitted. The additional revenue generated from the amended charges will augment the operating budget of the NASD's Advertising Department, which is responsible for reviewing such material. Further, the NASD believes that imposing additional service charges on longer materials, or materials requiring expedited review, more equitably apportions the costs of review among the members who submit material.

The NASD believes it is unfair to charge members the same amount for reviewing a one page adertisement as for reviewing a fifteen page advertisement, or for reviewing materials on an expedited basis. With a single, uniform charge, those members

who submit shorter documents in effect subsidize the review of longer documents. The NASD also believes that imposing a basic fee, plus a per minute charge for reviewing non-print media is the most equitable method of assessing such submissions. Moreover, if the NASD does not charge a fee for expedited review all submissions would likely be accompanied by a request for expedited review, which the NASD would be unable to accommodate.

The NASD is also proposing to amend section 13 to clarify that the charges imposed are limited to the pages of printed media or minutes of non-printed media actually reviewed. By including the word "reviewing" in the amended language, the NASD is expressly limiting the charge to the material actually examined, even though the document submitted may be longer. This amendment would codify the NASD's current practice of not charging for the review of those portions of a document or other submission that ordinarily are not subject to the scrutiny of the Advertising Department, such as financial statements.

Finally, under the current provisions of section 13 to Schedule A, submissions made pursuant to Article III, section 35(c)(6) of the NASD's Rules of Fair Practice are exempted from the review fee. Section 35(c)(6) provides for spot-checking procedures of member firm advertising. The Association recently added rules covering government securities which include a similar advertising spot-check procedure, and will also be adding rules addressing options communications which will also include an advertising spot-check procedure. The NASD is proposing to amend section 13 to eliminate the specific reference to the section 35 spot-check procedure and to substitute a reference to "spot-check procedures set forth in the Association's Rules of Fair Practice and Government Securities Rules." This will eliminate the need to amend section 13 each time another section is amended or renumbered.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective January 17, 1991 pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it consitutes a fee or assessment imposed exclusively upon the NASD's members. The NASD, however, will not implement the proposed rule change until February 1, 1991 to provide time to disseminate notice of the rule change to the membership.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate n the public interests, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such 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 February 22, 1991.

For the Comission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 25, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2413 Filed 1-31-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25249]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 25, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 19, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System (70-7338)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

By order dated March 10, 1987 (HCAR No. 24337), NEES was authorized to issue and sell, through December 31, 1990, up to 10,693,536 shares of its authorized but unissued common shares, $1.00 par value, pursuant to the NEES Dividend Reinvestment Plan ("Plan"). NEES has issued 8,881,707 of such shares through December 31, 1990 under

the Plan. The Plan also provides that NEES may elect to purchase shares of its common stock on the open market and resell those shares to the Plan at the market price.

NEES now proposes to renew its authority through December 31, 1993 to issue, sell and acquire up to 10,693,536 shares of its authorized but unissued, or reacquired, common shares pursuant to its Plan. In all respects, the terms and conditions associated with the issuance, sale and acquisition of the common shares will remain as previously authorized.

Allegheny Generating Company (70–7785)

Allegheny Generating Company ("AGC"), 320 Park Avenue, New York, New York 10022, an indirect subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed an application under section 6(b) of the Act and Rule 50a(5) thereunder.

AGC proposes to issue and sell from time-to-time, through March 31, 1993, up to an aggregate principal amount of $150 million of notes ("Commercial Paper") to dealers in commercial paper, under an exception from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5). The Commercial Paper will be backed by a funding commitment established through revolving lines of credit. The proceeds from the proposed Commercial Paper will be used by AGC to operate its business as an electric public utility.

The Commercial Paper will be in the form of promissory notes and will be of varying maturities, with no maturity more than 270 days after the date of issue and none will be prepayable prior to maturity. The Commercial Paper will be sold by AGC directly to the dealer and/or placement agent at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. The dealer and/or placement agent may reoffer the Commercial Paper at a discount rate of up to ⅛ of 1% per annum less than the discount rate to AGC.

AGC intends to issue Commercial Paper only if the interest cost thereof is equal to or less than the effective interest cost at which AGC could borrow the same amount pursuant to the lines of credit or if AGC is not able to borrow the same amount for the same period of time.

Arkansas Power & Light Company (70–7813)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and Rule 44 thereunder.

AP&L proposes to make two sales. First, AP&L proposes to sell substantially all its retail distribution and related transmission facilities ("Missouri Property") to Union Electric Company ("Union Electric"), an electric utility operating in Missouri, for $68,987,000 cash, subject to certain adjustments. The proposed sale, which includes the sale or assignment of related real estate, leases, easements, and contract rights, however, excludes (1) the Jim Hill Steam Electric Station, (2) certain facilities necessary to serve the cities of Campbell and Thayer, AP&L's two wholesale customers which AP&L is retaining, (3) certain transmission assets to be purchased by Associated Electric Cooperative, Inc. ("AECI"), an electric generating cooperative whose members supply wholesale power in Missouri, Iowa, and Oklahoma, and (4) certain transmission assets to be retained by AP&L for the integral operation of its remaining electric system. Union Electric and AP&L have executed a Contract for Purchase and Sale of Certain Assets and Real Estate, Assignment of Easements, Leases and Licenses, as amended ("Agreement of Sale") reflecting the terms and conditions of sale of the Missouri Property.

The proposed sale to Union Electric also includes other assets relating to the Missouri Property ("Other Assets") such as customer accounts receivable and unbilled revenue, equipment, vehicles, materials and supplies, the purchase price of which will be calculated prior to closing and added to the base purchase price. The Other Assets and the Missouri Property are collectively referred to as "Missouri Facilities."

The purchase price also is subject to an adjustment for certain taxes and a deduction for the transfer of certain accrued personal benefits including post-retirement medical, pension for non-union employees, and vacation benefits. The terms of the Agreement of Sale also provide that if Union Electric is successful in negotiating an agreement to include AP&L's union employees in its existing retirement plan or to include such employees in a separate retirement plan, Union Electric will, in each case, provide benefits based upon service with AP&L, and AP&L will pay Union Electric $236,000.

The assets to be sold under the Agreement of Sale are currently subject to, and will be released from, the lien of AP&L's Mortgage and Deed of Trust dated October 1, 1944, as supplemented ("Mortgage").

Several agreements are required to be executed as part of the Agreement of Sale. Among these is a power purchase agreement ("Power Agreement") (the existing wholesale power agreement between the two companies will be terminated) by which Union Electric has agreed to purchase 120 megawatts ("MW") of capacity and associated energy from AP&L under a wholesale formula rate for an initial period of ten years which capacity will be increased by 40 MW on January 1, 1995 until the end of the initial term. Union Electric may extend the period of the Power Agreement for a minimum period of six years during which period the capacity to be sold thereunder may not exceed 160 MW. AP&L shall have the right to limit delivery of the power under the Power Agreement to Union Electric in the event AP&L would otherwise have to curtail service for its own firm retail or firm wholesale load.

Additionally, AP&L and Union Electric will enter into a service boundary agreement ("Boundary Agreement") as part of the Agreement of Sale which will supercede the existing boundary line agreement between AP&L and Union Electric. Under the Boundary Agreement, AP&L and Union Electric will agree, upon request, to construct any extensions necessary to connect borderline customers in their respective service territories of Arkansas and Missouri to the distribution facilities of the other party. The requesting party shall reimburse the constructing party for costs incurred in the construction. Furthermore, AP&L and Union Electric will agree to supply power to the other at specific boundary line connections and will enter into an interchange agreement pursuant to which each party will agree to provide, maintain, and operate connections, interconnection points, delivery points, and facilities for the sale, purchase, delivery and receipt of power and energy under the Power Agreement and operate such equipment and facilities at its own cost and expense.

After the sale to and purchase by Union Electric, all of AP&L's current active Missouri employees will be employed by Union Electric.

The Agreement of Sale also provides that Union Electric has retained the option to sell and transfer a small portion of the Missouri Facilities to a local electric distribution cooperative.

The Agreement of Sale is contingent upon various regulatory approvals and other requirements.

Second, and in order to facilitate the sale to Union Electric, AP&L proposes to sell certain assets to AECI. AP&L proposes to sell AECI a 161 KV switching station and a 161 KV line for $1,013,000 cash subject to certain adjustments as set forth in the Contract for Purchase and Sale of Certain Assets and Real Estate and Assignment of Easements ("AECI Agreement of Sale") as well as certain related real estate and easements. The assets to be sold currently are subject to, and will be released from AP&L's Mortgage. Additionally, AP&L, Union Electric, and AECI will enter into an interconnection agreement ("Interconnection Agreement"), whereby AECI will reserve capacity, and subject to availability of adequate capacity in the AECI transmission system, AECI will provide a secondary transmission path for capacity under the Power Agreement through its transmission system in the event that capacity under the Interconnection Agreement is unavailable. AECI also has agreed to enter into an interconnection agreement with AP&L and to cancel AECI's existing transmission coordination agreement with AP&L. Furthermore, the present coordination interchange agreement between Union Electric and AECI will be amended to incorporate present loads and facilities associated with the existing transmission coordination agreement between AP&L and AECI.

AP&L plans to use the proceeds of the purchase prices received from Union Electric and AECI for general corporate purposes such as operations and maintenance expenses, construction expenditures, payroll, taxes, interest payments, payment of common stock and preferred stock dividends and any such other cash requirements of AP&L. Additionally, AP&L could use all or a portion of such proceeds to redeem all or a portion of certain series of AP&L's outstanding first mortgage bonds at special redemption prices, at or near par, pursuant to and in compliance with applicable provisions of the Mortgage. Currently, AP&L has not identified a specific purpose for the proceeds.

The Columbia Gas System, Inc. (70–7823)

The Columbia Gas System Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, has filed a declaration under sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

Columbia proposes to issue and sell, from time-to-time, through December 31, 1992, in one or more transactions, up to an aggregate principal amount of $400 million in any combination of (a) debentures maturing in not more than thirty years ("Debentures"), under the requirements of competitive bidding or in accordance with the alternative bidding procedures authorized by the Statement of Policy ("SOP"), dated September 2, 1982 (HCAR No. 22623), and (b) medium-term notes maturing in not more than thirty years ("MTNs"), under an exception from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5), thereunder, with the terms and conditions being privately negotiated by Columbia.

The proceeds from the sale of the Debentures or MTNs will be added to the general funds of Columbia and used (a) to finance a portion of the capital expenditures of Columbia's subsidiary companies, (b) to refinance existing debt, or (c) for other corporate purposes. The balance of funds required is expected to be obtained principally from internal cash generation.

The Debentures or MTNs will be issued under a current indenture, dated as of June 1, 1961, between Columbia and Morgan Guaranty Trust Company of New York, as Trustee ("Current Indenture") and will be sold to prospective purchasers at a price exclusive of accrued interest which may be at a discount to or premium over its stated principal amount.

As a result of the proposal to issue and sell Debentures, Columbia requests authorization for a deviation from the restrictions included in the SOP with regard to the distribution of capital stock under its Current Indenture. Columbia proposes to replace the restriction with a capitalization test, previously authorized by order dated June 5, 1990 (HCAR No. 25101), whereby Columbia will not make or authorize any distribution on capital stock if, after giving effect to such distribution, the principal amount of outstanding funded debt would exceed 60% of Columbia's total capitalization.

Columbia further requests an exception from the standards required under the Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Holding Company Act dated February 16, 1956 (HCAR No. 13105) and May 8, 1969 (HCAR No. 16369) ("SOP–FMB") for deviations regarding sinking funds and redemption provisions. MTNs generally do not contain sinking fund provisions, whereas the SOP–FMB requires the creation of a sinking fund. In addition, the MTNs may not be callable prior to their maturity, whereas the SOP–FMB requires that bonds must be callable for redemption at any time upon reasonable notice and with reasonable redemption premiums, if any. Further, Columbia will not issue MTNs at rates in excess of those generally obtained on the date of pricing on sales of MTNs with similar terms and conditions, including security, with the same maturity and by companies of comparable credit quality.

Columbia anticipates that, subject to further Commission authorization, it may also issue the Debentures or MTNs under the terms of an amendment or revision to the Current Indenture or a new, separate indenture which may not include restrictions on the issuance of additional debt or restrictions on the payment of dividends and therefore would be inconsistent with the SOP-FMB. Any restrictions will consist of those restrictions deemed by the officers of Columbia to be required by the marketplace to successfully sell the Debentures or MTNs as determined at the time of issuance.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2411 Filed 1–31–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1336]

Extension of the Restriction on the Use of United States Passport for Travel To, In, or Through Lebanon

On January 26, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports with the exception of the category cited below, were declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. This action was required because the situation in Lebanon, and in West Beirut in particular, was so chaotic that it was determined that American citizens could not be considered safe from terrorist acts.

Review of the situation in Lebanon has led me to conclude that conditions there for American travelers have not improved by any measurable degree.

Therefore, in light of these circumstances, I have determined that Lebanon continues to be an area "* * * where there is imminent danger to the public health and physical safety of United States travelers" within the

meaning of § 51.73(a)(3) of title 22, Code of Federal Regulations.

Accordingly, all United States passports, except for those passport holders who are immediate family members of hostages in Lebanon, shall remain invalid for travel to, in, or through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the Federal Register and shall expire at the end of one year unless extended or sooner revoked by Public Notice.

Dated: January 25, 1991.

James A. Baker III,

Secretary of State.

[FR Doc. 91-2456 File 1-31-91; 8:45 am]

BILLING CODE 4710-10-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed New Routine Use

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed new routine use for TVA-26, "Retirement System Records—TVA."

SUMMARY: This publication gives notice, as required by the Privacy Act, of TVA's intention to establish a new routine use for the system of records entitled TVA-26, "Retirement System Records—TVA." Details of the proposed new routine use are described below. The full text of TVA-26 appears at 55 FR 34833-34, August 24, 1990.

DATES: Comments must be received by March 4, 1991.

ADDRESSES: Comments should be sent to Ronald E. Brewer, Privacy Act Officer, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402-2801.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, 615-751-2520.

TVA-26

SYSTEM NAME:

Retirement System Records—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information; retirement, benefit, and investment information; related correspondence; and legal documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Internal Revenue Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

To contractors and subcontractors of TVA or the Retirement System who are providing records maintenance or other similar support services to the Retirement System.

* * * * *

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91-2362 Filed 1-31-91; 8:45 am]

BILLING CODE 8120-02-M

Privacy Act of 1974; Proposed New Routine Use

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed new routine use for TVA-2, "Personnel Files—TVA."

SUMMARY: This publication gives notice, as required by the Privacy Act, of TVA's intention to establish a new routine use for the system of records entitled TVA-2, "Personnel Files-TVA." Details of the proposed new routine use are described below. The full text of TVA-2 appears at 55 FR 34817-8, August 24, 1990.

DATES: Comments must be received by March 4, 1991.

ADDRESSES: Comments should be sent to Ronald E. Brewer, Privacy Act Officer, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402-2801.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, 615-751-2520.

TVA-2

SYSTEM NAME:

Personnel Files—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interest and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military services; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103; various sections of Title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

* * * * *

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91-2363 Filed 1-31-91; 8:45 am]

BILLING CODE 8120-02-M

Privacy Act of 1974; New Routine Uses

AGENCY: Tennessee Valley Authority (TVA).

ACTION: New routine uses for TVA-12, "Travel History Records—TVA."

SUMMARY: As required by the Privacy Act, TVA gave notice (55 FR 47023, November 8, 1990) of its intention to establish new routine uses for the systems of records entitled TVA-12, "Travel History Records—TVA." No comments were received. The new routine uses are described below. The full text of TVA-12 appears at 55 FR 34826, August 24, 1990.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, Privacy Act Officer, TVA, 615-751-2520.

TVA-12

SYSTEM NAME:

Travel History Records—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel advance requests, travel expense vouchers and supporting documentation, travel charge card program records and reports, and travel orders. Records supporting relocation expense claims also include Government Bills of Lading, real estate sales agreements and settlements, Federal Truth-In-Lending disclosure statements, lease agreements, receipts for loss of rental deposit, and relocation income tax allowance documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701-5709, and related Federal travel regulations; Tennessee Valley Authority Act of 1933, 16 U.S.C 831-831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

To respond to a request from a Member of Congress regarding the status of an employee, former employee, or applicant.

To TVA contractors and subcontractors engaged at TVA's direction who are providing support services to TVA's travel charge card program.

* * * * *

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91–2364 Filed 1–31–91; 8:45 am]

BILLING CODE 8120–02–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Alameda and Santa Clara Counties, California

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 (EIS) will be prepared for a proposed freeway connector between Interstate Routes 880 and 680 within the study limits of Route 237 (Calaveras Boulevard) in Santa Clara County, and Durham Road in Alameda County, California.

FOR FURTHER INFORMATION CONTACT: Mr. C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. 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 EIS in accordance with the National Environmental Policy Act (NEPA) on a proposed freeway connector between Interstate Routes 880 and 680 within the study limits of Route 237 (Calaveras Boulevard) in Santa Clara County, and Durham Road in Alameda County. The project is needed to relieve existing and projected traffic congestion along State Route 237 (Calaveras Boulevard), and State Route 262 (Mission Boulevard).

Calaveras Boulevard and Mission Boulevard serve as the major east-west connectors between Interstate 880 and Interstate 680. Primary access is provided by Mission Boulevard. Mission Boulevard is a conventional four-lane highway passing through industrial, commercial, and residential areas. It functions as a commuter and commercial arterial as well as a principal connector. Similarly, Calaveras Boulevard is a four-lane conventional highway, serving as both a commercial street and a connector for commercial and commuter traffic between I–680 and I–880.

Interstates 680 and 880 are the principal north/south routes serving the East Bay and South Bay through Alameda and Santa Clara Counties. Traffic along these corridors has been increasing as Alameda County provides an increasing proportion of the housing for individuals working in Santa Clara County, especially in the "Silicon Valley" area. Anticipated growth and development in and around the study area will increase both internally and externally generated trips, and further aggravate existing traffic congestion on both Interstates 680 and 880 and as a consequence along Calaveras and Mission Boulevards. The 1990 Association of Bay Area Governments (ABAG) projection has forecasted 13-percent population growth, and 30-percent employment growth in Santa Clara County, and 16-percent and 30-percent population and employment increases, respectively, in Alameda and Contra Costa Counties by 2005.

The alternatives to be studied include the following:

1. *State Route 237 (Calaveras Boulevard) Upgrade*—Upgrade the existing Route 237 facility.

2. *Jacklin Road Alternative*—Construct a roadway from south of the I–880/Dixon-Landing Road Interchange, initially eastward then paralleling Jacklin Road and terminating at the I–680/Jacklin Road Interchange. This alternative may require modification of the proposed I–880/237 and I–680/237 Interchanges. The modification of these Interchanges could include ramp realignment and overcrossing lengthening to accommodate auxiliary lanes from the branch connections.

3. *Scott Creek Road Alternative*—Construct a roadway from north of the I–880/Dixon-Landing Road Interchange paralleling existing Kato Road and Scott Creek Road, and terminating at the I–680/Scott Creek Road Interchange. This alternative would require modification of the I–880/Dixon-Landing Road Interchange by lengthening the overcrossing and realigning the ramps to accommodate auxiliary lanes from the branch connections. Elements of this alternative follow the alignment of the previously adopted "Southbay Freeway" alignment which was rescinded in 1980.

As a variation of the Scott Creek Road Alternative, a roadway will be considered along the "Southbay Freeway" alignment, which will extend Route 237 to provide an east-west connector approximately along the Santa Clara/Alameda County line between Calaveras Boulevard and Mission Boulevard.

4. *Mission Boulevard Viaduct Alternative*—Construct a viaduct above existing Mission Boulevard preserving the right-of-way of the local street. Due to the close spacing of the I–880/Mission Boulevard Interchange to the I–880/Fremont Boulevard Interchange, a flyover structure will be necessary to achieve required weaving distances. Another option is to follow the Mission Boulevard alignment with an underground facility.

5. *Mission Boulevard—New Alignment Alternative*—Construct a roadway beginning at the I.880/Mission Boulevard Interchange paralleling Mission Boulevard to the Union Pacific Railroad tracks, then diverging from Mission Boulevard in an northeasterly direction to terminate north of the I–680/Mission Boulevard Interchange. Due to the close spacing of the I-880/Mission Boulevard and the I-880/Fremont Interchanges, a flyover structure will be necessary to achieve required weaving distances.

6. *Fremont Boulevard Alternative*—construct a roadway beginning at the I-880/Fremont Boulevard Interchange heading northerly along Fremont Boulevard, then northwesterly paralleling Grimmer Boulevard, then northerly and terminating at the I–680/Durham Road Interchange. This alternative may require the relocation of the truck scales south of the I–880/Durham Interchange.

7. *Durham Road*—Construct a roadway beginning at the I-880/Durham Road Interchange, paralleling Durham Road and terminating at the I–680/Durham Road Interchange. This alternative may require the relocation of the truck scales south of the I-880/Durham Road Interchange.

Each of the above alternatives proposes a six-lane roadway with 2-lane connections to I-880 and I-680. Depending on final design, each alternative will require the construction of some structures. The project will also add one lane along I-880 in each direction between its junction with I-880 and the I-880/237 Interchange.

8. *No Build*—This alternative does not propose any capacity-increasing improvements aside from routine maintenance and spot improvements for local needs.

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 (CEQA), publication of the Notice of Intent (NOI) in the Federal Register, and a scoping meeting/open house to be held this Winter. Also, letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens in the study area. Additional public and agency meetings will be held throughout the study to provide information and receive input on the proposal. A Draft EIS will be circulated for public and agency review and comment followed by a formal public hearing. Public notices will be mailed and/or advertised in local newspapers indicating the time and place of the meetings.

To ensure that a full range of environmental issues and public concern related to this proposed action are addressed and that all potential significant effects are identified, comments and suggestions are invited from all interested parties. If you have any information regarding historic resources, endangered species, or other sensitive issues which could be affected by this project, please notify this office. Also, please indicate if you would be interested in being notified at the completion of historic resource studies. 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 of Federal Programs and activities apply to this program.)

Issued on: January 25, 1991.

Lee W. Onstott,

Senior Area Engineer, Sacramento, California.

[FR Doc. 91-2365 Filed 1-31-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 25, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: New
Form number: None
Type of review: New Collection
Title: Focus Group Interviews to Identify Characteristics of Taxpayer Burden
Description: These focus group interviews are necessary to obtain taxpayers' perceptions and attitudes regarding the burden associated with complying with the tax laws. Findings from these focus groups will be used to help develop an overall index of taxpayer burden. Affected public is 100 participants
Respondents: Individuals or households, Small businesses or organizations
Estimated number of respondents: 1,000
Estimated burden hours per response: 3 hours, 5 minutes
Frequency of response: One-time focus groups
Estimated total reporting burden: 383 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 Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-2340 Filed 1-31-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

January 25, 1991.

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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545-0224
Form number: 6248
Type of review: Extension
Title: Annual Information Return of Windfall Profit Tax
Description: Form 6248 is used by purchasers of domestic crude oil to inform the producers of crude oil the amount of windfall tax that was paid with respect to the producer's interest. The IRS uses Form 6248 to determine if the correct amount of windfall profit tax was paid with respect to the producer's interest
Respondents: Individuals or households, Businesses or other for-profit
Estimated number of respondents: 400
Estimated burden hours per response/recordkeeping:
Recordkeeping—13 hours, 10 minutes
Learning about the law or the form—1 hour, 41 minutes
Preparing and sending the form to IRS—1 hour, 59 minutes
Frequency of response: Annually
Estimated total recordkeeping/reporting burden: 6,728 hours

OMB number: 1545-0928
Form number: None
Type of review: Extension
Title: Notices, Elections and Consents Under the Retirement Equity Act of 1984
Description: The notices referred to in this Treasury decision are required by statute and must be provided by employers to retirement plan participants to inform participants of their rights under the plan or under the law. Failure to timely notify participants of their rights may result in loss of plan benefits
Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated number of respondents: 750,000
Estimated burden hours per response: 35 minutes
Frequency of response: On occasion
Estimated total reporting burden: 435,000
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 Management and Budget, room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-2341 Filed 1-31-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 28, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545-0023
Form number: 720
Type of review: Revision
Title: Quarterly Federal Excise Tax Return
Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and vaccines, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (Internal Revenue Code section 6011).
Respondents. Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated number of respondents: 92,500
Estimated burden hours per response/recordkeeping:
Recordkeeping—13 hours, 23 minutes
Learning about the law or the form—1 hour, 40 minutes
Preparing and sending the form to IRS—6 hours, 45 minutes
Frequency of response: Quarterly
Estimated total recordkeeping/reporting burden. 13,266,560 hours
OMB number: 1545-0988
Form number: 8609 and Schedule A (Form 8609)
Type of review. Revision
Title: Form 8609, Low-Income Housing Credit Allocation Certification; Schedule A (Form 8609), Annual Statement
Description: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to get a credit allocation for the housing credit agency. The form, along with Schedule A, is used by the owners to certify necessary information required by the law.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated number of respondents: 200,000
Estimated burden hours per response/recordkeeping:

Form	8609	Sched. A (8609)
Recordkeeping ...	7 hours, 53 minutes.	8 hours, 8 minutes.
Learning about the law or the form.	2 hours, 11 minutes.	1 hour, 23 minutes.
Preparing and sending the form to IRS.	2 hours, 25 minutes.	1 hour, 34 minutes.

Frequency of response: Annually
Estimated total recordkeeping/reporting burden: 2,128,800 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 Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 91-2385 Filed 1-31-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 28, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1990, 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545-0058
Form number: 1028
Type of review: Revision
Title: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code
Description: Farmers' cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in Internal Revenue Code section 521. The information on the Form 1028 provides the basis for determining whether applicants are exempt.
Respondents: Businesses or other for-profit
Estimated number of respondents: 50
Estimated burden hours per response/recordkeeping:
Recordkeeping—44 hours, 14 minutes
Learning about the law or the form—1 hour, 32 minutes
Preparing the form—4 hours, 11 minutes
Copying, assembling, and sending the form to IRS—32 minutes
Frequency of response: On occasion
Estimated total recordkeeping/reporting burden: 2,525 hours
OMB number: 1545-0430
Form number: 4810
Type of review: Extension
Title: Request for Prompt Assessment Under Internal Revenue Code section 6501(d)
Description: Form 4810 is used to request a prompt assessment under Internal Revenue Code section 6501(d). IRS uses this form to locate the return to expedite processing of the taxpayer's request.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations
Estimated number of respondents: 4,000
Estimated burden hours per response: 30 minutes
Frequency of response: On occasion
Estimated total reporting burden: 2,000 hours
OMB number: 1545-1044
Form number: None
Type of review: Extension
Title: Physician Statement of Clearance for an Exercise Program
Description: This consent form is necessary so that all IRS employees can be considered medically safe and cleared by their personal physician for

the Health Improvement Program. This form will remain in each employee's private fitness file, in locked cabinets. Only physicians can fill it out and thereby be affected by this form.

Respondents: Federal agencies or employees, Small businesses or organizations

Estimated number of respondents: 20,000

Estimated burden hours per response: 6 minutes

Frequency of response: Annually

Estimated total reporting burden: 2,000 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 Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 91–2386 Filed 1–31–91; 8:45 am]

BILLING CODE 4830–01–M

Federal Law Enforcement Training Center; Advisory Committee to the National Center for State and Local Law Enforcement Training; Meeting

AGENCY: Advisory Committee to the National Center for State and Local Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes: opening remarks by the Director of the Federal Law Enforcement Training Center and Committee Co-chairs; discussion of FY 91 training program status; Southwest Border/ Operation Alliance; program development activities; Fellowship Program report; and discussion of AIDS Symposium.

DATES: February 5, 1991.

ADDRESSES: Federal Law Enforcement Training Center, Building 94, Board Room, Glynco, Georgia.

FOR FURTHER INFORMATION CONTACT: Hobart M. Henson, Director, Office of State and Local Training, Federal Law Enforcement Training Center, Glynco, Georgia 31524.

Signed: January 25, 1991.

Charles F. Rinkevich,

Director.

[FR Doc. 91–2536 Filed 1–31–91; 8:45 am]

BILLING CODE 4810–32–M

Customs Service

[T.D. 91–9]

Extension of Analyses for Which Caribbean Petroleum Inspectors, Inc., an Approved Customs Gauger, Have Been Accredited To Perform

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of additional analyses for which Caribbean Petroleum Inspectors Inc., a Customs approved commercial gauger, have been accredited to perform.

SUMMARY: Caribbean Petroleum Inspectors Inc., of Ponce, Puerto Rico, a Customs approved commercial gauger under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given Customs accreditation to perform the following laboratory analyses: API Gravity, Sediment and Water, Water by Distillation, Sediment by Extraction, Water by Distillation, Reid Vapor Pressure, Saybolt Univeral Viscosity, Percent by Weight Sulfur, Percent by Weight Lead, Isomer Composition, Distillation Characteristics and Composition by Weight of Benzene, Toluene and Xylene.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, Caribbean Petroleum Inspectors Inc., El Senorial Bldg., 10 Salud Street—suites 508–509, Ponce, Puerto Rico 00731 is accredited to perform the laboratory analyses named above and report the results to all Customs districts.

EFFECTIVE DATE: January 11, 1991.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2446).

Dated: January 25, 1991.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 91–2332 Filed 1–31–91; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 91–10]

Extension of Analyses for Which United Surveyors of Chemicals, Inc., an Approved Customs Gauger, Have Been Accredited To Perform

AGENCY: U.S. Customs Service, Department of the Teasury.

ACTION: Notice of additional analyses for which United Surveyors of Chemicals, Inc., a Customs approved commercial gauger, have been accredited to perform.

SUMMARY: United Surveyors of Chemicals, Inc., of Baytown, Texas, a Customs approved commercial gauger under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given Customs accreditation to perform the following laboratory analyses: API Gravity, Sediment and Water, Water by Distillation, Sediment by Extraction, Water by Distillation, Reid Vapor Pressure, Saybolt Universal Viscosity, Percent by Weight Sulfur, Percent by Weight Lead, Isomer Composition, Distillation Characteristics and Composition by Weight of Benzene, Toluene and Xylene.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, United Surveyors of Chemicals, Inc., 7501 Bayway Drive, Baytown, Texas 77520 is accredited to perform the laboratory analyses named above and report the results to all Customs districts.

EFFECTIVE DATE: January 10, 1991.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2446).

Dated: January 25, 1991.

John B. O'Laughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 91–2331 Filed 1–31–91; 8:45 am]

BILLING CODE 4820–02–M

Office of Thrift Supervision

Beach Savings Bank, FSB Fountain Valley, CA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Beach Savings Bank, FSB Fountain Valley, California, on January 18, 1991.

Dated: January 25, 1991.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–2325 Filed 1–31–91; 8:45 am]

BILLING CODE 6720–01–M

Irving Federal Savings and Loan Association, Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Irving Federal Savings and Loan Association, Paterson, New Jersey, on January 18, 1991.

Dated: January 25, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–2326 Filed 1–31–91; 8:45 am]

BILLING CODE 6720–01–M

Beach Savings Bank Fountain Valley, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (C) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Beach Savings Bank, Fountain Valley, California, on January 18, 1991.

Dated: January 25, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–2323 Filed 1–31–91; 8:45 am]

BILLING CODE 6720–01–M

Irving Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Irving Savings and Loan Association, Paterson, New Jersey, on January 18, 1991.

Dated: January 25, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–2324 Filed 1–31–91; 8:45 am]

BILLING CODE 6720–01–M

Founders Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Founders Federal Savings and Loan Association, Los Angeles, California, with the Resolution Trust Corporation as sole Receiver for the Association on January 18, 1991.

Dated: January 25, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–2327 Filed 1–31–91; 8:45 am]

BILLING CODE 6720–01–M

Padre Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d) (2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Padre Federal Savings and Loan Association, Corpus Christi, Texas with the Resolution Trust Corporation as sole Receiver for the Association on Janaury 11, 1991.

Dated: January 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–2328 Filed 1–31–91; 8:45 am]

BILLING CODE 6720–01–M

Silver Savings Association, F.A.; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Silver Savings Association, F.A., Silver City, New Mexico with the Resolution Trust Corporation as sole Receiver for the Association on January 18, 1991.

Dated: January 25, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–2329 Filed 1–31–91; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol 56. No. 22
Friday, February 1, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0385]

SuperPharm Corp., et al.; Withdrawal of Approval of Abbreviated New Drug Applications

Correction

In notice document 90-30260 beginning on page 53193 in the issue of Thursday, December 27, 1990. make the following corrections:

1. The subject heading should read as set forth above.

2. On page 53193, in the table:

a. In the item corresponding to ANDA Number 84-700, in the second line of the Applicant entry column, "43215-6532" should read "43216-6532".

b. The entire item corresponding to ANDA Number 87-828 was inadvertently repeated.

c. In the item corresponding to ANDA Number 87-837, in the Drug entry column, "Quinidine" was misspelled.

d. In the item corresponding to ANDA Number 87-842, at the end of the Drug entry column, "0.05" should read "0.025".

3. On page 53194, in the table:

a. In the item corresponding to ANDA Number 88-787, in the Applicant entry column, "SuperPharm" was misspelled.

b.In the item corresponding to ANDA Number 89-190, in the Drug entry column, "Isosorbide" was misspelled.

4. On the same page, in the same table, in the item corresponding to ANDA Number 89-191, in the Drug entry column, "Dinitrate" was misspelled.

BILLING CODE 1505-01-D

federal register

Friday,
February 1, 1991

Part II

Environmental Protection Agency

Registration and Agreement for TSCA Section 8(e) Compliance Audit Program; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-80015; FRL-3844-4]

Registration and Agreement for TSCA Section 8(e) Compliance Audit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice, pursuant to sections 15 and 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, announces the opportunity to register for EPA's TSCA Section 8(e) Compliance Audit Program. This Notice also contains the text of an Agreement for the TSCA Section 8(e) Compliance Audit Program ("CAP Agreement"). The TSCA Section 8(e) Compliance Audit Program and the registration provisions and CAP Agreement conditions are described below.

DATES: The Registration period for the TSCA Section 8(e) Compliance Audit Program commences February 1, 1991, and closes May 2, 1991. Persons interested in registering for the voluntary TSCA Section 8(e) Compliance Audit Program must request a CAP Agreement and submit a signed CAP Agreement to EPA no later than May 2, 1991.

ADDRESSES: Copies of the CAP Agreement may be obtained from the TSCA Assistance Information Service, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8(e) of TSCA states that "any person who manufactures, [imports,] processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the [EPA] Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information."

"Substantial risk information" reportable to EPA under section 8(e) of TSCA refers to new information that reasonably supports a conclusion that a chemical substance or mixture presents a substantial risk of injury to health or the environment. (The term new information refers to information (including preliminary data) about which EPA has not already been adequately informed.) Such information need not and most typically does not establish conclusively that such a risk exists. In other words, reasonable support for a conclusion is not synonymous with the conclusion itself and usually precedes the conclusion.

In deciding whether new information reasonably supports a conclusion of substantial risk, one must consider (1) The seriousness of the adverse effect, and (2) the fact or probability of the effect's occurrence. These two criteria should be weighed differently depending upon the seriousness of the effect and the extent of the exposure; i.e., the more serious the effect, the less heavily one should weigh the actual or potential exposure, and vice versa.

In some cases, e.g., the observance of certain types of serious toxicologic effects in animals or humans, exposure to the chemical substance(s) or mixtures is presupposed and will constitute sufficient evidence of exposure for a determination to be made to submit the new-found toxicological data. Such serious effects include, but are not limited to, (1) Birth defects and/or serious developmental effects (including those observed in the presence of maternal toxicity), and (2) cancer (as evidenced by benign and/or malignant tumors).

Any decision-making process for determining section 8(e)-reportability should focus primarily on whether new toxicologic or exposure data offer reasonable support for a conclusion of substantial risk and should not focus to any great extent, if at all, on whether the information is conclusive regarding the risk. Therefore, a decision to report pursuant to section 8(e) should not involve (1) Exhaustive health or environmental assessments, or (2) any evaluation of the economic or social benefits of the use(s) of the subject chemical(s).

In reviewing recent enforcement cases, EPA has found that some companies may be misinterpreting TSCA section 8(e) and EPA's "Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk," ("Section 8(e) Policy Statement," March 16, 1978, 43 FR 11110). Some companies obtaining information on certain serious health effects appear to be further evaluating and wrongly discounting the significance of the information on the basis of a "weight-of-the-evidence" risk assessment. It is EPA's position, however, that if certain serious health effects are discovered, the information should be considered for immediate reporting under section 8(e) without further evaluation. The following are examples of information that should be considered immediately for reporting under section 8(e) of TSCA.

1. New information concerning statistically or biologically significant increases in benign and/or malignant tumors in an animal study; a "weight-of-the-evidence" risk assessment should not be used to discount the findings.

2. Statistically or biologically significant increases in teratologic or other serious reproductive effects observed in animals; the level of maternal toxicity observed in the study should not be used to discount the findings.

3. Serious toxic effects (e.g., cancer, birth defects, and neurotoxicity) observed in tests of chemical substances or mixtures at the research and development stage; such findings should not be discounted because the company believes that there is no exposure to the chemical(s).

Up-to-date information on hazard and exposure is vital in supporting EPA efforts to protect human health and the environment from risks from toxic chemicals. EPA has the responsibility under TSCA to perform needed risk assessments on chemicals. Section 8(e) is a very important part of TSCA's section 8 information reporting and recordkeeping provisions that enable EPA to obtain and disseminate information needed to set priorities and perform risk assessments that may be national in scope. Companies that do not report vital information are undermining the effectiveness of the early warning system intended under section 8(e).

In the past year, some companies have alleged that EPA has changed its interpretation of TSCA section 8(e) thereby creating vulnerability that was not previously contemplated for reporting. These same entities have said that EPA's TSCA Sections 8, 12, and 13 Enforcement Response Policy contains significant disincentives (namely very high monetary penalties) to dissuade auditing of past studies and reporting them to EPA.

EPA has not changed its interpretation of TSCA section 8(e). EPA's implementation of the TSCA section 8(e) program is based on sound guidance

that is and has been consistent with the statutory language and intent of section 8(e), as well as EPA's Section 8(e) Policy Statement. Nevertheless, to achieve the Agency's goal of obtaining any outstanding section 8(e) data, EPA has developed this one-time voluntary compliance program designed to strongly encourage companies to voluntarily audit their files for studies reportable under section 8(e). This program is known as the TSCA Section 8(e) Compliance Audit Program.

The TSCA Section 8(e) Compliance Audit Program has been developed to encourage industry reporting by setting forth guidelines that identify in advance EPA's enforcement response and allow companies to assess liability prior to electing to participate. Companies that do not participate in the TSCA Section 8(e) Compliance Audit Program should be aware that EPA intends to actively pursue violations of the TSCA section 8(e) reporting requirement.

II. Text of the Registration/CAP Agreement

The text of the Registration and CAP Agreement for the TSCA Section 8(e) Compliance Audit Program:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Office of Pesticides and Toxic Substances

Registration and Agreement for TSCA Section 8(e) Compliance Audit Program

The United States Environmental Protection Agency ("EPA") and the Regulatee, the Parties herein, wishing to register for and enter into this Agreement for a Toxic Substances Control Act ("TSCA") Section 8(e) Compliance Audit Program ("CAP Agreement") and having consented to the terms of this CAP Agreement do therefore agree to fully comply with the terms of this CAP Agreement.

I. Registration Requirements

A. The Regulatee agrees to conduct a TSCA Section 8(e) Compliance Audit Program to determine its compliance status with TSCA section 8(e).

B. To register for the TSCA Section 8(e) Compliance Audit Program, the Regulatee must, no later than May 2, 1991, sign and return this CAP Agreement by certified mail-return receipt requested to: Michael F. Wood, Director, Compliance Division (EN-342), Office of Compliance Monitoring, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

C. After EPA receives this signed CAP Agreement from the Regulatee, EPA will sign this CAP Agreement and enter the following identification number (_____) to the copy of this CAP Agreement which will be returned to the Regulatee. The Final Report and all other documents submitted pursuant to Unit II.C of this CAP Agreement must display the identification number established by this paragraph.

D. The TSCA Section 8(e) Compliance Audit Program shall commence no later than May 2, 1991.

E. The TSCA Section 8(e) Compliance Audit Program shall terminate within 180 days of May 2, 1991. Thus, all submissions under this TSCA Section 8(e) Compliance Audit Program must be delivered to EPA no later than October 29, 1991.

II. Terms of Agreement

EPA and the Regulatee mutually initiated this TSCA Section 8(e) Compliance Audit Program in response to a February 1, 1991, **Federal Register** notice announcing the opportunity to participate in the TSCA Section 8(e) Compliance Audit Program. As part of this CAP Agreement, EPA and the Regulatee agree to the following:

A. General Provisions

1. This CAP Agreement and the Consent Agreement and Consent Order in this matter shall be a complete settlement of all civil and administrative claims and causes of action which arose or could have arisen under TSCA section 8(e) in connection with any study or report submitted pursuant to the terms of this CAP Agreement. Pursuant to TSCA, EPA will consider ability to pay/effect on ability to continue to do business claims during the course of development of the Consent Agreement and Consent Order in this matter. The Regulatee will be responsible for submitting adequate documentation of such claims to EPA at the time of submission of the Final Report required by this CAP Agreement.

2. For purposes of this CAP Agreement and any subsequent proceeding, without trial or any adjudication of the facts, the Regulatee admits that EPA has jurisdiction over the subject matter of the terms of this CAP Agreement and any study or report submitted pursuant to this CAP Agreement.

3. The Regulatee waives its right to request a judicial or administrative hearing on any issue of law or fact that has arisen or may arise during the conduct of the TSCA Section 8(e) Compliance Audit Program conducted pursuant to the terms of this CAP Agreement, or that may arise in any subsequent proceeding involving the Consent Agreement and Consent Order resulting from and entered into pursuant to the terms of this CAP Agreement, including but not limited to the Regulatee's right under TSCA section 16(a)(2)(A) to request a hearing.

4. The Parties agree that any study or report submitted by the Regulatee under this TSCA Section 8(e) Compliance Audit Program and pursuant to the terms of this CAP Agreement constitute a violation of TSCA sections 8(e) and 15(3)(B), for which a civil penalty will be assessed against the Regulatee. Any study or report submitted under TSCA section 8(e) prior to the date of commencement of the TSCA Section 8(e) Compliance Audit Program is not subject to the terms of this CAP Agreement or the TSCA Section 8(e) Compliance Audit Program.

5. EPA reserves its rights under TSCA section 16 to take appropriate enforcement action if EPA determines later that the Regulatee was required to submit under TSCA section 8(e) a study or report determined by the Regulatee to be not reportable and therefore not submitted under the TSCA Section 8(e) Compliance Audit Program. In such event, the terms of the EPA TSCA Sections 8, 12, and 13 Enforcement Response Policy will apply to such proceeding.

6. EPA reserves its rights to challenge the categorization of studies or reports submitted under this TSCA Section 8(e) Compliance Audit Program pursuant to the requirements of Unit II.B.2.a and b of this CAP Agreement.

7. EPA agrees that any submissions made pursuant to the terms of this CAP Agreement and the TSCA Section 8(e) Compliance Audit Program will be viewed by EPA as "prior such violations" under TSCA section 16(a)(2)(B) for future violations of TSCA section 8(e) only.

8. The Final Report submitted pursuant to Unit II.C.4 of this CAP Agreement shall be the controlling document for purposes of determining what was submitted under the TSCA Section 8(e) Compliance Audit Program and this CAP Agreement.

9. Any submission made by the Regulatee to EPA that does not meet all of the requirements of the TSCA Section 8(e) Compliance Audit Program and this CAP Agreement is subject to the EPA TSCA Sections 8, 12, and 13 Enforcement Response Policy.

B. TSCA Section 8(e) Compliance Audit Program and Civil Penalties

1. In conducting the TSCA Section 8(e) Compliance Audit Program, the Regulatee shall use EPA's March 16, 1978, "Statement of Interpretation and Enforcement Policy; Notification of

Substantial Risk" (43 FR 11110) ("TSCA Section 8(e) Policy Statement") to determine whether the reviewed study or report is:

a. *Not reportable under TSCA Section 8(e)*: The Regulatee will not submit the study or report.

b. *Reportable under TSCA Section 8(e)*: The Regulatee will submit the study or report.

Upon Registration for the TSCA Section 8(e) Compliance Audit Program, the Regulatee will receive a copy of the TSCA Section 8(e) Policy Statement, the publication numbers of publicly available and previously published volumes of Section 8(e) "Status Reports" available through the National Technical Information Service, copies of Question and Answer documents developed in response to specific questions involving section 8(e), and a document entitled "Substantiating Claims of Confidentiality."

2. The Regulatee agrees to pay the following stipulated civil penalties for all studies or reports submitted under this TSCA Section 8(e) Compliance Audit Program as TSCA section 8(e) data:

a. $15,000 per study for any submitted study or report involving effects in humans.

b. $6,000 per study for any other submitted study or report submitted as TSCA section 8(e) data.

As a matter of policy under this TSCA Section 8(e) Compliance Audit Program, EPA agrees to a $1,000,000 cap on the total civil penalty for the Regulatee.

3. The Regulatee shall be exempt from any additional late and/or nonreporting TSCA section 8(e) civil liability which arose or could have arisen for any study or report submitted under this TSCA Section 8(e) Compliance Audit Program.

4. Upon termination of the TSCA Section 8(e) Compliance Audit Program, the Regulatee shall provide EPA with a Final Report certifying that the TSCA Section 8(e) Compliance Audit Program has been completed. Such Final Report shall be signed and certified by the appropriate corporate official with authority to settle claims on behalf of the Regulatee. Such Final Report shall also comply with the requirements of Unit II.C.4 of this CAP Agreement.

5. Following termination of the audit, EPA will present the Regulatee with a Consent Agreement and Consent Order summarizing the results of the TSCA Section 8(e) Compliance Audit Program and specifying the terms of payment of stipulated civil penalties. The Regulatee will have 30 calendar days from its receipt of an executed copy of the Consent Order to pay any stipulated civil penalties.

C. Information Submission and Final Report

1. All studies or reports submitted to EPA by the Regulatee under the terms of this CAP Agreement shall be identified pursuant to the categories established in Unit II.B.2.a and b of this CAP Agreement, and shall be sent to the following address: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attn: Section 8(e) Coordinator (CAP Agreement).

2. The Regulatee shall submit one original and two full copies of all cover letters, studies, reports, substantiations of confidentiality claims, and, as appropriate, sanitized copies of cover letters, studies, reports, or substantiations of confidentiality claims.

3. In accordance with Part IX of the TSCA Section 8(e) Policy Statement, each study or report submitted to EPA by the Regulatee under the terms of this CAP Agreement shall be accompanied by a separate cover letter containing the following information:

a. Company name, address and telephone number.

b. The signature and printed name, title and telephone number of the person submitting the study or report.

c. A clear statement that the document, identified on the cover letter by the identification number established by Unit I.C of this CAP Agreement, is being submitted pursuant to the TSCA Section 8(e) Compliance Audit Program and this CAP Agreement.

d. The exact identity of each tested chemical or mixture or component of a tested mixture including the CAS Registry Number, if known.

e. The title of the accompanying study or report.

f. A full summary of the reportable adverse effect(s) or exposure(s) observed in the accompanying study or report. In addition, the cover letter should identify by EPA Document Control Number any previous TSCA section 8(e) submission(s) or premanufacture notification(s) (PMN(s)) submitted by the Regulatee on the subject chemical substance(s) or mixture or component(s) of such mixture.

4. Each study or report submitted to EPA by the Regulatee under the terms of this CAP Agreement shall be listed in a Final Report. Such Final Report shall list each submitted study or report by title pursuant to the categories established in Unit II.B.2.a and b of this CAP Agreement, and shall display the identification number established by Unit I.C of this CAP Agreement. Such Final Report shall certify that the TSCA Section 8(e) Compliance Audit has been completed and include the following statement: "I certify that the information contained in or accompanying this Final Report is true, accurate, and complete. As to any identified portion(s) of this Final Report for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete." The Final Report will be the controlling document as to what was or was not submitted under the terms of this CAP Agreement and shall be sent to the address specified in Unit I.B of this CAP Agreement.

D. Other Matters

1. Nothing in this CAP Agreement shall relieve the Regulatee from complying with all applicable TSCA regulations or other applicable environmental statutes.

2. This CAP Agreement shall be binding upon the Parties and in full effect pursuant to the requirements specified in Unit I. of this CAP Agreement.

3. The Regulatee's obligations under this CAP Agreement shall end when the Final Report required by Unit II.C.4 of this CAP Agreement has been submitted to EPA and stipulated civil penalties paid.

4. Failure to comply with the terms of this CAP Agreement permits EPA to proceed under TSCA section 16 to impose the civil penalties allowable under the existing EPA TSCA Sections 8, 12, and 13 Enforcement Response Policy for any study or report submitted pursuant to Unit II.C of this CAP Agreement.

5. All of the terms and conditions of this CAP Agreement together comprise one agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. In the event that this CAP Agreement (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory parties in identical form, then the entire CAP Agreement shall be null and void.

6. The Regulatee may assert claims of confidentiality under TSCA section 14 for submissions under this CAP Agreement. The Regulatee must, at the time of submission, provide substantiation for all information claimed as confidential. The Regulatee agrees that the failure to assert a claim of confidentiality for studies, reports, or information submitted under the terms

of this CAP Agreement shall be interpreted by EPA as a waiver by the Regulatee of the right to assert a claim of confidentiality.

7. Submissions containing information claimed as TSCA Confidential Business Information (TSCA CBI) shall contain cover sheets bearing the typed or stamped legend "company confidential," "proprietary," or "trade secret." Information contained in the submission which is claimed as TSCA CBI must be clearly marked by boxing, circling, or underlining the specific text so claimed. All pages containing such information shall also be marked "CONFIDENTIAL." Care should be taken to ensure that these markings do not obscure the text of the submission. Submissions directed to EPA in this manner should be sent by certified mail-return receipt requested or in any other way which will permit verification by the Regulatee of its receipt by EPA.

8. If the Regulatee chooses to assert a confidentiality claim, the Regulatee shall provide two sets of each such submission: one set shall have the TSCA CBI material marked in the manner contemplated under 40 CFR 2.203(b) and Unit II.D.7 of this CAP Agreement; the second set shall have the TSCA CBI material excised. The Regulatee is advised that the second, "sanitized" set will be available for public review without further notice to the Regulatee and therefore care should be exercised in the creation of this set. Each sanitized and unsanitized submission must comply with Unit II.C.2 of this CAP Agreement and thus will consist of one original and two copies.

9. The Regulatee is advised to review carefully the confidentiality claim procedures at 40 CFR 2.201. Specific information concerning TSCA section 8(e) confidentiality claims is contained at Part X of the TSCA Section 8(e) Policy Statement.

10. The Regulatee agrees that if the specific chemical identity is claimed as confidential in a submission, a generic nonconfidential chemical identity will be included on the sanitized version of the submission. Guidance for developing appropriate generic chemical identities may be obtained by consulting the TSCA Chemical Substance Inventory: 1985 Edition, or by contacting the Office of Toxic Substances' Chemical Inventory Section at (202) 382–3527.

11. The Regulatee agrees that confidentiality claims will be honored by EPA only if each claim is accompanied by responses to the questions in the document provided with this CAP Agreement entitled "Substantiating Claims of Confidentiality." The Regulatee shall provide an original and two copies of these responses in accordance with Unit II.C.2 of this CAP Agreement. The Regulatee shall also, in the event the Regulatee desires information in these responses to be considered TSCA CBI, provide a sanitized original and two copies in accordance with Unit II.C.2 and Unit II.D.8 of this CAP Agreement.

12. The Regulatee agrees that failure to adhere to each requirement pertaining to TSCA CBI may result in forfeiture of the CBI protection for the submission and its subsequent availability in its entirety for public review.

WE AGREE TO THIS:

For Regulatee:

[Signing official]

[Title]

[Company name]

[Signing official]

[Title]

[Company name]

For EPA:

Michael F. Wood,

Director, Compliance Division, Office of Compliance Monitoring.

Michael J. Walker,

Associate Enforcement Counsel for Pesticides and Toxic Substances.

III. Conclusions

EPA has announced the opportunity to register for the TSCA Section 8(e) Compliance Audit Program. Any further information regarding this Audit Program or the CAP Agreement may be obtained from the contact person noted above.

Dated: January 25, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91–2299 Filed 1–31–91; 8:45 am]

BILLING CODE 6560–50–F

federal register

Friday
February 1, 1991

Part III

Department of Agriculture

Office of the Secretary

Proposed Guidelines for Research Involving the Planned Introduction Into the Environment of Organisms With Deliberately Modified Hereditary Traits; Notice

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Proposed USDA Guidelines for Research Involving the Planned Introduction Into the Environment of Organisms With Deliberately Modified Hereditary Traits

AGENCY: Office of the Secretary, USDA.

ACTION: Notice and request for public comment.

SUMMARY: The United States Department of Agriculture (USDA or the Department), Office of Agricultural Biotechnology, invites public comment on Proposed USDA Guidelines For Research Involving Planned Introduction Into the Environment of Organisms With Deliberately Modified Hereditary Traits ("Guidelines"). These Guidelines describe principles for assessing the safety of research with specific organisms and designing confinement measures that promote safety. The Guidelines are not mandatory. They are intended as points to consider to aid principal investigators and institutions in designing research so it can be conducted safely outside contained facilities. The Guidelines also encourage institutions to utilize Institutional Biosafety Committees (IBCs) to aid investigators in the safety evaluation and confinement design.

DATES: Comments concerning the proposed guidelines must be received in writing by April 2, 1991.

ADDRESSES: Submit written comments concerning the proposed guidelines to Daniel Jones, OAB, USDA, room 321–A, Administration Building, 14th Street and Independence Avenue, SW., Washington, DC 20250–2200.

FOR FURTHER INFORMATION CONTACT: Maryln Cordle, OAB, USDA, room 324–A, Administration Building, 14th Street and Independence Avenue SW., Washington, DC 20250–2200, or call (703) 235–4414.

SUPPLEMENTARY INFORMATION:

Introduction

The policies of the Department are guided by the principles set forth in the Coordinated Framework for Regulation of Biotechnology (**Federal Register**, June 16, 1986, 51 FR 23302), published by the Office of Science and Technology Policy (OSTP), Executive Office of the President. The Coordinated Framework described a comprehensive Federal policy for insuring the safety of biotechnological research and products. The notice included separate descriptions of the policies of the Food and Drug Administration, Environmental Protection Agency, the Occupational Safety and Health Administration, the National Institutes of Health (NIH), and the research and regulatory [1] agencies of the Department of Agriculture.

USDA published an Advanced Notice of Guidelines for Biotechnology Research (51 FR 23367). The guidelines in the advanced notice in 1986 set forth specific proposed practices for construction, handling, and testing of plants, animals, and microorganisms involved in agricultural biotechnology research. On December 9, 1986, (51 FR 44397, announcement of open meeting of the Biotechnology Science Coordinating Committee) USDA announced its intention to propose provisions for agricultural research for inclusion in the NIH Guidelines for Research Involving Recombinant DNA Molecules (**Federal Register** of May 7, 1986. 51 FR 16958) instead of proceeding separately with the previously announced USDA Guidelines. Provisions for research with whole plants in greenhouses and animals in containment facilities (**Federal Register** of August 11, 1987, 52 FR 29300) have been recommended for approval by the NIH Recombinant DNA Advisory Committee and await action by NIH.

The Department believes that certain principles and points to consider would be helpful to researchers and institutions in designing research so it can be conducted safely outside contained facilities. Accordingly, these are being presented in proposed Guidelines for public comment.

USDA believes that voluntary Guidelines will encourage sound research, development, and safe procedures for biotechnology in the improvement of agricultural production and practice. This is important because biotechnology holds promises of broad economic and social benefits to crop and livestock health and production, to genetic diversity, to international competitiveness for American farmers and ranchers, to food quality and safety, and to environmentally compatible agricultural practices. In order to aid this development, the Department has been urged by the scientific community and others to formulate guidelines for safe field testing.

The Guidelines address research involving planned introduction into the environment of organisms with deliberately modified hereditary traits. "Planned introduction" refers to limited, carefully controlled trials outside contained facilities using confinement measures instituted to limit release of organisms outside the test site.

Organisms with deliberately modified hereditary traits includes organisms resulting from modification to genetic traits by any technique or process. Modified organisms do not pose risks different from or greater than naturally-occurring organisms. Like naturally-occurring organisms, introductions of organisms with deliberately modified hereditary traits will fall within a range from safe to high risk. As noted in the Coordinated Framework:

> * * * [I]ntroductions of new plants, animals and microorganisms have long occurred routinely with only some of those that are not native or are pathogenic requiring regulatory approval. It should be noted that microorganisms play many essential roles in agriculture and the environment and that for decades agricultural scientists have endeavored to exploit their advantages through routine experimentation and introduction into the environment; and as a rule these agricultural and environmental introductions have taken place without harm to the environment. (**Federal Register** of June 26, 1986, 51 FR 23303.)

These guidelines are intended to be useful to researchers in designing experiments involving introductions of modified organisms.

History of the Development of the Proposed Guidelines

The Agricultural Biotechnology Research Advisory Committee (ABRAC) was established by Departmental Regulation 1042–87 on October 8, 1987, to provide advice to the Department on scientific and technical aspects of biotechnology. The Committee serves the Secretary of Agriculture through the Assistant Secretary for Science and Education in an advisory capacity with respect to policies, programs, operations, and activities associated with the conduct of agricultural biotechnological research. A major activity of ABRAC has been assisting USDA in developing the proposed Guidelines.

As a starting point, ABRAC utilized a working document that resulted from a meeting of international experts in biotechnology in Arlington, Virginia, on December 13–15, 1986. The working document that resulted from the Arlington workshop encompassed the entire scope of agricultural research involving biotechnology, from laboratory containment to field testing. The development of the Guidelines over the past two and a half years has been discussed at public meetings of ABRAC and its working groups. Public input at those meetings significantly contributed

[1] USDA/APHIS published draft regulations (51 FR 23351) which became final on June 16, 1987 (52 FR 22891).

to the proposed Guidelines. In addition, informal public meetings were held in September 1990 to obtain further comment on the technical aspects of the Guidelines in Sacramento, California, St. Louis, Missouri, Raleigh, North Carolina, and Washington, DC. A summary of those meetings has been prepared and is available to the public on request to the Office of Agricultural Biotechnology, USDA. These comments will be considered by USDA along with additional comments received in response to this notice.[2]

Overview of the Guideline Process

USDA hopes that the safety assessment and confinement design principles in the Guidelines will be utilized by a broad constituency involved in biotechnological research. Some research addressed by the Guidelines such as that involving the use of pesticides or plant pests is subject to the jurisdiction of Federal regulatory agencies and may require a permit or other approval or clearance. Nothing in the proposed Guidelines displaces requirements under Federal, state, or local laws and regulations. The Agricultural Biotechnology Research Advisory Committee will be available for advice to Federal, state, and local agencies through the Assistant Secretary for Science and Education.

Biotechnology is constantly developing, and research guidelines must be designed to respond to the dynamics of the science. Public input has been encouraged in all phases of the development of the Guidelines. The Department believes the Guidelines should be a flexible, living document that will be modified and updated as additional safety information and experience become available.

The Guidelines provide a step-wise process for researchers to use in assessing the safety of planned introductions into the environment of organisms with deliberately modified hereditary traits and for designing safe research. The Guidelines are based on the principle that the conditions under which such research can be conducted safely should be assessed relative to the conditions that are normally accepted for conducting research safely with the parental organism. Modification of hereditary traits may increase, decrease, or result in no change in the level of safety concern that might be associated by the planned introduction of the parental organism. Introduction of the parental organism may pose negligible, low or high risk, depending on the traits of the organism, the characteristics of the target environment, and any confinement techniques applied. Because the modified organism will still retain all or almost all of the traits of the parental organism, the safety evaluation of the modified organism begins with a determination of the level of safety concern for the parental organism (Step 1). A framework for this evaluation and for assignment to one of five levels of safety concern is described in section VI. Next, the effect of the modification of hereditary traits on safety is determined (Step 2), leading to the assignment of a level of safety concern for the modified organism (Step 3). Then a confinement level is determined that corresponds to the modified organism's level of safety concern, and a confinement protocol is developed (Step 4). USDA invites comment on this general design as well as on the specific principles of safety assessment and design of confinement for field testing.

Key Definitions

Several key terms and their usage in the Guidelines are unique. One such term is "confinement." Confinement refers to that which restricts or limits the scope of spread and survival of organisms, and refers to practices and procedures that are used to keep experimental organisms within the research site. In essence, confinement is to field research as "containment" is to laboratory research.

The Guidelines are not intended for research that is performed within contained facilities, e.g., a laboratory or greenhouse. A contained facility refers to an enclosed structure with walls, roof, and floor that is described in the NIH Guidelines. The Department is aware that overlap may arise on occasion when certain animal studies are conducted outside an enclosed structure for which the NIH Guidelines consider the study to be "contained." However, in such cases the NIH Guidelines provide for decision-making by the IBC, and USDA believes that the advice provided in the proposed USDA Guidelines for such studies would not be inconsistent with requirements under the NIH Guidelines. Because NIH and USDA have a history of working well together on matters of common interest and overlapping expertise, the distinction between "contained" and "confined" research is not expected to be a significant problem.

The Department gave considerable attention to the definition of "safety," and proposes that it refer to conditions determined with reasonable certainty to have acceptable or negligible risk to human health or managed or natural ecosystems. This definition recognizes that safety assurance can not be absolute and that scientific progress and development of beneficial new products must be allowed to proceed within bounds of acceptable risk.

USDA specifically invites comment on these and other definitions presented in section II of the proposed Guidelines.

Scope Definitions

Generally accepted field research practices are well established for the vast majority of agricultural research involving plants, animals and microorganisms. Confinement practices protect the health of humans, animals, and plants as well as other components of the environment. The design of these research practices is based upon: (1) Knowledge and experience about the range of phenotypic properties anticipated for such organisms and how they are routinely managed; and, (2) past experience with safe introduction of similar organisms.

These guidelines describe the principles underlying the design of research practices. They suggest a step-wise format for assessing safety and developing confinement practices that apply to the planned introduction of any organism in any environment. However, application of the steps outlined in the guidelines may not be necessary for planned introductions of organisms for which the generally accepted research practices are considered adequate.

At this time, examples of such organisms are left undefined pending review of comments received on this and a related document, "Principles for Federal Oversight: Planned Introduction into the Environment of Organisms with Modified Hereditary Traits" published by OSTP in the **Federal Register** of July 31, 1990 (55 FR 31118). In the OSTP document examples of potential exclusion categories are provided for organisms that would generally be excluded from oversight because their introduction is considered to be similar to previous safe introductions, or because other information available regarding risk posed by such introduction (including knowledge that existing practices or regulations adequately address possible risks posed by the introduction) makes oversight unnecessary. Potential exclusion categories include:

[2] Substantive public comments were received by USDA in response to the Advanced Notice of Proposed USDA Guidelines for Biotechnology Research in 1986 and from three public hearings held across the country in the fall of 1986. These comments led to the Department's decision to pursue a different strategy for addressing the need for guidance.

1. Plants and animals that result from natural reproduction or the use of traditional breeding techniques. These include, for example, for vascular plants, mutagenesis and hand pollination, and for vertebrate animals, artificial insemination, superovulation and transfer of embryos.

2. Microorganisms modified solely: (a) Through chemical or physical mutagenesis; (b) by the movement of nucleic acids using physiological processes including, but not limited to, transduction, transformation, or conjugation; or (c) by plasmid loss or spontaneous deletion.

3. Vascular plants regenerated from tissue culture, including those produced through selection of somaclonal variants, embryo rescue, protoplast fusion, or treatments that cause changes in chromosome number.

4. Organisms that have been modified by the introduction of non-coding, non-expressed nucleotide sequences that cause no phenotypic or physiological changes in the parental organism.

5. Organisms resulting from deletions, rearrangements, and amplifications within a single genome, including its extrachromosomal elements.

6. Organisms with a new phenotypic trait(s) conferring no greater risk to the target environment than the parental strain, which is considered to be safe. Although the proposed USDA guidelines are not intended for Federal oversight of biotechnology research but only as guidance for institutions and researchers, the Department believes the scope of the guidelines should be consistent with other Federal policy.

The Department is tentatively considering the following as examples of modified organisms that may not need consideration under the Guidelines.

1. Plants [3] that result solely from selection or natural regeneration, hand pollination or other managed, controlled pollination, chemical or physical mutagenesis and plants that are regenerated from organ, tissue, or cell culture, including those produced through selection and propagation of somaclonal variants, embryo rescue, protoplast fusion, or chemical treatments that cause changes in chromosome number;

2. Animals [4] that result solely from selection, artificial insemination, superovulation, embryo transfer, or embryo splitting;

3. Microorganisms [5] modified solely: (a) by chemical or physical mutagenesis; (b) by the movement of nucleic acids using physiological processes, including, but not limited to, conjugation, transduction and transformation; and (c) by plasmid loss or spontaneous deletion; (If nucleic acid molecules produced using in vitro manipulation [6] are transferred using any of the techniques listed in this exclusion, the resulting organism would not fall under this exclusion and the Guidelines would apply.)

4. Organisms which have been modified by the introduction of non-coding, non-expressed nucleotide sequences that cause no phenotypic or physiological changes compared to the parental organism; and

5. Other specific organisms excluded by USDA.[7]

The rationale for these examples of modified organisms that may not need consideration under the Guidelines is as follows:

Proposed Examples for Plants

The selection of plants from nature and from progeny of crosses between selected parents has been used widely to obtain plants with desirable heritable traits. Experience with research, development and commercialization of a vast number of plants has led to such an understanding of the life cycle of plants, including details of their reproductive, survival and dispersal mechanisms, that their behavior is quite predictable. Techniques such as chemical and physical mutagenesis, controlled pollination, and chemically induced polyploidy have been used for many years with many species. No untoward effects are expected provided standard breeding practices of advancing only desirable progeny are followed. Plants produced by some of the more recent cellular techniques of inducing genetic variability in plants, including regeneration from tissue culture, somaclonal variation, protoplast fusion, and embryo rescue, have also been introduced into the environment and commerce without any recognized risk.

Proposed Examples for Animals

Animals selected from natural populations and from progeny of controlled breeding have been used widely to obtain species with desirable traits for agricultural and other purposes of human domestication of animals. Experience from genetic research and commercial production of a large number of animal species have led to an understanding of the life cycles of animals, including details of their sexual reproductive mechanisms and the heritability of traits, that their behavior in breeding experiments is predictable. Measures needed to confine mobile animals are known to vary with the species, but in most cases are generally known and accepted as effective. The principles of animal genetics have been well established with some species and there is no reason to believe they should not apply universally to all members of the animal kingdom. Animals produced through the use of more recent techniques such as artificial insemination, superovulation, embryo transfer, and embryo splitting are known to have an increased and more predictable frequency of desired traits, and to result in a limited range of new phenotypes. The confinement of animals, either in research or in commercial settings, varies widely with the animal and its mobility but is generally accepted as sufficient, provided accepted research practices are followed.

Proposed Examples for Microorganisms

Genetic modification of microorganisms in nature occurs by many mechanisms, many of which have been utilized by researchers to produce microorganisms that may be used in experiments involving planned introductions into the environment. For such modifications (i.e., similar to those which occur readily in nature), phenotypic traits significantly different from an organism's natural range of expression are unlikely to occur. Many modified strains of microorganisms are less fit than the parental strain. They often revert to the parental phenotype or will be outcompeted and fail to survive.

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[3] "Plant" is any member of the Kingdom Plantae, made up of bryophytes and vascular plants, as defined in Raven, Peter H., Ray F. Evert, and Susan E. Ichhorn (1986). "Biology of Plants." Worth Pub., Inc., New York, NY. pp. 161, 718.

[4] "Animal" is any member of the Kingdom Animalia, which includes animals such as insects and nematodes, as defined in Raven, Peter M. and George B. Johnson (1986). "Biology." Times Mirror/Mosby Publishing, St. Louis, MO. p. 724.

[5] "Microorganism" includes any organism or entity capable of reproduction that is not visible to the human eye, including viruses, viroids, bacteria, protozoa, fungi, and certain algae. The definition is an operational one.

[6] In vitro manipulation includes the directed addition of nucleotide sequences to, rearrangement of nucleotide sequences of, or removal of nucleotide sequences from the genetic material that has been introduced into the organism or the use of chemical or physical techniques to enrich for a specific sequence.

[7] It is expected that the environmental introduction of many additional modified organisms will, with experience, be identified as posing little or no risk. These would be added to the examples of organisms not requiring consideration under the Guidelines following the amendment process defined in section XI.

Proposed Examples for Organisms Modified by the Introduction of Non-coding, Non-expressed Nucleotide Sequences

Organisms that have been modified by the introduction of non-coding, non-expressed nucleotide sequences [8] will not result in any phenotypic or physiological changes in the organism. Thus generally accepted practices are expected to be sufficient for safe field testing.

It has also been suggested that the Guidelines be used for research involving all living organisms. USDA invites comments on both this and the proposed examples. The Department anticipates that public comments received in response to this proposal, as well as comments that have already been submitted in response to the OSTP notice, will be helpful in clearly defining that research for which the Guidelines are recommended.

Principles of Safety Assessment

Section VI presents a detailed procedure for determining the level of safety concern for the parental organism (Step 1) that includes evaluation of five attributes:

—The pest/pathogen status and potential of the parental organism in the accessible environment,
—The potential of the parental organisms to establish itself in the accessible environment,
—The ecological relationships of the parental organism with other organisms in the accessible environment,
—The potential of the parental organisms for inducing genetic change in natural or managed populations in the accessible environment, and
—The potential for monitoring and control of the parental organism in the accessible environment.

This evaluation is made within the context of the accessible environment, defined as the area in and immediately surrounding the research site, into which the parental organism would have access in the absence of confinement.

Five levels of safety concern are defined. These range from Level 1 for organisms whose ecological attributes in the specified accessible environment are understood to the extent that it can be determined with reasonable certainty that the parental organism has virtually no potential for adverse effects on human health or on managed or natural ecosystems to Level 5 for organisms with potential for predictably high adverse consequences on human health or on managed or natural ecosystems and which possess characteristics that preclude safe research outside contained facilities under the current state of knowledge about the organism. Appendix 1 illustrates examples of the evaluation and assignment of levels of safety concern for five specific organisms.

Alternatives to this approach were considered by USDA and discussed by ABRAC. The possibility of classifying and listing all research organisms was considered and rejected as impractical. USDA also considered whether fewer levels of safety concern might be more appropriate, but decided that, because the research is conducted by highly trained individuals, more refined judgments on risk classification are possible and would be beneficial. Public comment on this matter is invited.

Section VII describes the evaluation of the modification of hereditary traits. The modifications might be insertions of nucleic acid sequences from any source, or manipulations of nucleic acid sequences within the genome, including deletions and rearrangements. Such modifications, independent of the methods used, may have no effect on the level of safety concern (Type 2 modification), or they may increase (Type 3 modification) or decrease (Type 1 modification) the level of safety concern. In order to determine which of these three types of modification is involved, information on the method of genetic modification; the molecular characterization and stability of the modified genes; and the expression, function, and effects of the modified genes is considered.

A substantial understanding of the molecular biology and gene expression which shows that a modification is well characterized should be demonstrated before a Type 1 or Type 2 assignment is made. It is also important to note that Type 3 modifications include those manipulations of genes whose functions or effects are not well understood. This reflects USDA's belief that uncertainty or a lack of knowledge may warrant substantial precautions until potential risks are predictable.

The determinations reached in Steps 1 and 2 then lead to determination of the appropriate level of safety concern for the modified organism in Step 3, which is used as a basis for designing appropriate confinement protocols.

USDA invites comments on the technical merits of the safety assessment principles, and welcomes suggestions that might improve upon the guidance provided.

Confinement Principles

Confinement measures limit the spread or survival of organisms and their products, thereby minimizing the potential for adverse effects on human health or on managed or natural ecosystems.

The level of confinement needed to limit the transfer of genetic information, dissemination, survival, reproduction, and other attributes of the organism must correspond to the properties of the organism, characteristics of the research site and the accessible environment, and the design of the experiment.

Five classes of confinement measures are described in section IX–B, physical barriers, biological barriers, variations in environmental conditions, chemical treatments, and limitations of the scale of research. These measures can be used separately or in concert to achieve safe experimentation.

Four levels of confinement are set forth to correspond with modified organisms that have been assigned levels of safety concern 1 through 4. Confinement Level 1, which is appropriate for organisms with virtually no potential for adverse effects (Level of Safety Concern 1), consists of good agricultural research practices for the particular organism and research site. Good agricultural research practices include instructions to all personnel on appropriate recordkeeping and monitoring of experiments; it also includes planting, inoculating, reproduction, husbandry, harvesting, slaughter, and disposal practices that would be used on a well managed research farm or facility. Each higher confinement level builds upon Confinement Level 1 (i.e., good agricultural research practices) by progressively adding more stringent confinement measures most appropriate for the organism. At Confinement Level 4 (maximum confinement), for example, all available confinement measures appropriate to the organism are to be applied.

USDA recognizes that confinement levels in the abstract would be of limited value and, therefore, has provided more specific recommendations on confinement practices for six groups of organisms, presented as examples in Appendix 2. In addition, USDA under its National Biological Impact Assessment Program, has developed a computerized data base, which can be accessed through a toll free number, that provides additional information to assist researchers in designing safe confinement protocols.

[8] Nucleotide sequences that affect gene regulation would not be excluded.

Comments on the confinement principles and suggestions on how the guidance provided may be improved are invited.

Institutional Biosafety Committees and Other Advisors

Collegial advice is often sought by principal investigators in research design. Institutional biosafety committees are widely used by institutions to provide peer advice and review of various types of research activities, including their use under the NIH Guidelines. These committees can offer special expertise on appropriate confinement levels. Likewise, principal investigators may wish to consult with other experts to augment scientific information.

Institutions also rely on institutional biosafety committees as a means of maintaining safe institutional research activities. Institutions typically tailor these committees in their scope and membership to meet the institutions' management needs.

USDA supports these roles for institutional biosafety committees and requests comments on the use of such committees, adequate membership requirements, and public participation.

Amendment Procedure for the Guidelines

USDA intends that the Guidelines will be periodically reviewed to maintain their compatibility with the current state of knowledge in biotechnology. Accordingly section XI proposes an amendment procedure under which proposals for amendment normally would be reviewed by ABRAC and would be subject to public notice and comment.

For the reasons set forth in the preamble, USDA proposes the following voluntary Guidelines:

PROPOSED USDA GUIDELINES FOR RESEARCH INVOLVING PLANNED INTRODUCTION INTO THE ENVIRONMENT OF ORGANISMS WITH DELIBERATELY MODIFIED HEREDITARY TRAITS

Table of Contents

I. Purpose
II. Definitions and Acronyms
  II–A. Technical Terms
  II–B. Administrative Terms
III. Scope
  III–A. General
  III–B. Exclusions
  III–C. Research Subject to Regulations
IV. General Information
V. Overview: Guidelines for Safe Conduct of Research
VI. *Step 1:* Determination of the Level of Safety Concern for Parental Organisms
  VI–A. ACTION I. Accessible Environment
  VI–B. ACTION II. Attributes of the Organism
  VI–B–1. Pest/Pathogen Status and Potential in the Accessible Environment
  VI–B–2. Potential to Establish Itself in the Accessible Environment
  VI–B–3. Ecological Relationships with Other Organisms in the Accessible Environment
  VI–B–4. Potential for Inducing Genetic Change in Natural or Managed Populations in the Accessible Environment
  VI–B–5. Potential for Monitoring and Control in the Accessible Environment
  VI–C. ACTION III. Relative Importance of Attributes
  VI–D. ACTION IV. Level of Safety Concern for Parental Organisms
VII. *Step 2:* Determination of the Effect of Modifications of Hereditary Traits on Level of Safety Concern
  VII–A. Type 1: Modifications of Hereditary Traits that Decrease the Level of Safety Concern for the Modified Organism
  VII–B. Type 2: Modifications of Hereditary Traits that have No Effect on the Level of Safety Concern for the Modified Organism
  VII–C. Type 3: Modifications of Hereditary Traits that Increase the Level of Safety Concern for the Modified Organism
VIII. *Step 3:* Determination of the Level of Safety Concern for Organisms with Deliberately Modified Hereditary Traits
IX. *Step 4:* Confinement Principles and Design of Safety Protocol
  IX–A. Application of Confinement Principles
  IX–B. Confinement Measures
  IX–C. Confinement Levels
X. Roles and Responsibilities
  X–A. Institution
  X–B. Institutional Biosafety Committee
  X–C. Principal Investigator
XI. Amendment Procedure
  Appendix 1. Examples of Determinations of Levels of Safety Concern for Parental Organisms
  Appendix 2. Guidance on Confinement for Planned Introductions into the Environment of Organisms with Deliberately Modified Hereditary Traits

I. Purpose

These Guidelines recommend practices and procedures for the safe conduct of research involving the planned introduction into the environment of certain organisms with deliberately modified hereditary traits. The Guidelines establish principles for assessing the safety of research with specific organisms and designing confinement to promote safety. They are intended to aid researchers and institutions in the design of safe experiments conducted outside of contained facilities.

II. Definitions and Acronyms

II–A. Technical Terms

II–A–1

"Confinement" is that which restrains or limits the scope of spread or survival of organisms and their products. (See section IX.)

II–A–2

"Contained facility" refers to an enclosed structure with walls, roof, and floor (e.g., a laboratory or greenhouse) that is described in the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules," (**Federal Register**, May 7, 1986, 51 FR 16958).

II–A–3

"Managed or natural ecosystems" refers to all plants, animals, and microorganisms, and their interactions, in domesticated and wild environments.

II–A–4

"Organism" is any biological entity, cellular or noncellular, with the capacity for self-perpetuation and response to evolutionary forces; examples include plants, animals, fungi, prokaryotes, viruses, and viroids. (To avoid repetition in the use of "organisms and its products," the term "organism" includes not only the living organism but any substance such as toxins produced by the organism.)

II–A–5

"Safety" or "safe" refers to conditions determined with reasonable certainty to have acceptable or negligible risk to human health or to managed or natural ecosystems.

II–A–6

"Deliberately modified hereditary traits" refers to changes to genetic traits of an organism by any method.

II–A–7

"Research involving planned introduction into the environment" refers to research outside contained facilities in an appropriately confined environment. It does not refer to the deliberate release of organisms in the open environment beyond research sites or to releases in a commercial setting.

II–B. Administrative Terms

II–B–1

"ABRAC" or "Agricultural Biotechnology Research Advisory Committee" is a Federal advisory committee that advises the Secretary of Agriculture through the Assistant Secretary for Science and Education on

scientific and technical matters concerning biotechnological research, including research involving the planned introduction into the environment of organisms with deliberately modified hereditary traits.

II–B–2

"Department" refers to the United States Department of Agriculture.

II–B–3

"IBC" or "Institutional Biosafety Committee" is the committee at an institution that provides local expertise in aiding researchers in the use of the Guidelines. (See section X–B.)

II–B–4

"Institution" refers to any individual, corporation, partnership, association, public or private entity, Federal agency, or other unit which conducts or sponsors research. (See section X–A.)

II–B–5

"OAB" or "Office of Agricultural Biotechnology" is the office within the United States Department of Agriculture which serves as the point of contact for users of the Guidelines.

II–B–6

"USDA" refers to the United States Department of Agriculture.

III. Scope

III–A. General

These guidelines are intended for agricultural research involving the planned introduction into the environment of certain organisms with deliberately modified hereditary traits. The Office of Science and Technology Policy, Executive Office of the President, on July 31, 1990, published for comment proposed "Principles for Federal Oversight: Planned Introduction Into the Environment of Organisms With Modified Hereditary Traits." Upon consideration of comments on both this document and the OSTP document, appropriate examples will be published describing the types of environmental research with organisms with deliberately modified hereditary traits for which use of these guidelines is not necessary or appropriate.

III–B. Research Subject to Regulations

Certain field testing involving specific organisms such as pathogens or pesticides may be subject to the jurisdiction of a Federal regulatory agency and requires its prior approval or clearance. Questions concerning jurisdiction of Federal agencies may be addressed to OAB.

IV. General Information

The Guidelines are based upon current agricultural knowledge and practices for safe field research. USDA will periodically revise the Guidelines to reflect new scientific information.

V. Overview: Guidelines for Safe Conduct of Research

The purpose of this section is to provide an overview of the scheme or step-wise process that is recommended for use by the principal investigator. The conditions under which research with an organism with deliberately modified hereditary traits can be conducted safely should be assessed relative to the conditions that are normally accepted for conducting research with the parental organism. Therefore, the safety evaluation begins with a determination of the level of safety concern for the parental organism. Section VI sets out a framework for determining which of five levels of safety concern is appropriate for the parental organism in a specific environment.

After the level of safety concern for the parental organism has been determined, the principal investigator should consider the effect of the genetic modification on safety. Section VII sets out a framework for assessing whether the modification has no effect on the level of safety concern, or whether it increases or decreases the level. Knowledge of the precise modification may allow better predictability of the safety of the organism and its products, so that appropriate confinement and other safety practices for the research can be selected.

Evaluation of the effect of the genetic modification on the parental organism will lead to the determination of the level of safety concern for the modified organism. This guidance is provided in section VIII.

At this point, principal investigators should assign an appropriate confinement level, based on the level of safety concern for the modified organisms and design the confinement measures and other safety conditions for the research. Section IX describes confinement principles that can be applied to the design of the research to achieve appropriate levels of confinement.

In summary, the conditions for safely performing research should be chosen according to the following four- step process:

Step 1. Determination of the level of safety concern for the parental organism (section VI).

Step 2. Determination of the effect of the genetic modification on the level of safety concern, i.e., whether it increases, decreases, or has no effect on the level of safety concern for the parental organism (section VII).

Step 3. Determination of the level of safety concern for the modified organism (section VIII).

Step 4. Determination of the confinement level appropriate to the particular level of safety concern for the modified organism and development of a safety protocol to meet the level of confinement (section IX).

VI. Step 1: Determination of the Level of Safety Concern for Parental Organisms

The level of safety concern for the parental organism should be determined by evaluating the attributes of the organism within the context of the environment in which the research is to be performed. The particular attributes of the organism should be studied along with its ecological relationships with other organisms in the environment accessible to it in the absence of confinement. The attributes which should be considered are:

—The pest/pathogen status and potential of the parental organism in the accessible environment,
—The potential of the parental organism to establish itself in the accessible environment,
—The ecological relationships of the parental organism with other organisms in the accessible environment,
—The potential of the parental organism for inducing genetic change in natural or managed populations in the accessible environment, and
—The potential for monitoring and control of the parental organism in the accessible environment.

A series of actions are recommended in the section to determine the level of safety concern of the parental organism. By following these actions, principal investigators will be in a reasonable position to evaluate the relative importance of specific attributes, to choose a level of safety concern for the parental organism, and to document the rationale for placing the parental organism at an appropriate level of safety concern. Appendix 1 provides examples of specific organisms for further guidance to principal investigators in determining levels of safety concern.

The evaluations made under this section will not be the same for all organisms. Nor will all evaluations described in this section be relevant to every organism. At the same time, there may be additional information relevant

to the level of safety concern for a particular organism that is not specifically mentioned in this section.

VI–A. ACTION I. Accessible Environment

Define the environment accessible to the organism. This includes the area in and immediately surrounding the research site, into which the parental organism would have access in the absence of confinement.

VI–B. ACTION II Attributes of the Organism.

Define the relevant attributes of the parental organism in the accessible environment. This should be done by addressing the following questions and issues:

VI–B–1. Pest/Pathogen Status and Potential in the Accessible Environment

VI–B–1–a. What are the plausible adverse effects of the organism on the accessible environment due to its being a pest or pathogen? These include adverse effects, such as, lowered productivity of economically important organisms, damage or destruction of natural habitats, and adverse effects on human health. Will the potential extent of adverse effects, as a result of this result of this research, be greater than already exists in the accessible environment from the organisms already present?

VI–B–1–b. What is the potential for exchange of genetic information between the organism and pests or pathogens in the accessible environment? In other words, what is the likelihood of the organism becoming a pest or pathogen through an exchange of genetic information under the conditions of the research?

VI–B–1–c. Does the organism have any ecological characteristics that might increase or decrease its pest/pathogen potential? For example, if the organism and its relatives were restricted to a narrow set of ecological conditions (niche), does this imply that the potential to broaden that niche and become a pest is expected to be low?

VI–B–2. Potential to Establish Itself in the Accessible Environment

VI–B–2–a. What are the known mechanisms of survival or persistence of the organism in the natural environment? Are there natural predators or other organismal relationships that affect its survival? Are there climatic and edaphic or other abiotic factors influencing survival of the organism?

VI–B–2–b. What are the known mechanisms of dissemination of the parental organism?

VI–B–2–c. Is population size known to affect the ability of the organism to become established?

VI–B–2–d. What information is known about the competitiveness and aggressiveness of the organism in the accessible environment in relation to the ability of the organism to become established in that environment?

VI–B–3. Ecological Relationships with Other Organisms in the Accessible Environment

VI–B–3–a. What is the importance of the organism to the structure of the community? Is the parental organism involved in any critical ecosystem functions, e.g., nitrogen fixation, inorganic nutrient uptake, key food chain component, critical habitat for key species? Is involvement in critical ecosystem functions indirect or direct? Can other organisms in the ecosystem fulfill its function?

VI–B–3–b. What is the ecological specificity and range of interactions of the organism with other organisms?

VI–B–3–c. What is the geographic range of the organism? Is the geographic range small or large? What changes might occur in the organism to broaden or narrow its geographic range?

VI–B–3–d. What is the habit of the organism? Is the organism free-living, mutualistic, pathogenic, parasitic, or symbiotic? Does its habit relate to potential adverse effects on the environment should it escape from confinement? Will the habit of the organism facilitate monitoring and control?

VI–B–4. Potential for Inducing Genetic Change in Natural or Managed Populations in the Accessible Environment

VI–B–4–a. Is there intrinsic genetic stability of the genome? Can the organism incorporate exogenous DNA? Are active transposable elements present? Are active viral elements present that interact with the normal genome? Have mutations been observed that have resulted in an unusual genotype or phenotype?

VI–B–4–b. Is there a natural or managed interbreeding population known? What is its size? What is the degree of genetic diversity in the population? Is there any potential for genetic exchange between a "released" organism and the organisms in the natural population?

VI–B–5. Potential for Monitoring and Control in the Accessible Environment

VI–B–5–a. Is information from prior research (both within and outside contained facilities) available that has demonstrated control of the organism by various means, such as biological, environmental, physical, chemical?

VI–B–5–b. What monitoring methods are available? What is their sensitivity and degree of accuracy? What is their cost?

VI–B–5–c. Are there procedures to minimize escape of the organism from the test site?

VI–C. ACTION III. Relative Importance of Attributes

Determine the relative importance of the specific attributes in the context of the planned research. Analyze the attributes to identify those that are most critical or influential in the ability of the organism to cause adverse effects.

VI–D. ACTION IV. Level of Safety Concern

Determine the level of safety concern for the parental organism. The level of safety concern is based on the potential for adverse effects on human health or on managed or natural ecosystems. The level of safety concern is not derived from the sum or the mean of the individual levels assigned to the specific attributes described in Action II (section VI–B). Neither is it controlled by the highest or lowest levels assigned to the individual attributes.

The particular attributes listed in Sections VI–D–1 and VI–D–5 which describe Levels of Safety Concern 1 and 5, respectively, are not exclusive. Other attributes may also indicate a particular level. Furthermore, any one attribute does not necessarily indicate a particular level, and all attributes listed need not be shown to conclude a particular level. Principal investigators must exercise sound scientific judgement in evaluating the relative importance of the attributes in Action III (section VI–C) in order to assign the level of safety concern.

When there is a question about the determination of the appropriate level of safety concern (e.g., choosing between Level 3 and Level 4), principal investigators should assign the higher level (i.e., choose Level 4).

VI–D–1. Level 1. Organisms whose ecological attributes in the specified accessible environment are understood to the extent that it can be determined with reasonable certainty that the parental organism has virtually no potential for adverse effects on human health or on managed or natural

ecosystems. Some attributes that alone or in combination might indicate Level 1 organisms are:

VI–D–1–a. No history of adverse effects in the accessible environment or similar environments,

VI–D–1–b. Low evolutionary potential to become a harmful organism in the accessible environment,

VI–D–1–c. Low probability of survival in the accessible environment beyond the time necessary for the particular research,

VI–D–1–d. Low probability of exchange of genetic information with native populations of organisms,

VI–D–1–e. Indigenous status in the accessible environment,

VI–D–1–f. Existence of practical techniques to minimize escape of viable organisms from the accessible environment, or

VI–D–1–g. Existence of practical techniques to recapture or kill escaped organisms before adverse effects occur.

VI–D–2. Level 2. Organisms which may cause adverse effects on human health or on managed or natural ecosystems, the consequences of which are predictably low.

VI–D–3. Level 3. Organisms which may cause adverse effects on human health or on managed or natural ecosystems, the consequences of which are predictably moderate.

VI–D–4. Level 4. Organisms which may cause adverse effects on human health or on managed or natural ecosystems, the consequences of which are predictably high.

VI–D–5. Level 5. Organisms whose ecological attributes in the specified accessible environment indicate the organism may cause adverse effects on human health or on managed or natural ecosystems, the consequences of which are predictably high, and no feasible types of confinement will allow safe conduct of research outside contained facilities. Some of the attributes that alone or in combination might indicate Level 5 organisms are:

VI–D–5–a. History of adverse effects in the accessible environment or in similar environments,

VI–D–5–b. Ability to survive and proliferate in the accessible environment,

VI–D–5–c. Non-indigenous status in the accessible environment,

VI–D–5–d. High frequency of exchange of genetic information with native populations of organisms,

VI–D–5–e. Lack of effective techniques to minimize escape of viable organisms or active products of the organism from the research site, or

VI–D–5–f. Lack of adequate techniques to recapture or kill escaped organisms before adverse effects occur.

VII. Step 2: Determination of the Effect of the Genetic Modification on Level of Safety Concern

The genetic modification should be evaluated in terms of its effects on the attributes of the parental organism. Genetic modification may have no effect on the level of safety concern for the organism, or it may increase or decrease the level of safety concern. The effects of the genetic modification on safety must be evaluated with reference both to the direct actions of the organism on human health or the environment and to the indirect actions of the organism through the substances it produces.

In Step 2, principal investigators should examine the method of genetic modification; the molecular characterization and stability of the modified genes; and the expression, functions, and effects of the modified genes. This information allows a determination of whether the genetic modification decreases the level of safety concern for the modified organism (Type 1), has no effect on the level of safety concern (Type 2), or increases the level of safety concern (Type 3).

VII–A. Type 1: Genetic Modifications That Decrease the Level of Safety Concern for the Modified Organism

Type 1 modifications include those which delete or disrupt expression of a gene or genes known to be responsible for traits, such as, pathogenicity, fertility, survival, or fitness, in ways that increase safety of the organism. Substantial understanding of the molecular biology and other information which show that the modification is well characterized should be demonstrated before a Type 1 determination is made.

VII–B. Type 2: Genetic Modifications That Have No Effect on the Level of Safety Concern for the Modified Organism

Substantial understanding of the molecular biology and other information which show that the modification is well characterized should be demonstrated before a Type 2 determination is made.

Type 2 modifications include:

VII–B–1.

Insertions of nucleic acid from any source, deletions, or rearrangements that have no phenotypic or genotypic consequence in the field, e.g., certain marker genes bearing no hazardous traits, and

VII–B–2.

Insertions of nucleic acid from any source, deletions, or rearrangements that have known or predictable phenotypic or genotypic consequence in the field that is unlikely to result in additional adverse effect on human health or on managed or natural ecosystems, e.g., a storage protein gene with a more desirable amino acid balance.

VII–C. Type 3: Genetic Modifications That Increase the Level of Safety Concern for the Modified Organism

Type 3 modifications include:

VII–C–1.

Insertions of nucleic acid from any source, deletions, or rearrangements that affect the expression of genes, the functions or effects of which are not well understood, and

VII–C–2.

Insertions of nucleic acid from any source, deletions, or rearrangements that have known or predictable phenotypic or genotypic consequence in the field that is likely to result in additional adverse effects on human health or on managed or natural ecosystems, e.g., those which result in the production of certain toxins.

VIII. Step 3: Determination of the Level of Safety Concern for Organisms With Deliberately Modified Hereditary Traits

In Step 3, principal investigators should determine the level of safety concern for the genetically modified organism by considering the effect of the genetic modification (section VII) on the level of safety concern for the parental organism (section VI). The level of safety concern for genetically modified organisms is based on the effects of the modification on the potential for adverse effects on human health or on managed or natural ecosystems. Information evaluated in Step 2 on molecular biology and gene expression, which allows greater predictability of the safety of the modified organism, should be used in each case to determine the level of safety concern for the modified organism.

When there is a question about assignment of the appropriate level of safety concern (e.g., choosing between Level 4 and Level 3) principal investigators should assign the higher level (i.e., Level 4). The following describes the possible levels of safety concern for modified organisms. A description of this is presented in Table 1.

VIII–A. Level 1 Parental Organisms:

VIII–A–1.

With Type 1 modifications result in Level 1 modified organisms.

VIII–A–2.

With Type 2 modifications result in Level 1 modified organisms.

VIII–A–3.

With Type 3 modifications result in Level 2, 3, 4, or 5 modified organisms.

VIII–B. Level 2 Parental Organisms:

VIII–B–1.

With Type 1 modifications result in Level 1 modified organisms.

VIII–B–2.

With Type 2 modifications result in Level 2 modified organisms.

VIII–B–3.

With Type 3 modifications result in Level 3, 4, or 5 modified organisms.

VIII–C. Level 3 Parental Organisms:

VIII–C–1.

With Type 1 modifications result in Level 1 or 2 modified organisms.

VIII–C–2.

With Type 2 modifications result in Level 3 modified organisms.

VIII–C–3.

With Type 3 modifications result in Level 4 or 5 modified organisms.

VIII–D. Level 4 Parental Organisms:

VIII–D–1.

With Type 1 modifications result in Level 1, 2, or 3 modified organisms.

VIII–D–2.

With Type 2 modifications result i Level 4 modified organisms.

VIII–D–3.

With Type 3 modifications result in Level 5 modified organisms.

VIII–E. Level 5 Parental Organisms:

VIII–E–1.

With Type 1 modifications result in Level 1, 2, 3, or 4 modified organisms.

VIII–E–2.

With Type 2 modifications result in Level 5 modified organisms.

VIII–E–3.

With Type 3 modifications result in Level 5 modified organisms.

TABLE 1.—DETERMINATION OF THE LEVEL OF SAFETY CONCERN FOR THE MODIFIED ORGANISM

Level of safety concern for the parental organism	Level of safety concern for the modified organism		
	Type 1 modification	Type 2 modification	Type 3 modification
Level 1	Level 1	Level 1	Level 2, 3, 4 or 5.
Level 2	Level 1	Level 2	Level 3, 4 or 5.
Level 3	Level 1 or 2	Level 3	Level 4 or 5.
Level 4	Level 1, 2 or 3	Level 4	Level 5.
Level 5	Level 1, 2, 3 or 4	Level 5	Level 5.

IX. Step 4: Confinement Principles and Design of Safety Protocols

Principal investigators should select appropriate measures and level of confinement for the modified organism, as indicated by the level of safety concern. For guidance, general principles and practices of confinement for safely conducting research are discussed. Recommendations for confinement of specific groups of organisms are included in appendix 2.

Confinement seeks to limit the potential of organisms to adversely affect human health or managed or natural ecosystems.

IX–A. Application of Confinement Principles

The level of confinement corresponds to the level of safety concern. Therefore, the level of confinement is related to the potential for maintaining or increasing pest/pathogen status, the nature of the ecological relationships in the environment, the potential for establishment in the environment, the potential for inducing genetic change in natural or managed populations, the potential for monitoring and control, the characteristics of the accessible environment, and the design of the research. Some organisms, by virtue of their ability to cause adverse effects of predictably high consequence in the environment, cannot be safely handled outside contained facilities and are designated Level of Safety Concern 5. Other organisms are designated Level of Safety Concern 1, because they involve little or no risk of adversely affecting human health or managed or natural ecosystems, or because their characteristics of concern are of a self-limiting nature and, therefore, require no or minimal confinement beyond that normally practiced on a well managed research farm or facility.

IX–B. Confinement Measures

Confinement measures can be grouped into five types—physical, biological, environmental, chemical, and scale. The examples given for each type are not inclusive of all options available.

IX–B–1. Physical

Physical barriers can be used to limit the survival and dissemination of organisms outside the research site. Physical barriers include border rows, geographical isolation, dams, soil terraces, tillage, fences, screens, meshes, and impervious or plastic barriers.

IX–B–2. Biological

Biological barriers can be used to limit survival and dissemination of organisms outside the research site and to limit the transfer of genetic information from the research organism to other organisms. Biological barriers include genetic modifications that disable the organism, that produce sterility, and that reduce the ability of the organism to survive or to escape predators. Removal of reproductive organs and removal of organisms that are hosts for the research organism can be used to aid confinement. Natural biological decay, e.g., normal death, is a further barrier.

IX–B–3. Environmental

Environmental conditions can be varied to limit reproduction of organisms and to limit survival or dissemination of organisms outside the research site. Environmental variables, which are reproduction-limiting, include climate, geography or location of research site, water supply, humidity and photoperiod. Seasonal or temporal

factors, i.e., time of year, may be extremely important.

IX–B–4. Chemical

Chemical treatments can be used to limit survival and reproduction of organisms outside the research site and to limit transfer of genetic information from the research organism to other organisms. Chemical treatments include application of herbicides, fungicides, insecticides, disinfectants, fumigants, and other materials toxic to the research organism, Ph alterations, use of gametocides and other chemicals which act as reproductive control agents, and elimination of essential nutrients.

IX–B–5. Scale

By decreasing the number of organisms or the size of the research site, the possibility of rapid and widespread dissemination may be reduced. Remedial actions are easier to implement for smaller numbers of organisms and smaller research sites.

IX–C. Confinement Levels

Four levels of confinement are described below, ranging from good agricultural research practices (Confinement Level 1) to very stringent measures (Confinement Level 4). There is a continuous progression from minimum confinement to maximum confinement, and each confinement level is based upon good agricultural research practices. Confinement measures are combined to achieve progressively greater stringency of confinement.

Confinement should be designed for each particular organism and specified accessible environment, based on the ability of the organism to escape confinement and cause adverse effects on managed or natural ecosystems. The increased number and variety of confinement practices (e.g., the use of more than one type of biological barrier, or the use of a combination of biological and physical barriers) will result in greater assurance of safe confinement. These confinement levels are briefly described below. Consult Appendix 2 for details on confinement measures appropriate for each confinement level.

IX–C–1. Confinement Level 1

Confinement Level 1 consists of good agricultural research practices for the organism in the accessible environment. Good agricultural research practices include, but are not limited to: acceptable experimental design; definition of source, type, and name of all research organisms; maintenance of beginning and ending inventory; careful record keeping, including significant alterations of research protocols; description of site design and layout; utilization of appropriate statistical analysis design; clear statements of objectives, procedures, and methods; control and maintenance of integrity of sites and organisms; training, instruction, and oversight of personnel on research and emergency procedures; appropriate termination of research and disposal of organisms and experimental material in excess of that retained for further research.

IX–C–2. Confinement Level 2

Confinement Level 2 consists of good agricultural research practices plus increased stringency of two or more of the confinement measures most appropriate to the organism. Confinement Level 2 is appropriate for Level of Safety Concern 2 modified organisms.

IX–C–3. Confinement Level 3

Confinement Level 3 consists of the use of good agricultural research practices plus increased stringency of three or more of the confinement measures most appropriate to the organism. Confinement Level 3 is appropriate for Level of Safety Concern 3 modified organisms.

IX–C–4. Confinement Level 4

Confinement Level 4 consists of the use of good agricultural research practices plus all available confinement measures appropriate to the organism. Confinement Level 4 is appropriate for Level of Safety Concern 4 modified organisms.

X. Roles and Responsibilities

X–A. Institution

Each institution conducting or sponsoring agricultural research within the scope of the Guidelines should promote safe practices in conducting the research. Institutions are encouraged to:

X–A–1. Establish and implement policies which provide for the safe conduct of research taking into account the points to consider presented in these voluntary Guidelines;

X–A–2. Establish or associate with an Institutional Biosafety Committee to aid principal investigators in using the Guidelines;

X–B. Institutional Biosafety Committee and other Experts

Principal investigators may wish to seek advice from institutional biosafety committees and others expert in assessing the safety of a proposed experiment and designing adequate safety protocols.

X–C. Principal Investigator

On behalf of the institution, principal investigators are generally responsible for conducting research in a safe manner. As part of this responsibility, principal investigators are encouraged to:

X–C–1. Determine whether local, state, or federal regulations apply and adhere to the requirements;

X–C–2. Consider the principles for safety assessment and design of safety protocols described in the Guidelines; and

X–C–3. Instruct and train their staffs in practices and techniques to maximize safety and in procedures for dealing with accidents.

XI. Amendment Procedure

Proposals to change the Guidelines may be made by anyone through a written request for amendment to OAB. OAB will notify the submitter in writing that the request has been received and indicate the procedure for reviewing the request. Normally, OAB will publish the request in the **Federal Register** announcement for the next ABRAC meeting, if received in time for publication and if space is available on the ABRAC agenda. The Assistant Secretary for Science and Education will make a final determination on the request, usually after receiving a recommendation from ABRAC.

Appendix 1—Examples of Determinations of Levels of Safety Concern for Parental Organisms

The first step in evaluating organisms with deliberately modified hereditary traits for research involving planned introduction into the environment is to determine the level of safety concern of the parental organism. Five examples of determinations of levels of safety concern are included in this appendix. They were chosen to represent a range of organisms across the five levels of safety concern presented in section VI–D. The examples are: An animal (cow, *Bos taurus*), a microorganism (*Clavibacter xyli* subsp. *cynodontis* MD69a), a plant (rapeseed, *Brassica napus*), an insect, (Africanized honey bee, *Apis mellifera scutellata*), and an animal disease virus (Foot and Mouth Disease Virus). The last example is included as a demonstration of an organism that clearly would be judged ineligible for research outside contained facilities.

The process for determining level of safety concern for parental organisms is described in section VI. In developing these examples, scientific experts were selected who were familiar with the

organisms and the area in and immediately surrounding the research site to which the parental organism would have access without confinement measures. This area is referred to as the "accessible environment." The attributes of the organisms were evaluated within the context of the accessible environment to determine the level of safety concern for the parental organism. Each organism was evaluated within the context of the specified accessible environment (section VI) through the following attributes:

—Pest/pathogen status and potential,
—Potential to establish itself,
—Ecological relationships with other organisms, and
—Potential for inducing genetic change in natural or managed populations.

In addition, the potential to monitor and control the parental organism was evaluated. The evaluation and description of the relevant attributes were performed by answering the questions presented in section VI–B, and the level of safety concern was selected for the parental organism (section VI–D).

Table 1/Appendix 1 summarizes the examples. A ranking scheme was used for each attribute that assigned numbers between 1 (least concern) and 5 (most concern), inclusive.

TABLE 1/APPENDIX 1.—EXAMPLES OF DETERMINING LEVEL OF SAFETY CONCERN FOR PARENTAL ORGANISMS [1]

Organism	Pest/ pathogen status and potential	Potential to establish	Ecological relation-ships with other organisms	Potential for inducing genetic change	Potential for monitoring and control	Overall level of safety concern
Bos taurus (cow) in Overton, Texas	[2] 1	1	2	2	1	1
Clavibacter xyli subsp. cynodontis MD69a in Beltsville, Maryland	2	1	1	1	1	2
Brassica napus (rapeseed) in Washington State	3	3	3	3	1	3
Apis mellifera scutellata (Africanized honey bee) in Harlingen, Texas	4	5	3	4	4	4
Foot and mouth disease virus in Plum Island, New York	5	5	5	5	4	5

[1] Information developed by the Agricultural Biotechnology Research Advisory Committee (ABRAC) and Working Group on the Classification of Unmodified Organisms.

[2] Numbers in the body of the table represent the level of safety concern for the parental organism on a scale from 1 to 5. Level 1 represents the lowest level of safety concern and level 5 represents the highest level of safety concern.

Example 1. *Bos taurus*, cow, in Overton, Texas.

Action I. Accessible Environment

This research is to be conducted at the Texas A&M University Agricultural Research and Extension Center at Overton, Texas. It is a large, well-managed center with beef cattle production facilities that are typical of this semitropical region. The accessible environment consists of the center and the ranches, farms, and open land immediately surrounding it.

Action II. Attributes of the Organism Relevant to the Level of Safety Concern

Pest/Pathogen Status and Potential=1

Cattle have low adverse effects on the accessible environment. However, they can damage agricultural crops and certain plants if they escape confinement. Recent studies in New Mexico suggest that long term grazing of semiarid grasslands by cattle leads to an increase in the spatial and temporal heterogeneity of water, nitrogen, and other soil resources (Schlesinger et al. 1990).

B. taurus is fully capable of exchanging genetic information with other bovidae. Although this potential exists, it is unlikely to occur, because bovidae in most areas of the United States are confined.

Cattle are large, herbivorous animals requiring rather large amounts of plant material and water each day. They are capable of consuming a broad range of vegetation, including grasses, legumes, and the leaves and stems of shrubs and trees. They survive in nature untended in expansive, rough areas if feed and cover are adequate to support a breeding population (Ensminger 1072, 1983).

Potential to Establish=1

Although most contemporary breeds of *B. taurus* are less able to survive untended than their progenitors were, they are capable of doing so. They can forage, find fresh water, and reproduce under range, brush, swamp, and forest conditions. However, if they accidentally escape from captivity or are released into the "wild," they usually revert after a number of generations to a physical form that more closely resembles that of their wild ancestors (Cole and Brander 1986).

Cattle can range free for a distance of several miles, moving on foot to feed, water, and cover. Cattle are generally not aggressive or territorial in nature. They are sometimes curious but usually avoid human contact in free-ranging conditions.

Cattle are capable of breeding in all seasons of the year and before one year of age. Females come into estrus every 21 days. Cattle need proximity for estrus detection and breeding to occur.

Ecological Relationships With Other Organisms=2

B. taurus is a large herbivore with no major importance to its community. Cattle occupy no specific crucial ecological niche. They do contribute significantly to the living conditions of such diverse organisms as cattle egrets, ticks, dung beetles, and horn flies.

B. taurus is found in most areas of North America, but cattle are much less able to survive untended in the northern half of the United States because of adverse weather conditions. Temperature is the overriding climatic element which affects the physiologic functions of *B. taurus* (Cole and Ronning 1974).

Cattle are capable of becoming free-living in ecosystems that provide sufficient population density and adequate feed, water, and cover.

Potential for Inducing Genetic Change in Natural or Managed Populations=2

Although cattle have the potential to interbreed with other bovidae, and the United States population size is large, in most areas where cattle are produced, they are sufficiently confined and managed to prevent unintended interbreeding. However, examples abound where cattle from adjacent property interbreed when confinement barriers were penetrated.

A major effort has been launched to map the bovine genome (Womack 1989). Significant mutations do not occur with high frequency in the *B. taurus* genome.

B. taurus has the potential to exchange genetic information with other bovidae. Growth and feed efficiency are

two of many heritable traits that have been identified (Knapp et al. 1946).

Fossil remains of animals resembling the cow have been found in Asia dating back 3 to 4 million years (Blakely and Bade 1982). Ample evidence exists to conclude that a rather broad genetic base exists in *B. taurus*. Eighty alloantigenic determinants have been described and assigned to 11 genetically independent blood group systems in cattle (Stormont 1988). There is some evidence that the more heterozygous the cattle are for their blood group genes, the longer they remain in the herds (Schleger et al. 1977).

Potential for Monitoring and Control=1

Much information is available on the technology and methods necessary to confine, monitor, handle, and control *B. taurus*. Cattle are usually monitored by visual methods used on animals individually identified by neck chain, ear tag, tatoo, brand mark, or other methods. More sophisticated methods using electronic technology consisting of transmitters, transponders, and computers are also available and very effective. Cattle are large enough so that each animal can be identified and accounted for if adequately confined and frequently observed. Cattle are controlled by confinement and capture.

Action III. Relative Importance of Attributes

Cattle are large herbivores that can be confined and individually identified and monitored with considerable certainty. They do not survive in the wild in much of the United States and are not likely to encounter an untended interbreeding population.

Action IV. Level of Safety Concern=1

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Example 2. *Clavibacter xyli* subsp. *cynodontis* MD69a in Beltsville, Maryland.

Action I. Accessible Environment

The accessible environment is inoculated plants as well as uninoculated plants, soil, and water in proximity to those inoculated.

Action II. Attributes of the Organism Relevant to the Level of Safety Concern

Pest/Pathogen Status and Potential=2

Clavibacter xyli subsp. *cynodontis* MD69a was originally isolated from Bermuda grass (*Cylodon dactylon* L.). It has no known adverse effects on humans or the environment, except that some cultivars of maize may suffer a yield depression under a high inoculum load (Carlson 1987). Some methods of artificial inoculation of seed may transiently delay germination (Carlson 1989).

C. xyli subsp. *cynodontis* MD69a showed no detectable difference in DNA restriction fragment length polymorphism analysis nor in protein profiles by SDS–PAGE in comparison with a large number of strains (Carlson 1987). No DNA homology was detected by RFLP analysis between this strain and other representative, unrelated plant-associated coryneform bacteria. The bacterium has no detectable endogenous plasmids, nor were prophage detected. In laboratory tests, modified MD69a was not able to transmit nor exchange the integrated DNA sequences with other bacteria, even to the same genus and species. Therefore, the probability of genetic exchange with other strains of this subspecies or other microorganisms is extremely low.

C. xyli subsp. *cynodontis* MD69a is widespread in Bermuda grass. Experiments show poor survival of the strain outside of inoculated plants and gradually decreasing populations in debris from inoculated plants, as well as in soil and water.

Potential To Establish=1

The only known hosts for *C. xyli* subsp. *cynodontis* MD69a under natural conditions, appears to be Bermuda grass (Davis et al. 1984; Carlson 1987). Under natural conditions, no deleterious effects (e.g., stunting, overt disease) have been observed (Carlson 1987, 1988, 1989).

Dissemination to other plants or insects is poor. No effective dissemination appears to occur in soil or water (Carlson 1987, 1988, 1989). Mechanical transmission (i.e., by cutting tools, such as, lawn mowers) appears to be the main mechanism of transmission.

As population size increases, at least up to 10^6 CFU/gm upon inoculation, establishment within the plant increases (endophytic phase). However, the populations decline in certain cultivars and in harvested plants. The bacterium is not aggressive in the compatible environment.

Ecological Relationships With Other Organisms=1

The community in which *C. xyli* subsp. *cynodontis* MD69a survives best is with plants rather than with other microorganisms. Therefore, it is not known to have any role in community structure. Some related coryneform bacteria are known pathogens of plants and may occur sporadically in some cultivated ecosystems (Vidaver 1982; Davis 1986).

The niche appears restricted to Bermuda grass. *Clavibacter*, but not *C. xyli* subsp. *cynodontis* MD69a, occurs worldwide (Carlson 1987, 1988, 1989). *C. xyli* subsp. *cynodontis* MD69a appears to exist in a neutral state in nature, although other interactions may be surmised (Carlson 1987, 1988, 1989).

Potential for Inducing Genetic Change in Natural or Managed Populations=1

C. xyli subsp. *cynodontis* MD69a could incorporate exogenous DNA, transposons, plasmids, etc., but is of limited potential to affect humans or the environment adversely, because of poor persistence and loss of introduced DNA (Carlson 1987, 1988, 1989). Strains of the organism appear very homogeneous (Davis et al. 1984; Carlson 1987).

Potential for Monitoring and Control=1

Numerous field tests have been conducted with *C. xyli* subsp. *cynodontis* MD69a (Carlson 1987, 1988, 1989). No indication of unacceptable spread or deleterious effects on plants have been detected. Routine differential plating techniques are successfully used

to isolate and enumerate the test organism (Carlson 1987, 1988, 1989). Isolation from Bermuda grass outside the plot areas could be practiced (two meters or more).

Liquid inoculum spills or solid spills would be quickly inactivated (within hours to days), and no effective insect transmission would be expected (Carlson 1987, 1988, 1989). If the modified organism does not behave similarly, soil fumigation, plant incineration, or plowing under could be used in small-scale field tests to decrease the probability of spread and potential unwanted effects.

Action III. Relative Importance of Attributes

C. xyli subsp. *cynodontis* MD69a is problematic in terms of its status as a quasi-pathogen under high inoculum loads for certain maize cultivars. The restricted habitat, poor survival outside of plants, poor dissemination, and unlikelihood of genetic exchange outside the subspecies warrant a very low level of safety concern (Carlson 1987, 1988, 1989).

Action IV. Level of Safety Concern=2

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Example 3. *Brassica napus,* rapeseed, in Washington State.

Action I. Accessible Environment

This research is to take place in the seed production area of Washington State. Given that *B. napus* will spread through movement of pollen by insects or movement of seeds by animals, the environment accessible to the organism in the absence of confinement is the entire seed production area of Washington State.

Action II. Attributes of the Organism Relevant to the Level of Safety Concern

Pest/Pathogen Status and Potential=3

B. napus is grown extensively as an oil seed crop in southern Canada (Vaughn et al. 1976; Williams 1985), and is becoming an important oil seed crop in the United States. A large portion of the elite vegetable *B. napus* seed is produced for the United States seed market in the Northwest. Wild strains of *B. napus* are often considered weeds (Wilkinson and Jaques 1979). Other weedy *Brassica* species found in the Northwest are *B. nigra, B. juncea, B. kaber,* and *B. hirta.* A release of *B. napus* into this area would not have any adverse effects due to its pest/pathogen status or potential.

There is significant potential for exchange of genetic information between *B. napus* and indigenous weeds of *Brassica.* The potential for exchange between the various *Brassica* species is high in the Northwest, because *B. napus* is grown extensively for vegetable seed production, and because there are many indigenous weeds.

Cultivated *Brassica* species represent one of the largest and most diverse families of interrelated species and subspecies. Their diverse uses range from oils (*B. napus*), condiments (*B. juncea*), and vegetables (*B. oleracea*) to animal fodders (*B. napus*). *B. napus* will outcross with all of the many weedy, wild *Brassicas.* Generally, *Brassica* species are pollinated by insects, with little or no occurrence of wind pollination (McGregor).

Potential To Establish=3

B. napus tends to adapt well and could persist as do its closely related weedy relatives. Dissemination is through seed, not vegetative, propagation.

The effects of population size are unknown. The larger the field of *B. napus* the more likely insects will find it and spread pollen.

The aggressiveness of *B. napus* is not known. Based on the spread of related species, *B. napus* will propagate in an unmanaged ecosystem and establish itself as the predominant species.

Ecological Relationships With Other Organisms=3

Northwest species have low independence. The niche for *B. napus* is cultivated farm fields, but its weedy relatives can be found in wastelands and roadsides. The geographic range of the genus *Brassica* is worldwide.

B. napus is a free-living macroscopic organism. It is easily recognized and monitored.

Potential for Inducing Genetic Change in Natural or Managed Populations=3

Unless a characteristic (e.g., herbicide resistance) of a genetically modified *B. napus* were selected for intensity, it would be unlikely to alter the genetic composition of the natural population significantly. Its genetic stability and mutability are unknown. *B. napus* has the potential for genetic exchange with other *Brassica* species. It has a very high degree of genetic diversity.

Potential for Monitoring and Control=1

B. napus has been cultivated for over 100 years, and good control measures are available. *B. napus* is a higher plant, thus it is easily recognized and, except as seed or pollen, individuals do not move. Accepted monitoring methods include surveying suspect areas and visually identifying plants using taxonomic keys. Herbicides that control *B. napus* are available, and the spread of *B. napus* can be completely eliminated by preventing flowering or by controlling the insects that *B. napus* depends on for pollination. It is a non-vegetatively propagated annual plant. However, *B. napus* can survive in an unmanaged ecosystem and can cross with many other species.

The control of inadvertent release can be accomplished through the use of cultural and chemical methods of weed control. Cultural methods would include cultivation, mowing and hand pulling of plants. Chemical methods would include herbicides and fumigants to control plants and seed, respectively. Examples of herbicides includes 2, 4-D, dicamba, glyphosate, and bromoxynil. Weed scientists would be able to recommend the most effective control measures depending on the crop or ecological situation.

Action III. Relative Importance of Attributes

The most important factor is that *B. napus* can cross with many vegetable and weedy species. At the same time, monitoring and control of the plants and pollen are relatively easy. Therefore, the overall characteristics of this parental organism are of moderate concern for the purpose of experiments involving deliberate modification of hereditary traits.

Action IV. Level of Safety Concern=3

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Example 4. *Apis mellifera scutellata*, Africanized honey bees, in Harlingen, Texas.

Action I. Accessible Environment

This research is to take place in Harlingen, Texas, a semi-tropical area characterized by intensive agricultural production, with many crops dependent on pollination by European honey bees (EHB). Large, wild populations of EHB overwinter in this area for northern state beekeepers.

A. mellifera scutellata can travel up to 200–300 miles per year through natural colony swarming (Taylor 1985). In addition, colonies could inadvertently be hauled to new locations by beekeepers or survive on shipments of equipment or other items from infested areas (Gary et al. 1985). This means that the range of *A. mellifera scutellata* is limited only by temperature extremes, and researchers have not totally established what those temperature limitations are. The accessible environment, currently, would include anywhere from one-third to all of the United States.

Action II. Attributes of the Organism Relevant to the Level of Safety Concern

Pest/Pathogen Status and Potential=4

A. mellifera scutellata (or Africanized Honey Bee (AHB)) tends to be very defensive, and its behavior can be unpredictable. Because of these characteristics and the bees' propensity to swarm, they may adversely affect humans and pollination services (Gary et al. 1985; Fletcher 1987).

AHB can exchange genetic information with domestic bees, but it appears that hybrids do not survive as well in the environment as either of their parental strains (Hall and Muralidharan 1989; Smith et al. 1989; page 1989).

Breeding in South Africa and South America has demonstrated a potential to lessen defensive characteristics through selection (Fletcher 1978; Taylor 1985; Gary et al. 1985). AHB may be less defensive in more temperate climates (Otis 1982; Weaver 1976).

Potential to Establish=5

AHB can nest anywhere; they seem to be able to overwinter in areas with snowfall, but cold hardiness is a weak point (Kerr et al. 1980; Katznelson 1971). AHB are strong fliers; they swarm frequently, and their reproductive potential is high. They have been moving at a rate of about 200 miles per year since their introduction into Brazil in the 1950s (Otis 1982; Taylor 1985; Hall and Muralidharan 1989). Even one colony of AHB can produce many swarms (Taylor 1985; Otis 1982).

AHB tend to be very aggressive. They seem to compete well with other bees and can take over EHB hives (Taylor 1985; Otis 1982; Rinderer 1985).

Ecological Relationships With Other Organisms=3

AHB is an important pollinator where it has established, but it is replaceable by other subspecies. Like EHBs, the AHB needs access to water and pollen and nectar sources (Fletcher 1978; Taylor 1985).

AHB is currently found in South Africa, parts of South America, Central America, and Mexico. The potential to expand its range is based on its overwintering capabilities; most scientists predict it will establish and drive out EHB in the Rio Grande Valley (Taylor 1985; Taylor et al. 1988).

Potential for Inducing Genetic Change in Natural or Managed Populations=4

AHB can interchange genetic information with all other *Apis mellifera* (Otis 1982; Taylor 1985; Hall and Muralidharan 1989). With selective breeding, AHBs seem to have enough genetic variability to either cause more problems or fewer. AHBs will interbreed with EHBs, although current information indicates that the occurrence of hybrids is low. When it interbreeds with EHB, the AHB dominates (Hall and Muralidharan 1989; Smith et al. 1989; page 1989).

AHBs in Mexico can essentially be traced back to 26 queens from South Africa (page 1989).

Potential for Monitoring and Control=4

We have a long history of use of AHB in South Africa and 40 years in South America. The control of wild swarms is difficult and not absolute (Taylor 1985; Gary et al. 1985). We have developed adequate monitoring techniques, but, as of yet, they are not rapid or cheap (Gary et al. 1985; Rinderer et al. 1986). Currently, only methods of control for individual swarms exist. Many pesticides are lethal to honey bees, and individual swarms can be lured into bait traps using pheromone lures (Taylor 1985; Gary et al. 1985). We have no blanket control for AHB. They are too closely related to EHB, and any area-wide suppression of AHB could adversely affect EHB as well.

Action III. Relative Importance of Attributes

Ecological disturbances seem to be intense for the first few years after AHB is introduced into an area. Eventually, AHB establishes, becomes the dominant honey bee, and beekeepers can learn to successfully manage them and eventually domesticate (i.e., gentle) them. AHB will establish in Harlingen, Texas, regardless of whether humans put them there inadvertently or not.

Action IV. Level of Safety Concern=4

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Example 5. Foot and Mouth Disease Virus (FMDV) in Plum Island, New York

Action I. Accessible Environment

This research is to take place at the Plum Island Animal Disease Center, Plum Island, New York. It is a USDA high security research facility surrounded by navigable water and is off-limits to the public. It is a coastal

island, 3 miles off the northern tip of Long Island. The accessible environment is the center, Plum Island, and host animals reachable by prevailing wind currents. If the virus reaches the mainland, the accessible environment then becomes North, Central, and South America.

Action II. Attributes of the Organism Relevant to the Level of Safety Concern

Pest/Pathogen Status and Potential=5

Foot and Mouth Disease Virus (FMDV) does not occur in the United States, Canada, Mexico, or most of Central America. The United States has experienced 9 outbreaks of Foot and Mouth Disease between 1870 and 1929. The 1914–1916 outbreak involved 22 states and the District of Columbia. Its last appearance in North America was in Canada in 1952. This small outbreak involving only 42 premises cost a total of $800 million (Wiser et al. 1987). The effects on animals in the accessible environment and on the entire agricultural system are devastating (Committee on Foreign Animal Diseases 1984).

This enterovirus is a member of the picornavirus group. The symptoms were first described in the sixteenth century. It is the first filterable agent known to cause disease in animals. Seven virus types have been described, and more than 60 subtypes have been identified. All produce similar symptoms and lesions in susceptible animals. This virus has exhibited a high potential for exchange of genetic information.

FMDV has a very broad host range, including cattle, swine, sheep, goats, wild pigs, wild ruminants, hedgehogs, armadillos, rats, nutria, grizzly bears, elephants, buffalo, and capybara. Deer were seriously affected in the outbreak of 1924–1925 in California when 22,214 were destroyed. Rare infections occur in humans. Clinical signs of foot and mouth disease are similar to those of other vesicular diseases, making field diagnosis very difficult (Oxer 1972). Some evidence from the United Kingdom has been presented to support the theory that FMDV can move from island to island on wind currents (Sellers et al. 1977). The incubation period of FMDV may exceed 7 days, and inapparent infections have been reported (Shahan and Traum 1956).

Importation, possession, or use of FMDV is prohibited or restricted by law (Pub. L. 496–1954).

Potential To Establish=5

The broad host range and existence of inapparent carriers greatly aids the survival of FMDV. Viral particles in tissue fragments or even on contaminated materials, such as, hair, feed, stable equipment, milk, barnyards, trucks, or clothing may remain infective for weeks.

The most important method of spread is by direct contact between animals. Because of the high infectivity of the tissues and discharges of infected animals, and the readiness with which health of cattle can be infected, transmission on contact is almost certain (Handbook on Tropical Diseases 1962). Indirect contact through infected animal products, inhaled air, and premises contamination can also transmit FMDV. In one instance in California, FMDV persisted on a premises for 345 days (Shahan and Traum 1956). Semen from FMDV infected bulls may contain the virus before the appearance of clinical sign of illness.

FMDV has a very low infectious dose, although it has not been precisely determined. Aggressive characteristics have not been described for FMDV. Africa, Asia, and most of South America are large land masses where FMDV is present. This virus has escaped from high security laboratories in Europe and the United States.

Ecological Relationships With Other Organisms=5

No positive or negative ecological importance to its community has been described for FMDV. No niche has been described for FMDV. The geographic range of FMDV is worldwide. FMDV lives in the cells of a wide range of host animals and can survive long periods of time outside the animal body.

Potential for Inducing Genetic Change in Natural or Managed Populations=5

FMDV can exchange genetic information with other FMDV types and has the potential to do so with other enteroviruses of animals. The theoretical limit of interbreeding population size is 1. FMDV has a high potential to exchange information with other enteroviruses.

Mutations in FMDV have been well documented, mostly involving its protein coat which is composed of 60 copies, each of 4 polypeptides. Seven distinct immunologic types have been described. Extensive genetic diversity has been described among the more than 60 subtypes of this virus.

Potential for Monitoring and Control=4

Methods and procedures exist to monitor, control, and eradicate FMDV when it is detected. These methods are extremely costly and disruptive and are not always successful. Extensive surveillance of imported animals, animal products, and international travelers must be maintained. All cases of animals with blisters in the epithelium of the mouth and feet must be reported to USDA officials immediately. Rapid and specific diagnostic tests are available.

FMDV eradication methods consist of slaughter of infected and exposed animals and disposal of their carcasses and bedding by burial or incineration. Infected premises are decontaminated. Vaccination may or may not be used (Graves 1979). A worldwide monitoring and reporting system is in place for this disease. A well-developed world reference laboratory system exists.

Action III. Relative Importance of Attributes

There are compelling biological, ecological, economic, environmental, and statutory characteristics of FMDV and the disease it produces to warrant preclusion of its use.

Action IV. Level of Safety Concern=5

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Appendix 2—Guidance on Confinement for Planned Introductions Into the Environment of Organisms With Deliberately Modified Hereditary Traits

Research with organisms with deliberately modified hereditary traits may, to achieve safety in the environment, require confinement to the research plot, pool, pen, or pasture. Section IX–C of the Guidelines presents a general discussion of the different confinement levels. Since different organisms and environments require

different confinement techniques, suggested measures are given for 6 different classes of organisms based upon the similarity of confinement problems and practices. These classes are: domestic, terrestrial plants; domestic, terrestrial animals; microorganisms; insects, nematodes, and other arthropods; aquatic and marine animals; and aquatic plants.

Confinement Level 1. Good Agricultural Research Practices

Confinement Level 1 is based upon what are generally considered to be good agricultural research practices. These practices have evolved from experience in conducting agricultural field research over the past 100 years. This confinement level applies to modified organisms for which the level of safety concern is 1, the lowest level of risk. As used here, it is applicable to all groups of organisms. Each greater level of confinement includes and is based upon good agricultural research practices.

Good Agricultural Research Practices Include

—Acceptable experimental design,
—Definition of source, type, and name of all research organisms,
—Maintenance of beginning and ending inventories,
—Careful record keeping, including significant alterations of research protocols,
—Description of site design and layout,
—Utilization of appropriate statistical analysis design,
—Clear statements of objectives, procedures, and methods,
—Control and maintenance of integrity of sites and organisms,
—Training, instruction, and oversight of personnel on research and emergency procedures, and
—Appropriate termination of research and disposal of organisms and experimental material in excess of that retained for further research.

1. Domestic, Terrestrial Plants

Confinement Level 1.—See Good Agricultural Research Practice.

Confinement Level 2 (Appropriate, for example, for plants that do not hybridize or cross with indigenous plants).—Include all of Level 1 and:

—Confine all plants to research site.
—Control seeds, plant stocks, and their movement by wind or water, and secure seeds and plant stocks.
—Exclude birds, other animals, and unauthorized persons.
—Estimate the biomass and number of plants in the plot weekly.
—Record all persons entering and leaving research site.
—Monitor for escaped plants and survivors.

Confinement Level 3 (Appropriate, for example, for plants that hybridize or cross with indigenous plants).—Include all level 2 and:

—Isolate research site from all cross pollinators.
—Control pollen or sterilize.
—Monitor with trap crops for pollination.
—Controlled access.
—Provide patrolled security.
—Provide locked security fence.
—Destroy plants at termination and fumigate plot to kill seeds or plant parts.

Confinement Level 4 (Appropriate, for example, for plants that hybridize, outcross, and contain genes for resistance to herbicides that could be transferred to noxious weeds).—Include all level 3 and:

—Provide isolation of at least 3 times greatest distance that natural pollination has been reported to occur.
—Provide berms to contain all runoff.
—Provide 24 hour surveillance during pollen shedding period.
—Provide locked security fences with alarms.
—Exclude with double measures all pollinators, other animals, and insects.
—Monitor pollen collected in the area for genetic markers.
—Use methods of hand pollination and sterilization when possible.
—Monitor research site for 2 seasons after termination of experiment for genetic escapes.

2. Domestic, Terrestrial Animals

Confinement Level 1.—See Good Agricultural Research Practices.

Confinement Level 2 (Appropriate, for example, for animals that contain genes for growth promotion, other hormones or enzymes, or produce modified animal food products, but are not sexually mature or have been surgically rendered sterile).—Include all Level 1 and:

—Isolate with locked fence.
—Clip wings of fowl and band.
—Tatoo or eartag animals.
—Exclude predators, other animals, and unauthorized persons.
—Record all persons entering and leaving research site.
—Record initial number of animals, deaths, and final numbers.

Confinement Level 3 (Appropriate, for example, for animals that contain genes from other species and are capable of producing compounds that have pharmaceutical activity in animals or humans and are sexually mature and capable of reproduction).—Include all of Level 2 and:

—Maintain double security fence and locks to prevent breaking in or out.
—Provide continuous monitoring of the animals.
—Provide maximum security.
—Collect, record, and incinerate all animal products (milk, eggs, etc.).
—Control reproduction by segregation or sterilization.
—Destroy all animals and residues at termination.

Confinement Level 4 (Appropriate, for example, for animals that contain unique genes or combinations of genes not including infectious agents, but which may for prudence require higher levels of confinement, because there is no familiarity with the potential effects on human health or on managed or natural ecosystems).—Include all of Level 3 and:

—Provide alarms on all fences and gates.
—Permanently identify all animals.
—Equip animals with location devices such as radio transmitters.
—Develop and test system for immediate termination if confinement is breached.

3. Microorganisms

Confinement Level 1.—See Good Agricultural Research Practices.

Confinement Level 2 (Appropriate, for example, for microorganisms that are soil borne, non-motile, do not readily exchange genetic information, are not vectored by insects, and do not form endospores).—Include all Level 1 and:

—Prevent movement by wind and water.
—Prevent movement by contamination of hands, clothing, and shoes.
—Disinfect upon entry and exit.
—Exclude animals that can carry soil, other animals, and unauthorized persons.
—Monitor for movement.

Confinement Level 3 (Appropriate, for example, for microorganisms that are arboreal and are soil colonizers, motile with limited movement, vectored by insects, form endospores, contain toxins for some life forms, and evidence significant exchange of genetic information).—Include all of Level 2 and:

—Exclude vectors and trap and monitor potential vectors in the vicinity.
—Double security fence locked.
—Patrol area and have procedures if security is breached.
—Monitor organisms both inside and outside confinement.

—Monitor for exchange in organisms reported to have exchanged genetic information.
—Record all persons entering and leaving research site.
—Fumigate plot at termination and employ techniques to destroy all endospores.

Confinement Level 4 (Appropriate, for example, for microorganisms that are arboreal and soil colonizers which are motile and have been reported to readily exchange genetic information and which form endospores or have other long term methods of survival, produce toxins or other biocides or are readily vectored or spread by insects, wildlife, wind, or water).—Include all of Level 3 and:
—Double confinement fences, barriers, screens and netting.
—24 hour surveillance.
—Monitor to demonstrate that expected exchange of genetic information has occurred.
—Use double deactivation techniques for materials and personnel entering and leaving plot.
—Emergency termination and monitoring procedures if security is breached.
—Destroy all organisms at termination of experiment and all endospores or other long term survival bodies.
—Monitor site for 3 years.

4. Insects, Nematodes, and Other Arthropods

Confinement Level 1.—See Good Agricultural Research Practices.

Confinement Level 2 (Appropriate, for example, for insects that are non-flying or migratory, will not cross with native species, are not sexually mature, or are sterile).—Include all of Level 1 and:
—Isolate and fence research site.
—Control movement.
—Limit the number of organisms used in the field research.
—Monitor movement and invasion of hosts.
—Monitor trap hosts outside, but adjacent to research site.
—Exclude non-target hosts, predators, other animals, and unauthorized persons.
—Clean and or sterilize tools and clothing removed from the research site.
—Destroy at termination, including target host and all alternate hosts.
—Burn, fumigate, or deactivate as required.

Confinement Level 3 (Appropriate, for example, for insects that move or migrate, are sexually mature, are pests of indigenous plants, animals, or man, and will establish interbreeding colonies with natural parents).—Include all of Level 2 and,
—Prevent movement that will allow crossing or interbreeding with parental insects.
—Confine insects to research site.
—Monitor movement of insects for escape from research plot.
—Provide patrolled security on integrity of confinement.
—Record all persons entering and leaving research site.
—Monitor unmodified insects for two years for movement of genetic information from the research site.
—Destroy all insects, hosts, and habitat on research site and in near vicinity.

Confinement Level 4 (Appropriate, for example, for insects that move, migrate, are sexually mature, contain genetic information from non-insect sources, and would be likely to be more competitive or successful in the environment, if they were to escape).—Include all of Level 3 and:
—Double screen research site.
—Lock all entries and maintain 24 hour surveillance.
—Mark or uniquely identify (genetic markers) the experimental insect.
—Estimate by census the number of insects present at weekly intervals.
—Monitor the immediate environment for escapes with sticky boards and trap hosts.
—Provide a means to destroy or secure insects if impending weather conditions threaten the security of the plot.
—Develop and demonstrate the ability to terminate and destroy all organisms immediately, if the security is breached.
—Develop a plan to destroy all escaped insects if a breach occurs.
—Destroy at termination, and repeat at 2 intervals to destroy any insects that might have persisted.
—Monitor for 3 years for escaped insects and native insects for transfer of genetic information.

5. Aquatic and Marine Animals

Confinement Level 1.—See Good Agricultural Research Practices.

Confinement Level 2 (Appropriate, for example, for animals that do not cross or hybridize with related species, are not sexually mature, or are chemically or physically made nonfertile).—Include all of Level 1 and:
—Isolate from any connecting water ways or drains.
—Require pumping of all inlet and outlet water so no gravity or natural siphoning can normally occur.
—Screen all inlets and outlets to prevent escape.
—Have sufficient freeboard to prevent overflow from 100 year storm.
—Have sufficient berm design to prevent accidental failure.
—Utilize barriers and liners to prevent burrowing animals from penetration.
—Have overflow area that can contain 2 times the volume of any catastrophic breach of berms, and keep water levels low at all times.
—Mark, brand, or otherwise uniquely identify animals.
—Exclude wildlife, other animals, and unauthorized persons from the research site with screens and locked fence.
—Patrol surveillance and have emergency termination procedure.
—Record the numbers of animals stocked, deaths and removals, and number present at termination.
—Destroy all animals not needed for further research at termination and report number and identification of those retained.
—Monitor wild population of unmodified stock for presence of modified animals for two years following field research.

Confinement Level 3 (Appropriate, for example, for animals that are sexually mature, can cross or hybridize with large numbers of native species, or contain genetic material from unrelated animals, plants, or microorganisms, or the modification would enhance their competitive advantage with wild forms or increase their nuisance characteristics).—Include all of Level 2 and,
—Monitor animals for sexual maturity and spawning.
—Collect all drainage water during spawning period, and check for evidence of eggs, fry, and milt.
—Recycle or retain all drainage water during spawning period and for two weeks prior to and following spawning.
—Biologically deactivate all non recycled drainage water.
—Monitor and retain samples of roe, milt, and fry for post experiment analysis.
—Determine if crossing and hybridization can occur with native populations and genetic fingerprint of such crosses.
—Provide 24 hour surveillance and security.
—Record all persons entering and leaving research site.
—Estimate numbers produced.
—Destroy all excess animals at termination and incinerate.
—Record and uniquely identify all animals removed or retained for research purposes.

Confinement Level 4 (Appropriate, for example, for animals that contain genetic information from unrelated organisms, are sexually mature, contain characteristics which are known to increase their competitive advantage and nuisance characteristics).—Include all of Level 3 and:

—Secure, and have 24 hour on-site monitoring by trained, qualified personnel.
—Use triple screened drains and inlets.
—Maintain berms and freeboard to exceed by a factor of 2 a 100 year rainfall event.
—Perform blind deliberate releases of marked unmodified animals into the drains and retention system to test the integrity of the retention. Terminate upon failure.
—Destroy all animals at the termination of the research, except for those to be retained for research purposes, which must be clearly marked and have prior notification of intention to retain.
—Incinerate destroyed animals and verify by a third party.
—Develop, demonstrate, and test an emergency termination plan and system prior to an during the research.
—Monitor the site and surroundings for 3 years following termination.

6. Aquatic Plants

Confinement Level 1.—See Good Agricultural Research Practices.

Confinement Level 2 (Appropriate, for example, for plants that are not capable of sexual reproduction or cannot cross with indigenous plants).—Include all of Level 1 and:

—Isolate research site.
—Exclude wildlife, predators, other animals, and unauthorized persons.
—Prevent loss through drainage waters.
—Clean tools and clothing before leaving plot.

Confinement Level 3 (Appropriate, for example, for plants that reproduce by sexual means, that produce pollen, seed, or tubers and may be weeds or nuisances in the environment).—Include all of Level 2 and:

—Isolate from natural drainage and waterways.
—Prevent dispersal of pollen by wind, water, and insects.
—Remove plants from the near environment that can be cross pollinated.
—Screen all inlets and outlets to prevent movement of seeds, or plant parts.
—Recycle water when possible.
—Maintain catchment basins for drainage waters and pump all outlet water so no gravity drainage or siphoning can occur.
—Construct all berms and dams with liners or barriers to prevent burrowing animals from penetrating.
—Provide patrolled surveillance.
—Monitor near environment for escaped plants, seed, and pollen.
—Monitor unmodified plants, for transfer of genetic information.
—Develop and test plans for emergency termination of experiment if catastrophic breach occurs.
—Destroy all plants at termination, drain plots or pools, monitor for regrowth, treat or fumigate as required.

Confinement Level 4 (Appropriate, for example, for plants that both sexually and asexually reproduce or contain genetic information from non-plant sources and have a high likelihood of adversely affecting the environment, impacting on human health or producing toxic materials).—Include all of Level 3 and:

—Locate pools or plots in areas where water and plants will not reach natural drains or bodies of water if ruptures or failures occur.
—Test system with unmodified plants prior to research to insure integrity of confinement.
—Fence and screen plots with double fences and screens as required.
—Maintain free board in all plots or pools to contain water in excess of a 100 year rainfall event.
—Provide 24 hour surveillance.
—Develop and test a plan to monitor severe weather conditions; secure or terminate, if conditions are imminent that could breach confinement and spread plants.
—Inventory plants weekly to estimate number of plants, pollen, seeds, and other reproductive organs.
—Record wet biomass, number of plants, number of seeds, tubers, and other reproductive organs, and method of destruction of material not retained for future research.
—Monitor research site for 4 years and unmodified plants 6 years for transfer of genetic information.

Dated: January 25, 1991.

Alvin L. Young,

Director, Office of Agricultural Biotechnology.

[FR Doc. 91-2320 Filed 01-31-91; 8:45 am]

BILLING CODE 3410-22-M

federal register

Friday
February 1, 1991

Part IV

Department of Education

Final Procedures for Implementing the Robert C. Byrd Honors Scholarship Program in Fiscal Year 1991; Notice

DEPARTMENT OF EDUCATION

Robert C. Byrd Honors Scholarship Program

AGENCY: Department of Education.

ACTION: Notice of final procedures for implementing the Robert C. Byrd Honors Scholarship Program in fiscal year 1991.

SUMMARY: The Secretary establishes procedures necessary to implement certain aspects of the Robert C. Byrd Honors Scholarship Program (the Byrd Scholarship Program) in fiscal year 1991 in accordance with the provisions of the program statute (title IV, part A, subpart 6 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070d–31 *et seq.*) and the program regulations, published at 54 FR 12549 and codified at 34 CFR part 654, as superseded by Public Law 101–517, the Department of Education Appropriations Act, 1991 (1991 appropriations act). Grant awards to the States for fiscal year 1991 are governed by applicable provisions of the program statute, the program regulations, the General Education Provisions Act, the Education Department General Administrative Regulations, and the procedures in this Notice.

EFFECTIVE DATE: This Notice takes effect either March 18, 1991, or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register.** If you want to know the effective date of this Notice, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred H. Sellers, Chief, State Student Incentive Grant Section (room 4018, ROB #3), Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5447, Telephone (202) 708–4607.

SUPPLEMENTARY INFORMATION: Under the Byrd Scholarship Program, the Secretary makes available, through grants to the States, scholarships to outstanding high school graduates for the first year of study at institutions of higher education. In the Department of Education Appropriations Act, 1991, Congress appropriated $9.271 million for the Byrd Scholarship Program. Pursuant to the Department of Education Appropriations Act, 1991, as was also the case in fiscal years 1987, 1988, 1989, and 1990, sections 419G(b) and 419I(a) of the program statute do not apply to the administration of the program. Therefore, §§ 654.20(a) and 654.50(a)(4) of the program regulations published as final regulations on June 20, 1989 (54 FR 26006) also do not apply to the administration of the program in fiscal year 1991. The Secretary adopts the following procedures for fiscal year 1991 in lieu of the statutory and regulatory provisions which have been superseded by the 1991 appropriation language. These procedures are necessary for the administration of those aspects of the program which, due to superseding statutory provisions in the 1991 appropriations act, are not governed by provisions of the program statute and regulations.

1. The Secretary allots to the States the funds appropriated for the Byrd Scholarship Program in fiscal year 1991 in accordance with the provisions of section 419D of the program statute, except that the amount allotted for scholarship payments to each State is $1,500 multiplied by the number of scholarships that the Secretary has assigned to the State. The Secretary assigns to each State participating in the program the number of Byrd Scholarships which bears the same ratio to the total number of scholarships made available to all States as the State's school-aged population (ages five through seventeen) bears to the total school-aged population in all participating States, except that no State shall receive fewer than 10 scholarships. The population figures used to calculate the allotment of funds are determined by the most recently available data from the United States Census Bureau.

2. States shall administer their fiscal year 1991 allotments under the Byrd Scholarship Program, for scholarships for academic year 1991–92, in accordance with applicable provisions of the program statute and the final program regulations. However, since sections 419G(b) and 419I(a) of the program statute do not apply to the fiscal year 1991 appropriation, States shall also administer their fiscal year 1991 allotments in accordance with the following procedures—

(a) Byrd Scholars shall be selected solely on the basis of demonstrated outstanding academic achievement, promise of continued academic achievement, and the geographic consideration described in item 2(b) below.

(b) Byrd Scholars shall be selected in such a way that all parts of a State are fairly represented, and no part of a State has a disproportionate share of awards.

Waiver of notice of proposed rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. The Secretary solicited public comments on these same procedures, resulting from identical appropriation language in the 1987 Appropriations Act, in fiscal year 1987, through a Notice of Proposed Procedures published in the **Federal Register.** No comments were received. The same special procedures were subsequently published in final form and implemented in fiscal years 1988, 1989 and 1990. Since it is imperative for State educational agencies to receive their program allotments in time to make scholarship awards and payments by the end of the high school academic year during which the scholars have graduated, as required by section 419I(b) of the program statute (20 U.S.C. 1070d–39(b)), the Secretary finds that publication of a Notice of Proposed Procedures for fiscal year 1991 is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

Dated January 8, 1991.

(Catalog of Federal Domestic Assistance No 84–185, Robert C. Byrd Honors Scholarship Program)

Ted Sanders,

Acting Secretary of Education.

[FR Doc. 91–2434 Filed 1–31–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
February 1, 1991

Part V

Department of Labor

Office of the Secretary

Authority and Responsibilities of the Wage Appeals Board; Notice

DEPARTMENT OF LABOR

[Secretary's Order 1-91]

Authority and Responsibilities of the Wage Appeals Board

January 18, 1991.

1. *Purpose.* To supersede Secretary's Order No. 24–70, dated October 7, 1970, regarding the composition, authority and responsibilities of the Wage Appeals Board.

2. *Delegation of Authority and Assignment of Responsibility.* There is within the Department of Labor a Wage Appeals Board which is appointed by and responsible to the Secretary of Labor. The Board shall continue to act as the authorized representative of the Secretary of Labor in deciding appeals concerning questions of fact and law taken in the discretion of the Board from final decisions of the Assistant Secretary for Employment Standards or his or her delegees and final decisions of Administrative Law Judges, under the following:

a. The Davis-Bacon Act; any laws now existing or which may be subsequently enacted, providing for prevailing wage findings by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Copeland Act, and Reorganization Plan No. 14 of 1950.

b. The final decisions include those involving wage determinations, debarment, disputes and the assessment of liquidated damages under the Contract Work Hours and Safety Standards Act (except matters pertaining to safety).

3. *Composition.* The Wage Appeals Board shall consist of three public members, one of whom shall be designated Chairman. The Members of the Board shall be appointed by the Secretary of Labor, and shall be selected upon the basis of their qualifications and competence in matters within the authority of the Board. The Secretary may also appoint one additional Senior or Alternate Member, who shall perform such duties as are assigned by the Chairman. However, the Board shall sit, hear cases, render decisions and perform all other functions only in panels of 3 or fewer Members (whether or not including a Senior or Alternate Member) assigned by the Chairman.

4. *Terms of the Members.*

a. Of the initial appointments of Members of the Wage Appeals Board pursuant to this Order, the Member designated Chairman shall be appointed for a term not to exceed 3 years, one Member shall be appointed for a term not to exceed 2 years, and one Member shall be appointed for a term not to exceed 1 year. Thereafter each member shall be appointed for a term not to exceed 2 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the Member replaced.

b. A Senior or Alternate Member shall be appointed for a term not to exceed some specific time period, in the discretion of the Secretary.

c. Appointment of a Member of the Board to a term not to exceed some time period shall not affect the authority of the Secretary to remove, in his or her sole discretion, any Member at any time.

d. A vacancy in the membership of the Board shall not impair the authority of the remaining Member(s) to exercise all the powers and duties of the Wage Appeals Board.

5. *Voting.* The Chairman of the Board may, in his discretion designate himself or any other Member of the Board to decide any appeal, provided the interested persons or parties in the appeal have consented to the disposition of the appeal in this manner. The Chairman may also direct that any appeal may be decided by the full Board (but not to exceed panels of 3 Members). When an appeal is decided by three Members of the Board, a majority vote shall be necessary for decision. Any decision in any other matter and the issuance of any procedural rules under section 7 shall also be by a majority vote, except that a decision to hear any appeal may be by one Member.

6. *Location of Board Proceedings.* The Board shall hold its proceedings in Washington, DC, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

7. *Rules of Practice and Procedure.* The Board shall prescribe such rules of practice and procedure as it deems necessary or appropriate for the conduct of its proceedings. The rules which are prescribed in 29 CFR part 7 as of the date of this Order shall govern the proceedings of the Board until changed.

8. *Departmental Counsel.* The Solicitor of Labor shall provide counsel to represent the Assistant Secretary for Employment Standards in proceedings before the Board.

9. *Directives affected.* This order supersedes Secretary's Order No. 24–70, dated October 7, 1970.

10. *Effective date.* This Order is effective immediately. (January 18, 1991).

Roderick A. DeArment,

Acting Secretary.

[FR Doc. 91–2431 Filed 1–31–91; 8:45 am]

BILLING CODE 4510–23

federal register

Friday
February 1, 1991

Part VI

Department of Justice

Bureau of Prisons

28 CFR Parts 511, 540, 541
Control, Custody, Care, Treatment and Instruction of Inmates; Security Level Designations; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 511, 540, 541

Control, Custody, Care, Treatment and Instruction of Inmates; Security Level Designations

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is amending several of its rules on Control, Custody, Care, Treatment and Instruction of Inmates, to reflect changes in the Bureau's nomenclature regarding the security levels of its institutions. Previously, the Bureau ranked many of its institutions according to six security levels, ranging from Security Level 1 (lowest security) to Security Level 6 (highest security). Other special-purpose institutions, not rated according to security level, were called "Administrative." The Bureau has now collapsed those seven classifications into just classifications—Minimum, Low, Medium, High, and Administrative. Those Bureau regulations which differentiated certain policy decisions according to an institution's security level are hereby being modified to reflect the new nomenclature. This change is intended to better set forth the various types of facilities operated by the Bureau of Prisons and to better reflect changes affecting classification and placement of inmates.

DATES: Effective February 1, 1991. Comments due by March 18, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons implemented its current Security Designation and Custody Classification System in 1982. Since that time, numerous changes have occurred: e.g., in the characteristics of the inmate population for which the system was designed, and in the nature and missions of our institutions. Based on these matters, the Bureau has determined that management changes in the method of institution stratification are now appropriate to better define for staff, inmates, and the public the various types of facilities operated by the Bureau of Prisons and to better reflect the reality of our institutions' security features. For the most part, inmates will be unaffected by these changes. However, some inmates currently in our lower security level institutions may find their institution redesignated as a "medium" security level facility and required to follow the more stringent procedures for correspondence and visiting heretofore existing for security level 4, 5, and 6, and administrative institutions. These inmates, however, as do other Bureau of Prisons inmates, receive a program review at least once every 180 days. The inmate's institution designation will be considered at the program review, and where appropriate, a redesignation will be considered. In addition, any inmate who is dissatisfied with his or her institution designation is able to file a request for administrative remedy under the provisions of 28 CFR part 542.

Based on the above management revision and in order to update references in its regulations to institution security levels, the Bureau of Prisons is amending its rules on procedures for searching visitors, correspondence, inmate discipline and special housing, and visiting. A summary of the specific changes follows.

A final rule on procedures for searching visitors was published in the Federal Register November 1, 1984 (49 FR 44056) and amended July 18, 1986 (51 FR 26126). In § 511.12, paragraph (d) is amended to state that the Warden may authorize a visual search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to visit an inmate in a medium or high security level institution or administrative institution. Previously, the paragraph stated that the Warden could authorize such a search at a Security Level IV, V, VI, or administrative institution. In addition, this paragraph is amended by revising the word "pre-trial" as "pretrial" for editorial consistency.

A final rule on correspondence was published in the Federal Register October 1, 1985 (50 FR 40106). In § 540.14, paragraph (b) is amended to state that outgoing mail in minimum and low security level institutions, and of pretrial detainees in all institutions, may be sealed by the inmate and sent out unopened and uninspected. Previously, the paragraph stated that outgoing mail in Security Level 1, 2, and 3 could be sent sealed. In § 540.14, paragraph (c) is amended to state that outgoing mail in medium and high security level institutions, and administrative institutions, except "special mail" and mail from pretrial detainees, may not be sealed by the inmate and may be read and inspected by staff. Previously, the paragraph stated that, except for "special mail", outgoing mail could not be sealed in security level 4, 5, and 6 and administrative institutions, and may be inspected and read by staff.

A final rule on visiting regulations was published in the Federal Register June 30, 1980 (45 FR 44220) and amended July 18, 1986 (51 FR 26126). In § 540.41, paragraph (a) is amended to state that institutions of minimum and low security levels may permit visits beyond the security perimeter, but always under supervision of staff. Previously, the paragraph had stated that institutions of Security Levels 1, 2, and 3 may permit visits beyond the security perimeter, but always under supervision of staff. In § 540.41, paragraph (b) is amended to state that institutions of medium and high security levels, and administrative institutions may establish outdoor visiting, but it will always be inside the security perimeter and always under supervision of staff. Previously, the paragraph had stated that institutions of Security Levels 4, 5, and 6 and administrative institutions may establish outdoor visiting, but it will always be inside the security perimeter and always under supervision of staff. In § 540.44, paragraph (c)(1) is amended to revise the phrase "Security Level 1–3" as "Minimum and Low Security Level", and paragraph (c)(2) is amended to revise the phrase "Security Level 4–6" as "Medium and High Security Level".

A final rule on Inmate Discipline and Special Housing Units was published in the Federal Register January 5, 1988 (53 FR 196) and amended October 17, 1988 (53 FR 40686) and September 22, 1989 (54 FR 38987 and 39095). In § 541.22, paragraph (a)(6)(i) is amended to state that in minimum, low, medium, high, and administrative type institutions, with the exception of the United States Penitentiary, Marion, Illinois, staff, ordinarily within 90 days of an inmate's placement in post-disciplinary detention, shall, except for pretrial inmates, either return the inmate to the general inmate population or request regional level assistance to effect a transfer to a more suitable institution. Previously the rule stated that the requirement applied to Security Level 1 through 5 and administrative type institutions. This is not a significant change, since the U.S. Penitentiary, Marion, Illinois, was previously the only Security Level 6 institution. In § 541.22, paragraphs (a)(6)(iii) is amended to state that staff at the U.S. Penitentiary, Marion, Illinois, will attempt to adhere to the 90-day limit for an inmate's placement in post-disciplinary detention. Previously, the rule stated

that staff in Security Level 6 institutions would adhere to the limit. Again, since Marion was the only Security Level 6 institution, this is not a significant rule change. In § 541.22, paragraph (a)(6)(iv) is amended to state that the appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review for the purpose of making a disposition, the case of an inmate at the United States Penitentiary, Marion, Illinois, not transferred from post-disciplinary detention within the 90-day time frame specified in paragraph (c) of this section. Previously, the rule stated that such reviews were done at Security Level 6 institutions. Again, since Marion was the only Security Level 6 institution, this is not a significant rule change.

Because these modifications are based on changes in the Bureau's security level nomenclature and have been determined appropriate for the effective management of the Bureau of Prisons, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. While the Bureau believes it is necessary to implement these changes immediately, the Bureau is publishing the procedures as an interim rule in order to invite public comment. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 122291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Parts 511, 540, and 541

Prisoners.

Dated: January 29, 1991.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), part 511 in subchapter A of 28 CFR, chapter V, parts 540 and 541 in subchapter C of 28 CFR, chapter V, are amended as set forth below.

Subchapter A—General Management and Administration

PART 511—GENERAL MANAGEMENT POLICY

1. The authority citation for 28 CFR part 511 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99, 6.1.

2. In § 511.12, paragraph (d) is revised to read as follows:

§ 511.12 Procedures for searching visitors.

* * * * *

(d) The Warden may authorize a visual search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to a visit to an inmate in a medium or high security level institution, or administrative institution, or in a pretrial or in a jail (detention) unit within any security level institution when there is reasonable suspicion that the visitor possesses contraband or is attempting to introduce contraband into the institution.

* * * * *

Subchapter C—Institutional Management

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

3. The authority citation for 28 CFR part 540 is revised to read as follows, and all other authority citations within the part are removed:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In § 540.14, the introductory text of paragraph (b) is amended by revising the first sentence, and paragraph (c) is revised to read as follows:

§ 540.14 General correspondence.

* * * * *

(b) Outgoing mail in minimum and low security level institutions, and of pretrial detainees in all institutions, may be sealed by the inmate and sent out unopened and uninspected.

* * * * *

(c) Outgoing mail in medium and high security level institutions and administrative institutions, except "special mail" and mail from pretrial detainees, may not be sealed by the inmate and may be read and inspected by staff.

* * * * *

5. In § 540.41, paragraphs (a) and (b) are revised to read as follows:

§ 540.41 Visiting facilities.

* * * * *

(a) Institutions of minimum and low security levels may permit visits beyond the security perimeter, but always under supervision of staff.

(b) Institutions of medium and high security levels, and administrative institutions may establish outdoor visiting, but it will always be inside the security perimeter and always under supervision of staff.

§ 540.44 [Amended]

6. In § 540.44, paragraph (c)(1) is amended by revising the phrase "Security Level 1–3" to read "Minimum and Low Security Level", and paragraph (c)(2) is amended by revising the phrase "Security Level 4–6" to read "Medium and High Security Level".

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

7. The authority citation for 28 CFR part 541 is added to read as follows, and all other authority citations within the part are removed:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082, 4161–4166 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 541.22 [Amended]

8. In § 541.22, paragraph (a)(6)(i) is amended by revising the phrase "Security Level 1 through 5 and in Administrative type institutions," to read "minimum, low, medium, high, and administrative type institutions, with the exception of the United States Penitentiary, Marion,"; paragraph (a)(6)(iii) is amended by revising the opening words "In Security Level 6 institutions, staff" to read "Staff at the United States Penitentiary, Marion,"; and paragraph (a)(6)(iv) is amended by revising in the first sentence the phrase "in a Security Level 6 institution" to read "at the United States Penitentiary, Marion,".

[FR Doc. 91–2440 Filed 1–31–91; 8:45 am]

BILLING CODE 4410–05–M

federal register

Friday
February 1, 1991

Part VII

Congressional Budget Office

Transmittal of Sequestration Preview Report for Fiscal Year 1992 to Congress and the Office of Management and Budget; Notice

CONGRESSIONAL BUDGET OFFICE

Transmittal of Sequestration Preview Report for Fiscal Year 1992 to Congress and the Office of Management and Budget

Pursuant to the Omnibus Budget Reconciliation Act of 1990, section 254(b), the Congressional Budget Office hereby reports that it has submitted its Sequestration Preview Report for Fiscal Year 1992 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 91-2579 Filed 1-30-91; 4:01 pm]

BILLING CODE 1450-01-M

federal register

Friday
February 1, 1991

Part VIII

Department of Transportation

Federal Highway Administration

23 CFR Part 658

Truck Size and Weight; Dromedary Boxes, Decks, and Plates; Emergency Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 91-10]

RIN 2125-AC72

Truck Size and Weight; Dromedary Boxes, Decks, and Plates

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Emergency rule.

SUMMARY: The Federal Highway Administration is amending its vehicle length limitation rules, effective immediately, to designate as specialized equipment a truck tractor equipped with a dromedary box, deck, or plate not more than 65 inches in length when used in combination with a semitrailer to transport certain munitions for use by the Department of Defense (DOD). To meet military obligations and to avoid unnecessary danger, shells containing explosives are loaded onto semitrailers while the fuses are placed in the dromedary box on the tractor. This emergency rule applies only to truck tractors equipped with dromedary boxes, plates, or decks used as part of a vehicle combination transporting Class A or Class B explosives for DOD. The effect of this rule is to preempt States from imposing an overall length limit on such vehicle combinations.

DATES: This emergency rule is effective January 30, 1991, and will remain in effect until August 1, 1991. Comments on this rule must be received on or before April 2, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 91-10, Federal Highway Administration, Room 4232, HCC-10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with word processing programs WordPerfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Klimek, Office of Motor Carrier Information Management and Analysis (202-366-2212) or Mr. Charles Medalen, Office of Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:54 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA has broad authority under section 411(d) of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424, Title IV, January 6, 1983, 96 Stat. 2097, 2159-2160, codified at 49 U.S.C. App. 2311(d) (1988)) to designate specialized equipment. Such equipment may operate on the National Network (NN) of highways listed in 23 CFR part 658, appendix A, to the same extent as all other STAA vehicles. The agency has designated truck tractors equipped with dromedary boxes in lawful operation on December 1, 1982, as specialized equipment (Final rule, 49 FR 23302, June 5, 1984, codified at 23 CFR 658.13(f) (1900)). That rule was subsequently interpreted as including dromedary decks and plates, in addition to boxes (Final rule, 55 FR 4996, February 13, 1990).

North American Transportation Consultants, Inc. (NATC) has petitioned the FHWA on behalf of certain motor carriers of explosives for rulemaking to designate the dromedary boxes they use as specialized equipment. These carriers transport shells for the Department of Defense. Under DOT regulations, Class A and B explosives, such as shells, must be transported separately from the fuses or detonators that are installed prior to firing (49 CFR 177.848 (1989)). The carriers, therefore, typically transport the shells on semitrailers while carrying the less bulky fuses in a dromedary box attached to the truck tractor. The petition in effect requests that the FHWA drop the December 1, 1982, grandfather date in the present rule, and allow these carriers to operate new dromedary equipment.

The issues involved in NATC's petition are complex, and the agency has not completed its evaluation of the legal and practical implications of expanding the dromedary box rule. However, it has come to our attention that certain States have recently issued citations to munitions carriers for operating overlength vehicles. Those citations are consistent with current Federal rules because many of the dromedary boxes used by munitions carriers were not in operation on December 1, 1982.

In view of the extreme urgency of expediting the movement of munitions destined for United States forces in the Persian Gulf, the FHWA has decided to issue an emergency rule valid for 6 months. Part 658 prohibits the States from imposing an overall length limit on a combination vehicle consisting of a truck tractor equipped with a dromedary box that complies with this rule and a semitrailer. This rule will therefore enable munitions carriers using tractors with dromedary boxes, decks, or plates not more than 65 inches in length to operate freely on the NN during the next 6 months. This rule does not constitute a final decision on the merits of the NATC petition.

Because of the urgency of maintaining the flow of military supplies to Operation Desert Storm, the FHWA has determined pursuant to 5 U.S.C. 553(b) (1988) that it has good cause to promulgate this rule without prior public notice or opportunity for comment.

Rulemaking Analyses and Notices

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), the agency has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rule does not constitute a major rulemaking action under Executive Order 12291, nor is it a significant rulemaking under the regulatory policies and procedures of the DOT. It is consistent with DOT regulatory policies and procedures and Executive Order 12291 to promulgate an emergency rule. We, nevertheless, are giving the public an opportunity to comment after promulgation of the rule.

Executive Order 12612 (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 final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of 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.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 23 CFR Part 658

Grant programs—Transportation, Highways and roads, Motor carriers.

Issued on: January 30, 1991.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA amends chapter I 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 Public Law 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. App. 2311, 2312, 2313, and 2316), as amended by Public Law 98–17, 97 Stat. 59, and Public Law 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.13(f) is amended by designating the current text as paragraph (f)(1) and by adding paragraph (f)(2) to read as follows:

§ 658.13 Length.

* * * * *

(f)(1) * * *

(2) A truck tractor containing a dromedary box, deck, or plate and operating as part of a truck tractor semitrailer combination may operate on the National Network until August 1, 1991 provided:

(i) The dromedary box, deck, or plate is not more than 65 inches in length; and

(ii) The combination vehicle pulled by the truck tractor containing the dromedary box, deck, or plate is transporting Class A or Class B explosives for the U.S. Department of Defense.

[FR Doc. 91–2609 Filed 1–31–91; 11:09 am]

BILLING CODE 4910–22–M

federal register

Friday
February 1, 1991

Part IX

The President

Presidential Determination No. 91-18—Presidential Determination Under Section 402(c)(2)(A) of the Trade Act of 1974, as Amended—Bulgaria

Presidential Determination No. 91-19—Presidential Determination Under Section 402(c)(2)(A) of the Trade Act of 1974, as Amended—Mongolia

Federal Register

Federal Register
Vol. 56, No. 22
Friday, February 1, 1991

Presidential Documents

Title 3—

The President

Presidential Determination No. 91–18 of January 22, 1991

Presidential Determination Under Section 402(c)(2)(A) of the Trade Act of 1974, as Amended—Bulgaria

Memorandum for the Secretary of State

Pursuant to section 402(c)(2)(A) of the Trade Act of 1974, as amended (the "Act") (19 U.S.C. 2432(c)(2)(A)), I determine that a waiver by Executive order of the application of subsections (a) and (b) of section 402 of the Act with respect to Bulgaria will substantially promote the objectives of section 402.

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

THE WHITE HOUSE,
Washington, January 22, 1991.

[FR Doc. 91–2649
Filed 1–31–91; 11:42 am]
Billing code 3195–01–M

Editorial note: For the President's message to the Congress and the Executive order on trade with Bulgaria, see pp. 69 and 70 of vol. 4 of the *Weekly Compilation of Presidential Documents*.

Presidential Documents

Presidential Determination No. 91–19 of January 23, 1991

Presidential Determination Under Section 402(c)(2)(A) of the Trade Act of 1974, as Amended—Mongolia

Memorandum for the Secretary of State

Pursuant to section 402(c)(2)(A) of the Trade Act of 1974, as amended (the "Act") (19 U.S.C. 2432(c)(2)(A)), I determine that a waiver by Executive order of the application of subsections (a) and (b) of section 402 of the Act with respect to Mongolia will substantially promote the objectives of section 402.

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

THE WHITE HOUSE,
Washington, January 23, 1991.

[FR Doc. 91–2650
Filed 1–31–91; 11:43 am]
Billing code 3195–01–M

Editorial note: For the President's remarks following discussions with President Ochirbat of Mongolia, see the *Weekly Compilation of Presidential Documents* (vol. 27, p. 70). For the President's message to the Congress and the Executive order on trade with Mongolia, see p. 72 of the same issue.

Reader Aids

Federal Register

Vol. 56, No. 22

Friday, February 1, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

3961-4172..... 1

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 23, 1991

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 1991

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
February 1	February 19	March 4	March 18	April 2	May 2
February 4	February 19	March 6	March 21	April 5	May 6
February 5	February 20	March 7	March 22	April 8	May 6
February 6	February 21	March 8	March 25	April 8	May 7
February 7	February 22	March 11	March 25	April 8	May 8
February 8	February 25	March 11	March 25	April 9	May 9
February 11	February 26	March 13	March 28	April 12	May 13
February 12	February 27	March 14	March 29	April 15	May 13
February 13	February 28	March 15	April 1	April 15	May 14
February 14	March 1	March 18	April 1	April 15	May 15
February 15	March 4	March 18	April 1	April 16	May 16
February 19	March 6	March 21	April 5	April 22	May 20
February 20	March 7	March 22	April 8	April 22	May 21
February 21	March 8	March 25	April 8	April 22	May 22
February 22	March 11	March 25	April 8	April 23	May 23
February 25	March 12	March 27	April 11	April 26	May 28
February 26	March 13	March 28	April 12	April 29	May 28
February 27	March 14	March 29	April 15	April 29	May 28
February 28	March 15	April 1	April 15	April 29	May 29

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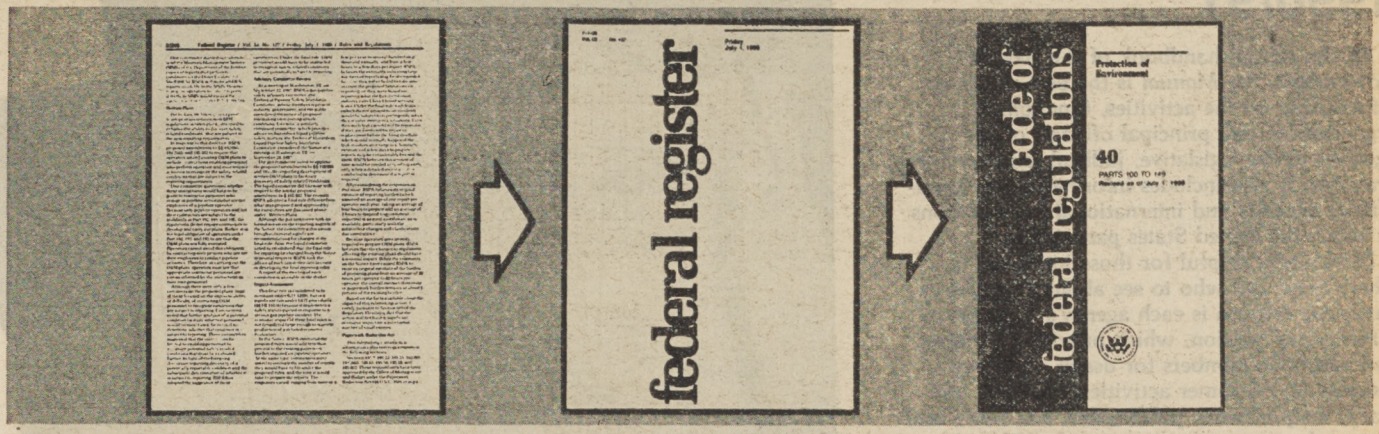

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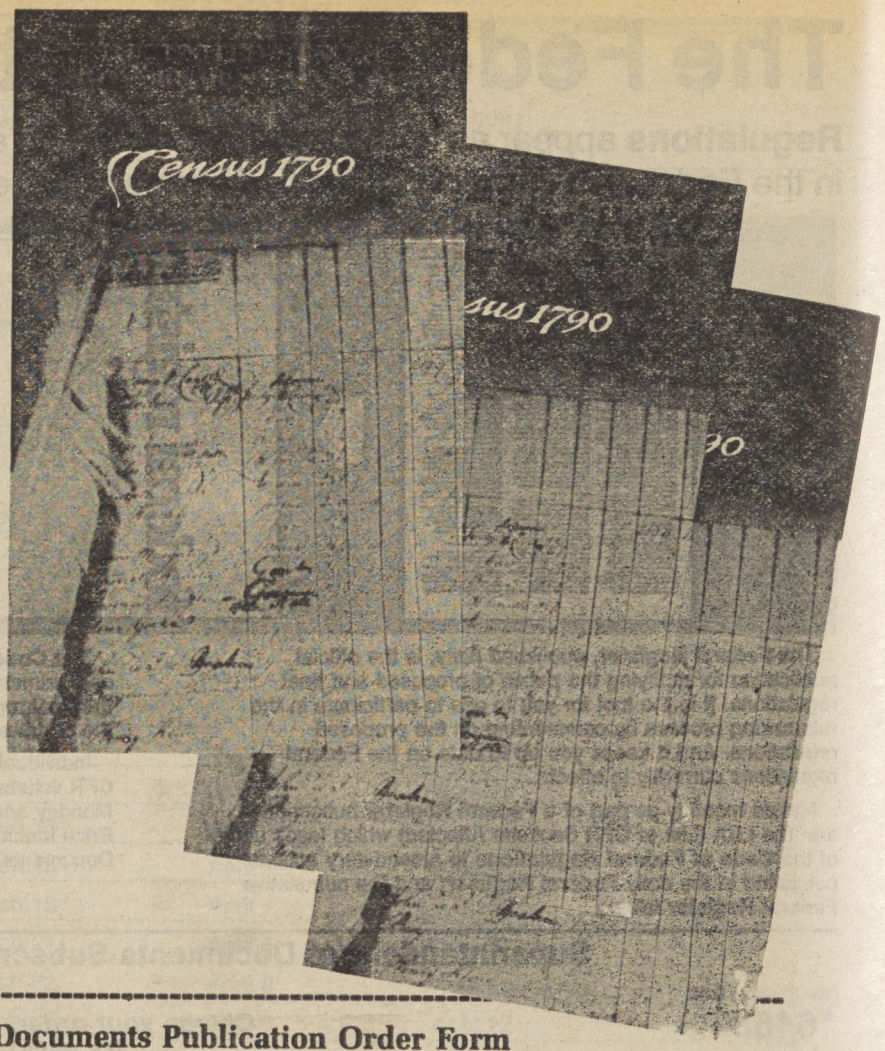

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