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

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

WHO: The Office of the Federal Register.

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

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4. An introduction to the finding aids of the FR/CFR system.

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

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am

WHERE: Federal Building, 501 Magazine St., Conference Room 1C3, New Orleans, LA

RESERVATIONS: Federal Information Center 1–800–366–2998

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-91-283FR]

Final Expenses and Assessment Rate for the Marketing Order Covering Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1991–92 fiscal year (August 1–July 31) under Marketing Order No. 905. This action authorizes the Citrus Administrative Committee (committee) established under the marketing order to incur expenses and collect assessments from handlers to pay those expenses. This action will also enable the committee to perform its duties and the marketing order to operate.

EFFECTIVE DATES: August 1, 1991, through July 31, 1992.

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

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

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are about 90 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable citrus fruit handled from the beginning of such year. An annual budget of expenses and assessment rate is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Florida citrus. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually recommended by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The proposed rule concerning these expenditures, assessment rate, and carryover of unexpended funds was published in the Federal Register (56 FR 22832, May 17, 1991). That rule requested that interested persons file comments by June 17, 1991. No comments were received.

The committee recommended a budget with expenditures of $210,000, for the 1991–92 fiscal year. The major expenditure items in the budget are for employee salaries and benefits, office operations, and the purchase of shipping information. These costs are generally slightly higher than those in the $180,000 budget for 1990–91, reflecting inflationary pressures. A new $20,000 item is included in the 1991–92 budget to fund committee travel expenses relating to member attendance at the Texas-Mexico Citrus Conference in 1992.

The committee also recommended a 1991–92 assessment rate of $0.0025 per ⅘ bushel carton of fresh fruit shipped. Assessment income for 1991–92 is expected to total $150,000, based on estimated shipments of 60,000,000 cartons of assessable fruit. Interest income for 1991–92 is estimated at $8,000. A deficit of $52,000 is budgeted for 1991–92 and is intended to reduce the committee's reserve to more modest levels. The 1991–92 assessment rate is $0.0009 lower than that established for 1990–91, reflecting an estimate that 1991–92 assessable shipments will be 10,000,000 cartons over the 1990–91 estimate.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be

significantly offset by the benefits derived from the operation of the marketing order. Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because approval of the expenses and assessment rate must be expedited. The fiscal year for this marketing order begins on August 1, 1991, and the committee needs sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 905

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

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

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

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

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

2. New § 905.230 is added to read as follows:

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

§ 905.230 Expenses and assessment rate.

Expenses of $210,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.0025 per ⅘ bushel carton of assessable fruit is established for the fiscal year ending July 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: July 10, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–16758 Filed 7–12–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 917

[Docket No. FV–91–251 FR]

Fresh Pears, Plums and Peaches Grown in California; Modification of Grade Requirements for Organic Pears for the 1991 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule continues, for the 1991 season, relaxed grade requirements established for organic Bartlett or Max-Red (Max Red Bartlett and Red Bartlett) pears grown in California during the 1990 season. Organic pears are produced without the application of synthetically compounded fertilizers, pesticides and growth regulators. This action requires shipments of organic pears to be at least U.S. Combination grade, with at least 50 percent, by count, grading U.S. No. 1 and the balance of each lot grading at least U.S. No. 2, except that russeting is not scored as a defect. These changes are expected to facilitate the marketing of pears grown in California.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: (209) 487–5901, or, George Kelhart, Marketing Order Administration Branch, F&V, AMS, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears, plums and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

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

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

It is estimated that approximately 45 handlers are subject to regulation under the marketing order for California pears. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $3,500,000. There are approximately 300 pear producers in California. Only a very few of these producers practice organic farming methods. Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000. The majority of these handlers and producers may be classified as small entities.

Shipments of California Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) pears (hereinafter referred to as pears) are regulated by grade, size and pack under Pear Regulation 12 (7 CFR 917.461). Because these regulations do not change substantially from season to season, they have been issued on a continuing basis, subject to amendment, modification or suspension as may be recommended by the Pear Commodity Committee (committee) and approved by the Secretary.

Fresh California pears shipped during the 1990 season totalled approximately 3,810,987 containers. The packinghouse door value of the pears in 1990 is estimated at $21.4 million.

This rule relaxes the grade requirements for organic pears for the 1991 season only, to allow handlers to better meet the market needs for such pears. The relaxed requirements are the same as those in effect for organic pears for the 1990 season. Those regulations required lots of organic pears to be at least U.S. Combination grade, and lowered from 80 percent to 50 percent, by count in any lot, the volume of pears required to grade at least U.S. No. 1, with the balance of each lot grading at least U.S. No. 2 quality. In addition, russeting was not scored as a defect for such pears. "Organic pears" continue to be defined as pears which are produced, harvested, distributed, stored, processed and packaged without the application of synthetically compounded fertilizers, pesticides or growth regulators. Additionally, no synthetically compounded fertilizers, pesticides or growth regulators shall be applied by the grower to the orchard in which the

pears are grown for 12 months prior to the appearance of flower buds and throughout the entire pear growing and harvest season (7 CFR 917.461(b)(5)).

Handlers who ship organic pears must provide, upon request, proof that such pears are grown in accordance with the provisions cited above. This relaxation authorizes shipments of organic pears with an increase in appearance defects and enables handlers of organic pears to better meet the needs of their buyers.

After a review of organic pear production and marketing during the 1990 season, the committee unanimously recommended that the 1990 requirements (55 FR 25958, June 26, 1990) for organic pears be continued for the 1991 pear marketing season. The committee believes that organic pear growers should be given additional opportunities to utilize organic cultural practices to meet consumer demand in these markets.

The committee also unanimously recommended that the size, container and pack requirements in effect for the 1990 season be applied to the 1991 pear marketing season. Thus, size, container and pack requirements in effect for the California pears during the 1990 marketing season and specified in § 917.461, as amended (7 CFR part 917), are applied to organic pears for the 1991 season.

The Department believes that the increase in appearance defects described in this rule will not adversely affect marketing conditions for non-organic pears, particularly since organic fruit is normally sold in specialty markets.

Based on available information, the Administrator of the AMS has determined that the relaxed grade requirements in this rulemaking will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of 1991 crop are expected to begin in early July and handlers should be able to take advantage of the relaxed requirements at that time; (2) handlers are aware of the relaxed requirements and they need no additional time to prepare; and (3) no useful purpose would be served by delaying the effective date of these relaxations.

List of Subjects in 7 CFR Part 917

Marketing Agreements, Peaches, Pears, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 917 is amended as follows:

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

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

2. Section 917.461 is amended by revising paragraph (a)(1) to read as follows:

§ 917.461 Pear Regulation 12.

(a) No handler shall ship:

(1) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1: *Provided,* That for the 1991 crop year, no handler shall ship organic pears of these varieties unless they grade at least U.S. Combination with not less than 50 percent, by count, grading at least U.S. No. 1 and the remainder grading at least U.S. No. 2, except that russeting shall not be scored as a defect for such organic pears. Handlers who intend to ship organic pears in accordance with this paragraph shall provide, upon request of the committee, with the approval of the Secretary, information to indicate that the pears were grown in accordance with the provisions of paragraph (b)(5) of this section.

* * * * *

Dated: July 9, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

(FR Doc. 91–16759 Filed 7–12–91; 8:45 am)

BILLING CODE 3410–02–M

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7 CFR Part 1210

[WRPA Docket No. 1; FV–91–246]

Watermelon Research and Promotion Plan; Amendments to Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting without modification as a final rule an interim final rule which amended the Watermelon Research and Promotion Plan's rules and regulations by allowing an additional ten days for handlers to report and remit assessments following each month of handling before late payment and interest charges would be incurred on watermelons handled after April 1, 1991. Additional changes are made to the rules and regulations for clarity. This action benefits handlers by providing additional time, after the month of handling, to file handling reports and remit assessments.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-South, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 447–4140.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Watermelon Research and Promotion Plan (Plan) (7 CFR part 1210). The Plan is effective under the Watermelon Research and Promotion Act (Title XVI, subtitle C of Pub. L. 99–198, 7 U.S.C. 4901–4916), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation No. 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Act and Plan provide that all producers (not including persons engaged in the growing of less than five acres of watermelons) and handlers of watermelons are subject to regulation under the plan for watermelons produced in the contiguous 48 States. The Act and Plan provide that watermelon producers and handlers pay equal assessments for operating the program. The Act and Plan further provide that handlers are responsible for collecting and submitting both producer and handler assessments to the Board, reporting their handling of watermelons, and for maintaining

records necessary to verify their reportings.

There are approximately 750 watermelon handlers and 5,000 watermelon producers subject to regulation under the Plan. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $3,500,000 and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of watermelon handlers and producers may be classified as small entities.

This action will not have a significant economic impact on small handlers or producers. This action benefits handlers by providing additional time, after the month of handling, to file handling reports and remit assessments to the Board. This action delays the time by which handlers must remit their assessments before interest and late payment charges accrue.

Sections 1647(b)(2) of the Act and 1210.327(b) of the Plan authorize the Board to recommend to the Secretary such rules and regulations as are necessary to effectuate the terms and conditions of the Plan.

An interim final rule amending § 1210.518 (7 CFR 1210.518) was issued April 12, 1991, and published in the **Federal Register** (56 FR 15807, April 18, 1991). That rule relaxed the provisions of § 1210.518 by providing an additional ten days for the filing of reports and remitting of assessments and before the imposition of late charges and interest. That rule also provided that interested persons could file written comments through May 20, 1991. Twenty-four comments, all favoring the amendments, were received from producers, handlers, persons commenting on behalf of the National Watermelon Promotion Board as well as a dietician.

Based on the experience of its first year of operation and information received from handlers, the National Watermelon Promotion Board (Board) recommended that § 1210.518 be amended to lengthen the assessment remittance, late payment, and interest charge time periods by 10 days. In addition, a proviso is added to clarify when the one and one-half percent per month interest would be added to accounts, with balances past due, for handlers paying their assessments under the prepayment provisions of § 1210.518.

The Board had received many comments regarding the time allotted for reporting and remitting assessments. Some handlers had stated that 20 days following the month the watermelons were actually handled was an insufficient amount of time to obtain the necessary information to adequately report the hundredweight of watermelons handled and remit the required assessment. Such handlers stated that they become too involved with the daily business of the watermelon season and would benefit from an additional ten days to file their reports and pay their assessments.

The amendments provide handlers an additional ten days for reporting and paying their assessments. The amendments also allow an additional ten days before the levy of late payment charges and interest. This additional ten days was necessary to maintain the grace periods provided in the rules and regulations for the receipt of assessments before the imposition of late payment charges and interest. These amendments have a positive impact on all handlers regardless of size. The amendments are especially beneficial to those handlers who do not have sufficient work force to update their records daily. Since the majority of both large and small handlers operate their budgets on a monthly basis, the additional ten days make it easier for handlers to work the reporting and remittance into their normal monthly billing and payment activities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), this rule contains no new information collection or recordkeeping requirements from those already approved by the OMB under OMB approval number 0581–0158. Recently this OMB approval number was redesignated by OMB as OMB approval number 0581–0093. Approximately 750 handlers are affected by these provisions.

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

Upon the basis of the evidence provided by the Board, it is found that this action, and all of its terms and conditions as set forth, finalizing the interim final rule, as published in the **Federal Register** (56 FR 15807, April 18, 1991), will tend to effectuate the declared policy of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**, because: (1) This action maintains the additional time for the filing of reports and remitting of assessments and before the imposition of late charges and interest; (2) watermelon handlers need no additional time to continue complying with the increased time for filing reports and remitting assessments; (3) shipment of the 1991 crop is currently underway; (4) the interim final rule provided a 30-day comment period, and twenty-four comments, all favoring the amendments, were received; and (5) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, part 1210, chapter XI of title 7 is amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. Accordingly, the interim final rule amending the provisions of § 1210.518, which was published in the **Federal Register** (56 FR 15807, April 18, 1991), is adopted as a final rule without change.

Dated: July 10, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–16760 Filed 7–12–91; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 91–097]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Puerto Rico from Class A to Class Free. We have determined that Puerto Rico now meets the standards for Class Free status. The rule affirmed by this action relieved certain restrictions on the interstate movement of cattle from Puerto Rico.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6188.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective April 4, 1991, and published in the **Federal Register** on April 10, 1991 (56 FR 14460–14461, Docket Number 91–040), we amended the brucellosis regulations in 9 CFR part 78 that provide a system for classifying States or portions of States according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. We removed Puerto Rico from the list of Class A States in § 78.41(b) and added it to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before June 10, 1991. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Puerto Rico from Class A to Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Puerto Rico. However, testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change.

The principal group affected by this action will be herd owners in Puerto Rico, as well as buyers who ship cattle from Puerto Rico interstate.

There are an estimated 30,000 herds in Puerto Rico, 99 percent of which are owned by small entities. Most of these herds are not certified-free. Test-eligible cattle offered for sale from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. The change could have a potential to reduce costs associated with selling breeding cattle in interstate commerce. However, the change from Class A to Class Free status should not have any economic impact on small entities affected by this rule because we anticipate that few, if any, breeding cattle will be exported from Puerto Rico.

Therefore, we believe that changing Puerto Rico's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amendming 9 CFR 78.41 (a) and (b) that was published at 56 FR 14460–14461 on April 10, 1991.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 9th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–16761 Filed 7–12–91; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 78

[Docket No. 91–095]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Oklahoma from Class B to Class A. We have determined that Oklahoma meets the standards for Class A status. The rule affirmed by this action relieved certain restrictions on the interstate movement of cattle from Oklahoma.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6188.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective March 29, 1991, and published in the **Federal Register** on April 4, 1991 (56 FR 13750–13751, Docket Number 91–041), we amended the brucellosis regulations in 9 CFR part 78 that provide a system for classifying States or portions of States according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. We removed Oklahoma from the list of Class B States in § 78.41(c) and added it to the list of Class A States in § 78.41(b).

Comments on the interim rule were required to be received on or before June 3, 1991. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information

compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Oklahoma from Class B to Class A reduces certain testing and other requirements governing the interstate movement of cattle from Oklahoma. However, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The principal group affected will be the owners of noncertified herds in Oklahoma not known to be affected with brucellosis who seek to sell cattle.

There are an estimated 62,000 herds in Oklahoma that could potentially be affected by this rule change. We estimate that 99 percent of these herds are owned by small entities. During fiscal year 1990, Oklahoma tested 294,213 eligible cattle at livestock markets. We estimate that approximately 15 percent of this testing was done to qualify cattle for interstate movement for purposes other than slaughter. Testing costs approximately $3.50 per head. Since herd sizes vary, larger herds will accumulate more savings than smaller herds. Also, not all herd owners will choose to market their cattle in a way that accrues these costs savings. The overall effect of this rule on small entities should be to provide very small economic benefit.

Therefore, we believe that changing Oklahoma's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.41 (b) and (c) that was published at 56 FR 13750–13751 on April 4, 1991.

Authority: 21. U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 9th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–16762 Filed 7–12–91; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 55

RIN 3150–AD55

Operators' Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to specify that the conditions and cutoff levels established pursuant to the Commission's Fitness-for-Duty Programs are applicable to licensed operators as conditions of their licenses. The final rule provides a basis for taking enforcement actions against licensed operators: (1) Who use drugs or alcohol in a manner that would exceed the cutoff levels contained in the fitness-for-duty rule, (2) who are determined by a facility medical review officer (MRO) to be under the influence of any prescription or over-the-counter drug that could adversely affect his or her ability to safely and competently perform licensed duties, or (3) who sell, use, or possess illegal drugs. The final rule will ensure a safe operational environment for the performance of all licensed activities by providing a clear understanding to licensed operators of the severity of violating requirements governing drug and alcohol use and substance abuse.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert M. Gallo, Chief, Operator Licensing Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–1031.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1989 (54 FR 24468), the NRC issued a new 10 CFR part 26, entitled "Fitness-for-Duty Programs," to require licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program. The general objective of this program is to provide reasonable assurance that nuclear power plant personnel will perform their tasks in a reliable and trustworthy manner, and not under the influence of any prescription, over-the-counter, or illegal substance that in any way adversely affects their ability to safely and competently perform their duties. A fitness-for-duty program, developed under the requirements of this rule, is intended to create a work environment that is free of drugs and alcohol and the effects of the use of these substances.

On April 17, 1990 (55 FR 14288), the NRC published in the **Federal Register** proposed amendments to 10 CFR part 55 to specify that the conditions and cutoff levels established in 10 CFR part 26, "Fitness-for-Duty Programs," are applicable to licensed operators as a condition of their licenses. These amendments also provide a basis for taking enforcement action against licensed operators who violate 10 CFR part 26. The proposed rule also described contemplated changes to the NRC enforcement policy. The comment period ended on July 2, 1990.

The Commission is adding specific conditions to operator licenses issued under 10 CFR part 55 to make fitness-for-duty requirements directly applicable to licensed operators. As pointed out in the supplementary information accompanying the promulgation of 10 CFR part 26, the scientific evidence shows conclusively that significant decrements in cognitive and physical performance result from the use of illicit drugs as well as from the use and misuse of prescription and over-the-counter drugs. Given the addictive and impairing nature of

certain drugs, even though the presence of drug metabolites does not necessarily relate directly to a current impaired state, the presence of drug metabolites in an individual's system strongly suggests the likelihood of past, present, or future impairment affecting job activities. More specifically, the Commission stated, "Individuals who are not reliable and trustworthy, under the influence of any substance, or mentally or physically impaired in any way that adversely affects their ability to safely and competently perform their duties, shall not be licensed or permitted to perform responsible health and safety functions." (See 54 FR 24468, June 7, 1989.) Although there is an underlying assumption that operators will abide by the licensees' policies and procedures, any involvement with illegal drugs, whether on site or off site, indicates that the operator cannot be relied upon to obey the law and therefore may not scrupulously follow rigorous procedural requirements with the integrity required to ensure public health and safety in the nuclear power industry.

The Commission believes strongly that licensed operators are a critical factor in ensuring the safe operation of the facility and consequently considers unimpaired job performance by each licensed operator or senior operator vital in ensuring safe facility operation. The NRC routinely denies Part 55 license applications or imposes conditions upon operator and senior operator licenses if the applicant's medical condition and general health do not meet the minimum standards required for the safe performance of assigned job duties. Further, under § 55.25, if an operator develops, during the term of his or her license, a physical or mental condition that causes the operator to fail to meet the requirements for medical fitness, the facility licensee is required to notify the NRC. Any such condition may result in the operator's license being modified, suspended, or revoked.

The power reactor facility licensee is further required under § 26.20(a) to have written policies and procedures that address fitness-for-duty requirements on abuse of prescription and over-the-counter drugs and on other factors such as mental stress, fatigue, and illness that could affect fitness for duty. The Commission expects each licensed operator or senior operator at these facilities to follow the licensee's written policies and procedures concerning the use and reporting requirements for prescription and over-the-counter drugs and other factors that the facility has determined could affect fitness for duty.

The use of alcohol and drugs can directly impair job performance. Other causes of impairment include use of prescription and over-the-counter medications, emotional and mental stress, fatigue, illness, and physical and psychological impairments. The effects of alcohol, which is a drug, are well known and documented and, therefore, are not repeated here. Drugs such as marijuana, sedatives, hallucinogens, and high doses of stimulants could adversely affect an employee's ability to correctly judge situations and make decisions (NUREG/CR–3196, "Drug and Alcohol Abuse: The Bases for Employee Assistance Programs in the Nuclear Industry," available from the National Technical Information Service). The greatest impairment occurs shortly after use or abuse, and the negative short-term effects on human performance (including subtle or marginal impairments that are difficult for a supervisor to detect) can last for several hours or days. The amendment to 10 CFR part 55 will establish a condition of an operator's license that will prohibit conduct of licensed duties while under the influence of alcohol or any prescription, over-the-counter, or illegal substance that would adversely affect performance of licensed duties as described by the facility's fitness-for-duty program. The amendment will be applicable to licensed operators of power and non-power reactors. This rulemaking is not intended to apply the provisions of 10 CFR part 26 to non-power facility licensees, but to make it clear to all licensed operators (power and non-power) through conditions of their licenses that the use of drugs or alcohol in any manner that could adversely affect performance of licensed duties would subject them to enforcement action.[1]

As explained in the Commission's enforcement policy (see 53 FR 40027; October 13, 1988), the Commission may take enforcement action if the conduct of an individual places in question the NRC's reasonable assurance that licensed activities will be conducted properly. The Commission may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, enforcement action may be taken regarding matters that raise issues of trustworthiness, reliability, use of sound judgment, integrity, competence, fitness of duty, or other matters that may not necessarily be a violation of specific Commission requirements.

[1] It should be noted that discussion of fitness-for-duty programs of Part 50 licensees is only applicable for power reactor licensees.

The Commission is amending § 55.53 to establish as a condition of an operator's license a provision precluding performance of licensed duties while under the influence of drugs or alcohol in any manner that could adversely affect performance. The Commission further amends § 55.61 to provide explicit additional notice of the terms and conditions under which an operator's license may be revoked, suspended, or modified. In addition, confirmed positive test results and failures to participate in drug and alcohol testing programs will be considered in making decisions concerning renewal of a part 55 license. These provisions will apply to any fitness-for-duty program established by a facility licensee, whether or not required by Commission regulations, including programs that establish cutoff levels below those set by 10 CFR part 26, appendix A. The Commission notes, however, that it has the discretion to forgo enforcement action against a licensed operator if the facility licensee established cutoff levels that are so low as to be unreasonable in terms of the uncertainties of testing. The Commission has reserved the right to review facility licensee programs against the performance objectives of 10 CFR part 26, which require reasonable detection measures. The revised rule will not impose the provisions of 10 CFR part 26 on non-power facility licensees. It is revised to make compliance with the cutoff levels and the policy and procedures regarding the use of legal and illegal drugs established pursuant to 10 CFR part 26 a license condition for all holders of a 10 CFR part 55 license.

Part 26 requires that facility licensees provide appropriate training to licensed operators, among others, to ensure that they understand the effect of prescription and over-the-counter drugs and dietary conditions on job performance and on chemical test results. The training also should include information about the roles of supervisors and the medical review officer in reporting an operator's current use of over-the-counter drugs or prescription drugs that may impair his or her performance. Licensed operators are required to follow their facility's policies and procedures regarding fitness-for-duty requirements.

Licensed operators will be subject to notices of violation, civil penalties, or orders for violation of their facility licensee's fitness-for-duty requirements. Therefore, in addition to amending the regulations to establish the 10 CFR part 55 licensed operators' obligations, the Commission is modifying the NRC

enforcement policy (Appendix C to 10 CFR part 2) in conjunction with the final rulemaking as described below.

In cases involving a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a notice of violation or a civil penalty to a licensed operator, or an order to suspend, modify or revoke the license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR part 26 or the facility licensee's cutoff levels, if lower. However, normally only a notice of violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties. In addition, the NRC intends to issue an order to suspend the part 55 license for up to three years the second time an individual exceeds those cutoff levels. If there are less than three years remaining in the term of the individual license, the NRC may consider not renewing the individual license or not issuing a new license until the three-year period is completed. The NRC intends to issue an order to revoke the part 55 license the third time an individual exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is subject to license suspension, revocation, or denial.

To assist in determining the severity levels of potential violations, 10 CFR part 2, appendix C, supplement I, is modified to provide a Severity Level I example of a licensed operator or senior operator involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and subsequently receiving a confirmed positive test for drugs or alcohol, two Severity Level II examples of (1) a licensed operator involved in the sale, use, or possession of illegal drugs or the consumption of alcoholic beverages within the protected area, or (2) a licensed operator or senior operator involved in procedural errors and subsequently receiving a confirmed positive test for drugs or alcohol, and a Severity Level III example of a licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation.

Summary of Public Comments

Letters of comment were received from 39 respondents. One commenter wrote two letters, which brought the total number of responses to 40. Thirty-one of the commenters wrote that the rule is unnecessary because the regulations already exist to ensure that the reactor operators adhere to 10 CFR part 26. The Commission agrees that the necessary regulations exist to have licensed power reactor operators comply with the provisions of part 26. However, the Commission realizes that the licensed operator is one of the main components and possibly the most critical component of continued safe reactor operation. Therefore, it wants to emphasize to and clearly inform the operators that as conditions of their licenses they must comply with their facility's fitness-for-duty program. The Commission also wants to clarify the term "use" versus "consumption" of alcohol in protected reactor areas. The rule has been rewritten to indicate that the "use of alcohol" means consumption of alcoholic beverages. The rule does not prohibit the use of alcohol within the protected areas for other than ingestion, such as application to the body. The use of medicine that contains alcohol is allowed within the parameters of the facility's fitness-for-duty program. However, use of over-the-counter or prescription drugs containing alcohol must be within the prescribed limitations and in compliance with the facility's fitness-for-duty program. Further, as 10 CFR part 26 does not apply to non-power reactor licensees, the Commission wishes to make it clear to licensed operators at these facilities that the use of drugs or alcohol in any manner that could adversely affect performance of licensed duties would subject them to enforcement action.

Twenty-eight of the commentors wrote that this rule singles out licensed operators for special treatment to the detriment of their morale. The Commission has considered the issue of morale and believes that most licensed operators already take their personal fitness for duty quite seriously. If there are any negative impacts on licensed operator morale these effects are expected to be short-lived as the vast majority of licensed operators will be unaffected. This rule may, in fact, increase operator confidence that their peers are fit for duty. This rule stresses to licensed operators that because of their critical role in the safe operation of their reactors, they must be singled out for special treatment to stress that their continuous unimpaired job performance is a highly necessary component of the overall safe operation of the reactors. The rule also stresses to licensed operators that their licenses are a privilege and not a right, and that refusal to participate in facility fitness-for-duty requirements can lead to enforcement action and/or licensing action. There has been no change to the rulemaking because of these comments.

Twenty commenters stated that it is an unnecessary burden that the proposed rule requires medical personnel to be available 24 hours a day to make judgments about prescription and over-the-counter drugs. Medical personnel are not required by part 26 or part 55 to be on duty 24 hours a day for prescription and over-the-counter drug evaluation. The intent of the rule is that licensed operators follow the facility fitness-for-duty program for supervisory notification of fitness-for-duty concerns about the use of legal drugs. The rulemaking has been clarified to more fully explain this intent.

There were two questions about the basis for the rulemaking—(1) What is the basis or need for the rule change? (2) Is it an industry wide problem? These questions were discussed above under the need for the rule (regulations already exist). The Commission can have nothing but a zero tolerance level for drug and alcohol use or abuse because of the critical nature of the industry. Therefore, the Commission deemed it necessary to stress compliance with facility fitness-for-duty programs as a condition of licensure. There is no change to the rulemaking as a result of these comments.

There was one question about the reporting of legal drugs. A licensed operator asked how operators who do not report medicinal use of drugs will be treated. Licensed operators are required to follow the fitness-for-duty program procedures and policies developed by their facility.

Two comments were specific to licensed operators at test and research reactor facilities. One was that formal drug testing programs should not be required for non-power facilities. These programs are not required by Part 26 or Part 55; however, if a fitness-for-duty program has been established at a non-power facility, licensed operators are required to participate. The second comment, regarding over-the-counter and prescription medication, was that medical review officers do not exist at non-power facilities. That statement is true; there are no requirements in either part 26 or part 55 that they do. No change to the rulemaking was required as a direct result of these comments. However, as a result of the previous comment regarding medical personnel availability, the rule was changed to clearly include supervisory notification when medical officers are not available.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0018.

Regulatory Analysis

The regulations in 10 CFR part 55 establish procedures and criteria for the issuance of licenses to operators and senior operators of utilization facilities licensed pursuant to the Atomic Energy Act of 1954, as amended, or section 202 of the Energy Reorganization Act of 1974, as amended, and 10 CFR part 50. These established procedures provide the terms and conditions upon which the Commission will issue, modify, maintain, and renew operator and senior operator licenses.

Subpart F of part 55, under § 55.53, "Conditions of Licenses," sets forth the requirements and conditions for the maintenance of operator and senior operator licenses.

This rule serves to emphasize to the holders of operator and senior operator licenses the conditions they are required to comply with under 10 CFR part 26, "Fitness-for-Duty Programs." A regulatory analysis has been prepared for the final rule resulting in the promulgation of part 26 and is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. This analysis examines the costs and benefits of the alternatives considered by the Commission for compliance with the conditions and cutoff levels. The Commission previously requested public comment on the regulatory analysis as part of the rulemaking proceeding that resulted in the adoption of part 26.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic effect on a substantial number of small entities. Many applicants or holders of operator licenses fall within the definition of small businesses found in section 34 of the Small Business Act (15 U.S.C. 632) or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121 or the NRC's size standards published December 9, 1985 (50 FR 50241). However, the rule will only serve to provide notice to licensed individuals of the conditions under which they are expected to perform their licensed duties.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 55

Criminal penalty, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2 and 10 CFR part 55.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579 as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Appendix C to 10 CFR part 2 is amended by—

a. Adding an undesignated paragraph at the end of section V. E.,

b. Adding paragraph (8) to section VIII, and

c. Adding paragraph A. 5., B. 3., B. 4., and C. 9 to supplement I to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

V. Enforcement Actions

* * * * *

E. Enforcement Actions Involving Individuals

* * * * *

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a notice of violation or a civil penalty to the part 55 licensee, or an order to suspend, modify or revoke the license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR part 26 or the facility licensee's cutoff levels, if lower. However, normally only a notice of violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties. In addition, the NRC intends to issue an order to suspend the part 55 license for up to three years the second time a licensed operator exceeds those cutoff levels. In the event there are less than three years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the

drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is subject to license suspension, revocation, or denial.

* * * * *

VIII. Responsibilities

* * * * *

(8) Any proposed enforcement action involving a civil penalty to a licensed operator.

* * * * *

Supplement I—Severity Categories

Reactor Operations

A. Severity I * * *

5. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. Severity II * * *

3. A licensed operator involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages, within the protected area.

4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

C. Severity III * * *

9. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation.

* * * * *

PART 55—OPERATORS' LICENSES

3. The authority citation for part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs, 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 55.3, 55.21, 55.49, and 55.53 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 55.9, 55.23, 55.25, and 55.53(f) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 55.53, paragraph (j) is redesignated as paragraph (l) and new paragraphs (j) and (k) are added to read as follows:

§ 55.53 Conditions of licenses.

* * * * *

(j) The licensee shall not consume or ingest alcoholic beverages within the protected area of power reactors, or the controlled access area of non-power reactors. The licensee shall not use, possess, or sell any illegal drugs. The licensee shall not perform activities authorized by a license issued under this part while under the influence of alcohol or any prescription, over-the-counter, or illegal substance that could adversely affect his or her ability to safely and competently perform his or her licensed duties. For the purpose of this paragraph, with respect to alcoholic beverages and drugs, the term "under the influence" means the licensee exceeded, as evidenced by a confirmed positive test, the lower of the cutoff levels for drugs or alcohol contained in 10 CFR part 26, appendix A, of this chapter, or as established by the facility licensee. The term "under the influence" also means the licensee could be mentally or physically impaired as a result of substance use including prescription and over-the-counter drugs, as determined under the provisions, policies, and procedures established by the facility licensee for its fitness-for-duty program, in such a manner as to adversely affect his or her ability to safely and competently perform licensed duties.

(k) Each licensee at power reactors shall participate in the drug and alcohol testing programs established pursuant to 10 CFR part 26. Each licensee at non-power reactors shall participate in any drug and alcohol testing program that may be established for that non-power facility.

* * * * *

5. In § 55.61, a new paragraph (b)(5) is added to read as follows:

§ 55.61 Modification and revocation of licenses.

* * * * *

(b) * * *

(5) For the sale, use or possession of illegal drugs, or refusal to participate in the facility drug and alcohol testing program, or a confirmed positive test for drugs, drug metabolites, or alcohol in violation of the conditions and cutoff levels established by § 55.53(j) or the consumption of alcoholic beverages within the protected area of power reactors or the controlled access area of non-power reactors, or a determination of unfitness for scheduled work as a result of the consumption of alcoholic beverages.

Dated at Rockville, Maryland, this 5th day of July 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–16687 Filed 7–12–91; 8:45 am]

BILLING CODE 7590–01–M

10 CFR Part 9

Duplication Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the charges for copying records publicly available at the NRC Public Document Room in Washington, DC. The amendment is necessary in order to reflect the change in copying charges resulting from the Commission's award of a new contract for the copying of records.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michelle Schroll, Public Document Room Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 202–634–3366.

SUPPLEMENTARY INFORMATION: The NRC maintains a Public Document Room (PDR) at its headquarters at 2120 L Street, NW., Lower Level, Washington, DC. The PDR contains an extensive collection of publicly available technical and administrative records that the NRC receives or generates. Requests by the public for the duplication of records at the PDR have traditionally been accommodated by a duplicating service contractor selected by the NRC. The schedule of duplication charges to the public established in the duplicating service contract is set forth in 10 CFR 9.35 of the Commission's regulations. The NRC has recently awarded a new duplicating service contract. The revised fee scheduled reflects the changes in copying charges to the public that have resulted from the awarding of the new contract for the duplication of records at the PDR.

Because this is an amendment dealing with agency practice and procedures, the notice provisions of the Administrative Procedures Act do not apply pursuant to 5 U.S.C. 553(b)(A). In addition, the PDR users were notified on June 27, 1991, that the new contract was being awarded and that the new prices would go into effect on July 10, 1991. The amendment is effective upon publication

in the Federal Register. Good cause exists to dispense the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with agency procedures.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1).

Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0043.

Backfit Analysis

This final rule pertains solely to minor administrative procedures of the NRC; therefore, no backfit analysis has been prepared.

List of Subjects in 10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 9.35, paragraph (a)(1) is revised to read as follows:

§ 9.35 Duplication fees.

(a)(1) Charges for the duplication of records made available under § 9.21 at the NRC Public Document Room (PDR), 2120 L Street, NW., Lower Level, Washington, DC by the duplicating service contractor are as follows:

(i) 6 cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 17×11 inches for which the charges vary as follows depending on the reproduction process that is used:

(A) Xerographic process—$1.50 per square foot for large documents or engineering drawings (random size up to 24 inches in width and with variable length, reduced or full size);

(B) Photographic process—$7.50 per square foot for large documents or engineering drawings (random size exceeding 24 inches in width and up to a maximum size of 42 inches in length, full size).

(ii) 6 cents per page for microform to paper copy, except for engineering drawings and any other records larger than 17×11 inches for which the charge is $3.00 per square foot, or $3.00 for a reduced size print (18×24 inches).

(iii) 75 cents per microfiche to microfiche.

(iv) 75 cents per aperture card to aperture card.

(2) Self-service duplicating machines are available at the PDR for the use of the public. Paper to paper copy is 10 cents per page. Microform to paper is 10 cents per page on the reader printers.

* * * * *

Dated at Rockville, Maryland, this 8th day of July 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–16688 Filed 7–12–91; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Part 20

RIN 3150–AD96

Standards for Protection Against Radiation: Monitoring Reports

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the submittal of radiation exposure monitoring reports. The final rule changes the address to which the licensee submits reports on an individual exposure to radiation and radioactive material to the NRC.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7758.

SUPPLEMENTARY INFORMATION: On May 21, 1991, the Nuclear Regulatory Commission published in the Federal Register (56 FR 23360) a final rule which amended 10 CFR part 20 to include the NRC's revised standards for protection against ionizing radiation. Section 20.2206 established requirement for monitoring the exposures of individuals for radiation and radioactive material and providing the NRC with reports on the required monitoring. Section 20.408 of the previous standards for protection against radiation contained similar requirements. This final rule is intended to ensure that radiation exposure documents will be delivered to the correct NRC office by changing the address for submitting the reports to specify the organization that is to receive and process these reports.

Because these amendments deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedures Act do not apply pursuant to 5 U.S.C. 553(b)(a). The amendments are effective upon publication in the Federal Register. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature concerning the change of an address.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150– .

List of Subjects in 10 CFR Part 20

Byproduct material, Criminal penalty, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

Under the authority of the Atomic Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION PROTECTION

1. The authority citation for part 20 continues to read as follows:

Authority: Sec. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as

amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141 Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 233, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.101, 20.102, 20.103 (a), (b), and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, 20.305, 20.1102, 20.1201–20.1204, 20.1206, 20.1207, 20.1208, 20.1301, 20.1302, 20.1501, 20.1502, 20.1601 (a) and (d), 20.1602, 20.1603, 20.1701, 20.1704, 20.1801, 20.1802, 20.1901(a), 20.1902, 20.1904, 20.1906, 20.2001, 20.2002, 20.2003, 20.2004, 20.2005 (b) and (c), 30.2006, 20.2101–20.2110, 20.2201–20.2206, and 20.2301 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); § 20.2106(d) is issued under the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a; and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b), 20.409, 20.1102(a) (2) and (4), 20.1204 (c), 20.1208 (g) and (h), 20.1904(c)(4), 20.1905 (c) and (d), 20.2005(c), 20.2006(b)–(d), 20.2101–20.2103, 20.2104(b)–(d), 20.2105–20.2108, and 20.2201–20.2207 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 20.408, paragraph (b) is revised to read as follows:

§ 20.408 Reports of personnel monitoring on termination of employment or work.

* * * * *

(b) When an individual terminates employment with a licensee described in paragraph (a) of this section, or an individual assigned to work in such a licensee's facility, but not employed by the licensee, completes the work assignment in the licensee's facility, the licensee shall furnish to the REIRS Project Manager, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report of the individual's exposures to radiation and radioactive material, incurred during the period of employment or work assignment in the licensee's facility, containing information recorded by the licensee pursuant to §§ 20.401(a) and 20.108. Such report shall be furnished within 30 days after the exposure of the individual has been determined by the licensee or 90 days after the date of termination of employment or work assignment, whichever is earlier.

3. In § 20.2206 paragraph (c), is revised to read as follows:

§ 20.2206 Reports of individual monitoring.

* * * * *

(c) The licensee shall file the report required by § 20.2206(b), covering the preceding year, on or before April 30 of each year. The licensee shall submit the report to the REIRS Project Manager, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

Dated at Rockville, Maryland, this 2nd day of July, 1991.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–16779 Filed 7–12–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–56–AD; Amdt. 39–7074; AD 91–15–10]

Airworthiness Directives; SOCATA Groupe AEROSPATIALE Models TB9, TB10, TB20, and TB21 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to SOCATA Groupe AEROSPATIALE Models TB9, TB10, TB20, and TB21 airplanes. This action will supersede AD 91–12–19, which requires an inspection of the horizontal stabilizer balance weights on Socata Models TB9, TB10, and TB20 airplanes to ensure proper and secure attachment, and modification if found improperly attached or loose. Since issuance of that AD, the FAA has determined that the Model TB21 airplanes should require the same inspections and possible modification. The actions specified by this AD are intended to prevent adverse airplane handling qualities and possible loss of control of the airplane.

DATES: Effective August 10, 1991. Comments for inclusion in the Rules Docket must be received on or before September 12, 1991.

ADDRESSES: SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991, that is discussed in this AD may be obtained from SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; Telephone 62.41.74.26; Facsimile 62.41.74.32; or the Product Support Manager, U.S.; AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641–3614; Facsimile (214) 641–3527. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–56–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. Richard Yotter, Project Manager, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 91–12–19, Amendment 39–6988 (56 FR 24336) was published in the **Federal Register** on May 30, 1991. AD 91–12–19 requires an inspection of the horizontal stabilizer balance weights on Socata Models TB9, TB10, and TB20 airplanes to ensure proper and secure attachment, and modification if found improperly attached or loose. Since the AD action was an emergency requlation that required immediate adoption, notice and public procedure were impracticable, and good cause existed for making the amendment effective in less than 30 days. However, comments were invited on this rule; in particular, factual information that supported the commenter's ideas and suggestions.

As a result of comments received on AD 91–12–19, the FAA has determined that Socata Model TB21 airplanes should also be affected by the inspections and possible modification currently required by the AD. These model airplanes were inadvertently left off of the effectivity of AD 91–12–19.

Since this condition could exist or develop in other Socata Model TB21 airplanes as well as Socata Models TB9, TB10, and TB20 airplanes of the same type design, an emergency AD to supersede AD 91–12–19 is being issued to prevent adverse airplane handling qualities and possible loss of control of the airplane. The action will require an inspection of the horizontal stabilizer balance weights to ensure proper and secure attachment, and immediate modification if found improperly attached or loose on Socata Models TB9, TB10, TB20, and TB21 airplanes. The actions are to be done in accordance

with the instructions in SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration 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); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91-12-19, Amendment 39-6988 (56 FR 24336, May 30, 1991) and adding the following new AD:

AD 91-15-10 SOCATA Groupe AEROSPATIALE: Amendment 39-7074; Docket No. 91-CE-56-AD.

Applicability: Models TB9 and TB10 airplanes (serial numbers 1 through 1217); and Models TB20 and TB21 airplanes (serial numbers 1 through 1030), certificated in any category.

Compliance: Required within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished.

Note: The compliance time referenced in this AD takes precedence over that in the referenced service bulletin.

To prevent adverse airplane handling qualities and possible loss of control of the airplane, accomplish the following:

(a) Inspect the horizontal stabilizer balance weight attachment nuts for proper installation in accordance with the instructions in parts (1) and (2) of SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991.

(1) If the horizontal stabilizer balance weight attachment nuts are not loose and are properly installed, accomplish the requirements in part (3) of SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991, and return the airplane to service.

(2) If the horizontal stabilizer balance weight attachment nuts are loose or are improperly installed, prior to further flight, remove, inspect, modify and reinstall the horizontal stabilizer balance weight in accordance with the criteria and instructions in part (4) of SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(c) The inspection and possible modification required by this AD shall be done in accordance with SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 20, 1991, at 56 FR 24336 (May 30, 1991). Copies may be obtained from SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or the Product Support Manager, U.S.; AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective on August 10, 1991.

Issued in Kansas City, Missouri, on July 3, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-16609 Filed 7-12-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-ASW-44; Amdt. 39-7072; AD 90-21-03]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 206A, 206A-1, 206B, 206B-1, 206L, 206L-1 and 206L-3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain BHTI helicopters by individual letters. The AD requires an inspection of all affected tail rotor blade assemblies and replacement of certain assemblies. This AD is necessary to prevent loss of the tip weight, failure of the tail rotor blade, and loss of the tail rotor hub

assembly, which, in turn, can result in loss of control of the helicopter.

DATES: Effective August 14, 1991, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 90–21–03, issued October 5, 1990, which contained this amendment.

ADDRESSES: Applicable AD-related material may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, or may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, FAA, Southwest Region, Fort Worth, Texas 76193–0170, telephone (817) 624–5168, fax (817) 624–5988.

SUPPLEMENTARY INFORMATION: On October 5, 1990, Priority Letter AD 90–21–03 was issued and made effective immediately as to all known U.S. owners and operators of certain Bell Helicopter Textron , Inc., Model 206A, 206A–1, 206B, 206B–1, 206L, 206L–1 and 206L–3 helicopters. The AD requires an inspection of the tail rotor blade assemblies of the affected helicopters unless already accomplished. For certain part and serial numbered items, replacement of the tail rotor blade assemblies was required prior to further flight. The AD was prompted by a report that certain serial numbered tail rotor blade assemblies, part number (P/N) 206–016–201–125 or –127, have the tip weight hole threads machined improperly. These tail rotor blade assemblies, if installed on the helicopter, may result in loss of tip weights, which could cause extreme tail rotor blade vibration, failure of the tail rotor assembly, and ultimately result in loss of control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued October 5, 1990, to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Models 206A, 206A–1, 206B, 206B–1, 206L, 206L–1 and 206L–3 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and 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 AD:

AD 90–21–03 Bell Helicopter Textron, Inc. (BHTI): Amendment 39–7072 Docket No. 90–ASW–44.

Applicability: All BHTI Models 206A, 206A–1, 206B, 206B–1, 206L, 206L–1 and 206L–3 helicopters, certificated in any category, with tail rotor blade assembly, P/N 206–016–201–125 or –127.

Compliance: Required before further flight, unless already accomplished.

To prevent the loss of a tip weight, failure of the tail rotor blade assembly, loss of the tail rotor hub assembly and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, inspect the aircraft to determine the part number and serial number of the installed tail rotor blade assembly. If P/N 206–016–201–125 or –127 with a serial number listed below is installed on the helicopter, remove and replace the assembly with an airworthy blade assembly.

For 206–016–201–127 T/R BLADE

CS–0203 CS–0206 CS–0238 CS–0985 CS–1141 CS–1153 CS–1207 CS–1210 CS–1219 CS–1229 CS–1232 CS–1235 CS–1252 CS–1304 CS–1306 CS–1316 CS–1325 CS–1332 CS–1337 CS–1342 CS–1351 CS–1354 CS–1359 CS–1360 CS–1368 CS–1373 CS–1375 CS–1380 CS–1391 CS–1461 CS–1466 CS–1476 CS–1489 CS–1519 CS–1523 CS–1524 CS–1525 CS–1528 CS–1533 CS–1544 CS–1553 CS–1555 CS–1556 CS–1557 CS–1559 CS–1563 CS–1564 CS–1566 CS–1577 CS–1579 CS–1580 CS–1584 CS–1585 CS–1588 CS–1594 CS–1597 CS–1599 CS–1612 CS–1614 CS–1635 CS–1642 CS–1647 CS–1656 CS–1670 CS–1673 CS–1685 CS–1705 CS–1716 CS–1726 CS–1733 CS–1734 CS–1737 CS–1740 CS–1744 CS–1745 CS–1754 CS–1756 CS–1760 CS–1771 CS–1778 CS–1784 CS–1827 CS–1830 CS–1842 CS–1844 CS–1855 CS–1856 CS–1881 CS–1890 CS–1893 CS–1894 CS–1900 CS–1901 CS–1907 CS–1909 CS–1913 CS–1914 CS–1940 CS–1944 CS–1953 CS–1954 CS–1957 CS–1958 CS–1959 CS–1961 CS–1978 CS–1979 CS–1981 CS–1982 CS–1983 CS–1985 CS–1986 CS–1989 CS–1994 CS–1997 CS–1998 CS–2000 CS–2003 CS–2007 CS–2016 CS–2019 CS–2027 CS–2033 CS–2037 CS–2088 T–47310 T–47361 T–47371 T–47378 T–47397 T–47398 T–47401 T–47426 T–47458

For 206–016–201–125 T/R BLADE

CS–136 CS–158 CS–398 CS–534 CS–625 CS–658 CS–684 CS–685 CS–688 CS–690 CS–711 CS–715 CS–716 CS–719 CS–720 CS–738 CS–740 CS–752 CS–807 CS–832 CS–865 CS–871 CS–874 T–61995

(b) An alternate method of compliance which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Certification Office, Southwest Region, Federal Aviation Administration, Fort Worth, Texas 76193–0170, telephone (817) 624–5170.

This amendment (39–7072; AD 90–21–03) becomes effective August 14, 1991 as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 90–21–03 issued October 5, 1990, which contained this amendment.

Issued in Fort Worth, Texas, July 1, 1991.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91–16724 Filed 7–12–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91-CE-52-AD; Amendment 39-7071; AD 91-15-08]

Airworthiness Directives; British Aerospace (BAe), Limited Jetstream HP 137 Mk1, Models 200, 3101, and 3201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to BAe Jetstream HP 137 Mk1, Models 200, 3101 and 3201 airplanes. This action requires initial and repetitive replacement of the engine power lever control cables. Two engine power lever control cables failed during ground operation and over 100 have been replaced because of broken wire strands on the affected airplanes. The actions specified by this AD are intended to prevent the loss of control of engine power, which could result in loss of control of the airplane.

DATES: Effective August 12, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 1991. Comments for inclusion in the Rules Docket must be received on or before September 8, 1991.

ADDRESSES: BAe Alert Service Bulletin 76-A-JA 910542, dated May 30, 1991, that is discussed in this AD may be obtained from British Aerospace, Manager Product Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91-CE-52-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on British Aerospace (BAe), Limited Jetstream HP 137 Mk1, Models 200, 3101, and 3201 airplanes. The CAA reports that an engine power lever control cable failed during ground operation on two of the affected airplanes and that there have been over 100 cable replacements on the affected airplanes because of broken wire strands within the cables. Failure of one of these cables results in the inability to advance power if the power setting is low, or the inability to reduce power if the power setting is high. It may also allow for propeller blade pitch angles below the flight regime, which could result in the pilot losing control of the airplane. Subsequent inspection of the power lever control cables of the affected airplanes owned by one airline operator involved in one of the reported incidents resulted in replacement of approximately 3 out of every 4 cables because of broken strands where the cable flexed over a pulley.

British Aerospace (BAe) has issued BAe Alert Service Bulletin (ASB) No. 76-A-JA 910542, dated May 30, 1991, which specifies replacement procedures for engine power lever control cables for BAe Limited Jetstream HP 137 Mk1, Models 200, 3101, and 3201 airplanes. The CAA classified this service bulletin as mandatory and issued CAA AD 007-05-91 in order to assure the airworthiness of these airplanes in the United Kingdom. The airplanes are manufactured in the United Kingdom and are type certificated for operation in the United States. Under a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation.

The FAA has examined the findings of the CAA, reviewed all available information and determined that emergency AD action should be taken for products of this type design that are certificated for operation in the United States. The FAA has determined that the cables should be replaced every 10,000 landings. Approximately 78 of the affected airplanes registered in the United States have 10,000 or more landings. Reports reveal that 22 of these airplanes have already replaced the 8 engine power lever control cables. Therefore, approximately 56 of the affected airplanes have exceeded the established 10,000-landing limit of these cables. Of these 56 airplanes, approximately 25 are near or over 15,000 landings. Since the condition exists on such a large number of the affected airplanes and could develop in other BAe Limited Jetstream HP 137 Mk1, Models 200, 3101, and 3201 airplanes of the same type design, an emergency AD is being issued to prevent the loss of control of engine power, which could result in loss of control of the airplane. This emergency action requires initial and repetitive mandatory replacement of the engine power lever control cables in accordance with the instructions in BAe Service Bulletin 76-A-JA 910542, dated May 30, 1991.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

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

to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration 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); and 14 CFR 11.89.

§ 39.13 [Amended]

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

AD 91-15-03 **British Aerospace (BAE),** Limited: Amendment 39-7071; Docket No. 91-CE-52-AD.

Applicability: Jetstream HP 137 Mk1, Models 200, 3101, and 3201 airplanes (all serial numbers), certificated in any category.

Compliance: Required initially as follows, unless already accomplished, and thereafter at intervals not to exceed 10,000 landings:

- For airplanes with less than 9,500 landings on the effective date of this AD, prior to the accumulation of 10,000 landings.
- For airplanes with 9,500 landings or more but less than 10,000 landings on the effective date of this AD, prior to the accumulation of 10,500 landings.
- For airplanes with 10,000 or more landings but less than 12,000 landings on the effective date of this AD, within the next 500 landings.
- For airplanes with 12,000 or more landings but less than 15,000 landings on the effective date of this AD, within the next 150 landings.
- For airplanes with over 15,000 landings on the effective date of this AD, within the next 50 landings.

Note: If no record of landings is maintained, hours time-in-service (TIS) may be used with one hour TIS equal to two landings. For example, 100 hours TIS is equal to 200 landings.

To prevent the loss of control of engine power, accomplish the following:

(a) Replace the engine power lever control cables (all 8) with new power lever control cables in accordance with the instructions in BAe SB 76-A-JA 910542, dated May 30, 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) The replacements required by this AD shall be done in accordance with BAe SB 76-A-JA 910542, dated May 30, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, Manager Product Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

This amendment becomes effective on August 12, 1991.

Issued in Kansas City, Missouri, on July 1, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-16765 Filed 7-12-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASW-52]

Alteration of VOR Federal Airway V-263; NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends VOR Federal Airway V-263 between Albuquerque, NM, and Corona, NM. This airway extension provides additional routing from Albuquerque to southeastern New Mexico. An operational advantage is realized by air traffic control by using this additional airway for departures from Albuquerque. This action improves the flow of traffic in the Albuquerque terminal area.

EFFECTIVE DATE: 0901 u.t.c., September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On March 26, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend VOR Federal Airway V-263 from Albuquerque, NM, via a south dogleg to Corona, NM (56 FR 12492). An air traffic control operational advantage is realized by using the airway as an additional departure route via a dogleg to the south of Albuquerque. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations extends VOR Federal Airway V-263 between Albuquerque, NM, and Corona, NM. This airway extension provides additional routing from Albuquerque to southeastern New Mexico. An operational advantage is realized by air traffic control by using this additional airway for departures from Albuquerque. This action improves the flow of traffic in the Albuquerque terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is

not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

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

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-263 [Amended]

By removing the words "From Albuquerque, NM, via" and substituting the words "From Corona, NM; INT Corona 278° and Albuquerque, NM, 160° radials; Albuquerque;"

Issued in Washington, DC, on July 1, 1991.

Jerry W. Ball,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-16725 Filed 7-12-91; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-29412]

Rescission of an Obsolete Rule, Rule 3a12-2

AGENCY: Securities and Exchange Commission.

ACTION: Rescission of rule.

SUMMARY: The Commission is rescinding rule 3a12-2 (17 CFR 240.3a12-2) under the Securities Exchange Act of 1934. The rule exempts a security from the operation of those provisions of the Exchange Act which by their terms do not apply to an "exempted security" if a state or political subdivision thereof is obliged to make good to the issuer of such security any deficiency in the income of such issuer, to the extent necessary to pay to the holders of such security interest or dividends at a specified rate, and the business of such issuer is managed by such state or political subdivision. The Commission believes that the rule is no longer necessary. The Commission is, therefore, rescinding the rule.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: C. Dirk Peterson, Attorney, (202) 504-2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is rescinding rule 3a12-2 [1] under the Securities Exchange Act of 1934,[2] which was adopted on June 16, 1935.[3] In 1988, the Commission proposed that the rule be rescinded.[4] No comments were received in response to the proposal.

The rule exempts a security from the operation of those provisions of the Act which by their terms do not apply to an "exempted security" if a state or political subdivision thereof is obligated to make good to the issuer of such security any deficiency in the income of such issuer, to the extent necessary to pay to the holders of such security interest or dividends at a specified rate, and the business of such issuer is managed by such state or political subdivision or by a board or officers appointed by such state or political subdivision. Although the rule was drafted in general terms, it appears that it was intended to apply to the Boston Elevated Railway Company ("BERC"). Rule 3a12-2 permitted trading in the securities of the BERC to continue on the Boston Stock Exchange without registration under the Exchange Act.[5]

The BERC's five dollar annual dividend was guaranteed by the Commonwealth of Massachusetts until 1959 and the company was managed by trustees appointed by the Commonwealth. Under the terms of a 1947 Massachusetts statute,[6] however, the Metropolitan Transit Authority was authorized to assume the outstanding indebtedness and liabilities of the BERC and acquire all of its common stock. The BERC subsequently began a process of dissolution and paid a partial liquidating dividend to stockholders of record as of September 12, 1947. Because of pending litigation, the dissolution did not occur immediately. For these reasons, the Commission permitted the market on the Boston Stock Exchange for the common stock of the BERC to continue.[7] The BERC common stock ceased trading on the Boston Stock Exchange on September 25, 1953. At that time, the BERC was the only company with a security that came within the exemptive provisions of rule 3a12-2.

In response to the Division of Market Regulation's request for information, the Massachusetts Bay Transportation Authority ("MBTA") advised the Division that all bonds, notes and other evidences of indebtedness issued by the BERC had been retired, refunded or otherwise discharged.[8] The MBTA also expressed the opinion that the Commission's rule providing an exemption for the BERC securities was no longer needed. Indeed, no comments were received following the Commission's proposal to rescind rule 3a12-2, thus indicating that no one was relying on the rule.

In light of the foregoing, the Commission believes that rule 3a12-2 is no longer necessary. Accordingly, the Commission is rescinding the rule.

List of Subjects in 17 CFR Part 240

Securities.

Text of New Rules

In accordance with the foregoing, title 17, chapter II, part 240 of the Code of Federal Regulations is amended as follows:

PART 240—[AMENDED]

1. The authority citation for part 240 continues to read as follows:

[1] 17 CFR 240.3a12-2.

[2] 15 U.S.C. 78 *et seq.*

[3] Securities Exchange Act Release No. 279 (June 16, 1935).

[4] Securities Exchange Act Release No. 26181 (October 14, 1988, 53 FR 41204).

[5] Section 12(a) of the Exchange Act provides that it is "unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title, and the rules and regulations thereunder." 15 U.S.C. 78*l*(a).

[6] See Sections 5 and 6 of chapter 44 of the Commonwealth of Massachusetts Act of 1947.

[7] Securities Exchange Act Release No. 4077 (April 8, 1948).

[8] Letter from Joseph H. Elcock, General Counsel, Massachusetts Bay Transportation Authority, to Steve Holtzman, Special Counsel, Division of Market Regulation, SEC (June 27, 1980).

Authority: 15 U.S.C. 77c, 77d, 77s, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a-29, 80a-37, unless otherwise noted.

§ 240.3a12-2 [Removed]

2. By removing § 240.3a12-2.

Dated: July 8, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-16706 Filed 7-12-91; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 289

[Release Nos. 33-6903; 34-29410; 39-2268; International Series Release No. 297]

Offerings by the International Finance Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today is adopting a new regulation specifying the periodic and other reports to be filed with it by the International Finance Corporation pursuant to the International Finance Corporation Act, as amended. The regulation is virtually identical to the regulations previously adopted by the Commission in connection with primary distributions of securities issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank and the African Development Bank. The regulation will ensure the availability of information about the International Finance Corporation for investors who may purchase securities issued by the International Finance Corporation and distributed in the United States.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Amy N. Kroll, (202) 272-3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today adopted rules and regulations specifying the periodic and other reports to be filed with it in connection with the primary distribution of securities issued by the International Finance Corporation (the "IFC"). The regulation, which is designated Regulation IFC,[1] is virtually identical to Regulations BW, [2] IA, [3] AD, [4] and AFDB, [5] which prescribe the reports to be filed by the International Bank for Reconstruction and Development ("IBRD"), the Inter-American Development Bank ("IAD"), the Asian Development Bank ("AD") and the African Development Bank ("AFDB"), respectively. (These four may be referred to herein collectively as the "Development Banks".).

I. Background

United States membership in the IFC was authorized in 1955 by the International Finance Corporation Act (the "IFC Act"). [6] The IFC Act was amended recently to provide that securities issued or guaranteed by the IFC are "exempted securities" within the meaning of section 3(a)(2) of the Securities act of 1933 (the "Securities Act") and section 3(a)(12) of the Securities Exchange Act of 1934 (the "Exchange Act"). [7] The IFC Act directs the IFC to file with the Commission such annual and other reports with regard to such securities as the Commission shall determine to be necessary in the public interest or for the protection of investors. [8] An exemption is also available under section 304(a)(4) of the Trust Indenture Act of 1939. [9]

The IFC was established in 1956 as an affiliate of the IBRD to further economic growth in developing member countries by promoting productive private investment. Its equity capital is provided by 135 member countries that, collectively, determine the IFC's policies and activities. [10] The IBRD and the other Development Banks are financial institutions that do not accept deposits or make short-term loans. They are organized to make loans fostering economic and social development within certain limitations embodied in their charters. Their shareholders are governments. [11] The activities of the IFC and the Development Banks are financed primarily through paid-in capital by members and through borrowing in international capital markets. Also, the IFC borrows from the World Bank under a Master Loan Agreement. In addition to its global borrowing, relying upon the statutory exemption granted to IFC securities, the IFC intends to begin borrowing in the United States' public markets during 1991.

As is the case with the Development Banks, public offerings in the United States of securities issued by the IFC will be subject to safeguards provided in both the IFC's charter and the IFC Act. First, prior to the issuance of any dollar-denominated IFC securities in the United States or any other jurisdiction, the IFC must obtain approval from the National Advisory Council on International Monetary and Financial Policies ("NAC"). [12] Second, the IFC Act

[1] 17 CFR part 289.

[2] 17 CFR part 285.

[3] 17 CFR part 286.

[4] 17 CFR part 287.

[5] 17 CFR part 288.

[6] 17 CFR part 282k.

[7] Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Public Law 101-513, title V, 104 Stat. 1979, 2037. Securities issued by the IFC would be government securities as defined in section 3(a)(42)(C) of the Exchange Act, 15 U.S.C. 78c(a)(42)(C). Persons acting as brokers or dealers in IFC securities would be government securities brokers or government securities dealers within the meaning of section 3(a)(43) or section 3(a)(44) of the Exchange Act, 15 U.S.C. 78c (a)(43) or (a)(44), and those persons would be subject to the registration and other requirements of section 15C of the Exchange Act, 15 U.S.C. 78*o*-5.

[8] 22 U.S.C. 282.

[9] 15 U.S.C. 77ddd (a)(4).

[10] International Finance Corporation, Annual Report 1990.

[11] The IFC and the Development Banks differ in their capital structures. The members of each Development Bank subscribe to both paid-in capital shares, that are fully or partially paid, and callable capital shares, that the Development Bank may call, in order to meet its obligations. The IFC's member country shareholders subscribe to paid-in capital shares only.

The IFC and the Development Banks also differ in certain respects with regard to the terms under which they provide funding. The Development Banks, to the extent that they lend to governments, government owned entities, government controlled entities, or public projects require that the member country or countries receiving the loan or involved in the project guarantee the Development Bank's loan or investment. To the extent that the Development Banks lend to private entities, they do not receive such government guarantees. The IFC, which lends only to private entities, is prohibited from receiving government guarantees on projects it finances.

[12] 22 U.S.C. 282b. See 22 U.S.C. 286b. The NAC was created to coordinate the policies and operations of representatives of the United States on the Development Banks or on agencies otherwise engaged in foreign financial transactions. It is composed of the Secretary of the Treasury (Chairman), who has delegated authority to approve the issuance of dollar denominated securities issued by the IFC and the Development Banks, the Secretaries of State and Commerce, the Chairman of the Federal Reserve Board and the President of the Export-Import Bank of the United States. 22 U.S.C. 286b. See Executive Order No. 11269 of February 14, 1966 (as amended by Ex. Or. No. 11335, March 2, 1967, 32 FR 3933 (providing that the Chairman may consult with interested but unrepresented agencies and may invite them to designate representatives to participate in NAC deliberations); Ex. Or. No. 11808, Sept. 30, 1974, 39 FR 35563; Ex. Or. No. 11977, Mar. 14, 1977, 42 FR 14671; Ex. Or. No. 12164, Sept. 29, 1979, 44 FR 56681; Ex. Or. No. 12188, Jan. 2, 1980, 45 FR 989, Ex. Or. No. 12403, Feb. 8, 1983, 48 FR 6087; Ex. Or. No. 12567, Oct. 2, 1986, 51 FR 35395; Ex. Or. No. 12647, Aug. 2, 1988, 53 FR 29323.

provides that the IFC will file with the Commission such annual and other reports as the Commission considers appropriate.[13] Finally, the IFC Act authorizes the Commission, after consulting with the NAC, to suspend the exemption in whole or in part at any time.[14]

II. Synopsis of Regulation IFC

Regulation IFC, and the rules thereunder, reuqire the IFC to file with the Commission copies of its regular quarterly financial reports and copies of the annual report to its governing board. The quarterly financial reports will be required to be filed with the Commission within 45 days after the end of each fiscal quarter. This time period is consistent with that provided in Regulations IBRD and IAD. While the period is shorter than the time provided in Regulations AFBD and IA, 15 days additional was given the AFDB and the AD because their main offices are located in Africa and the Philippines, respectively, while the main offices of the IFC, like the IBRD and the IAD, are located in the United States. The IFC Annual Report, like the annual reports of the Development Banks, is required to be filed with the Commission within 10 days of its submission to the IFC Board of Governors.

The IFC will be required to file an additional report with the Commission on or prior to the date on which any of its primary obligations are sold to the public in the United States. Schedule A under Regulation IFC sets forth the information and documents to be furnished in a report filed with respect to a distribution of primary obligations of the IFC. The information provided in the report includes a description of the primary obligation being offered, a description of the plan of distribution and any arrangements with underwriters, sub-underwriters and dealers, including arrangements for compensation, a statement of any other expenses to be incurred in connection with the sale of the obligations, a statement of the purposes for which the proceeds from the sale of the obligations will be used, and exhibits, including copies of instruments defining the rights evidenced by the obligations, opinions of counsel, material contracts, and prospectuses or other sales literature.

The Commission has been informed by the IFC that no public offering of securities other than primary obligations is presently contemplated in the United States. Accordingly, the new rules, insofar as they require the reporting of the proposed public sale of securities, are limited to the sale of primary obligations of the IFC. Rules with respect to reporting the sale of securities guaranteed by the IFC will be proposed by the Commission if and when the need arises. Regulations BW, IA, AD and AFDB are also limited to primary obligations.

III. Administrative Procedure Act and Other Statutory Findings

The Commission finds that the notice and public comment procedures pursuant to the Administrative Procedure Act [15] are unnecessary for the following reasons: (1) The regulations adopted herein are virtually identical to those for the Development Banks, each of which was adopted without prior exposure to public comments; (2) the ownership structure and operations of the IFC, like that of the Development Banks, are unique; and (3) the views of the IFC have been received and considered. The Commission finds also that the notice and comment procedures pursuant to the Administrative Procedure Act are impracticable because of the time sensitivity of the IFC's funding activities and the IFC's current consideration of proposals for a public issue in the United States.

In addition, the Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Policies, has express authority to suspend the exemption at any time. The Commission finds that this constitutes a substantial investor protection measure.

The Commission further finds that, because the rules are in the nature of exemptive rules, and because the effected party has and has had actual notice of the rules, there is good cause to dispense with the 30 days advance publication prior to effectiveness requirement pursuant to 5 U.S.C. 553(d), and therefore the rules shall be effective on July 15, 1991. The IFC will be in a position to proceed immediately with public offerings of its primary obligations in the United States.

IV. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, [16] the Chairman of the Commission has certified that adoption of Regulation IFC will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, is attached to this release as appendix A.

V. Statutory Basis of New Rules

Part 289 of the Code of the Federal Register is being adopted under section 13(a) of the International Finance Corporation Act (as amended) [17] and section 19(a) of the Securities Act.[18]

List of Subjects in 17 CFR Part 289

Reporting and recordkeeping requirements, Securities.

VI. Text of Amendment

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

1. By adding new part 289 to read as follows:

PART 289—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 13(a) OF THE INTERNATIONAL FINANCE CORPORATION ACT

Sec.

289.1 Applicability of this part.
289.2 Periodic reports.
289.3 Reports with respect to proposed distribution of primary obligations.
289.4 Preparation and filing of reports.
289.101 Schedule A. Information required in reports pursuant to § 289.3.

Authority: 15 U.S.C. 77s(a); 22 U.S.C. 282m.

§ 289.1 Applicability of this part.

This part (Regulation IFC) prescribes the reports to be filed with the Securities and Exchange Commission by the International Finance Corporation ("IFC") pursuant to section 13(a) of the International Finance Corporation Act.

§ 289.2 Periodic reports.

(a) Within 45 days after the end of each of its fiscal quarters the IFC shall file with the Commission the following information:

(1) Two copies of information as to any purchases or sales by the IFC of its primary obligations during such quarter;

(2) Two copies of the IFC's regular quarterly financial statement; and

(3) Two copies of any material modifications or amendments during such quarter of any exhibits (other than constituent documents defining the rights of holders of securities of other issuers guaranteed by the IFC, and loan and guaranty agreements to which the IFC is a party) previously filed with the Commission under any statute.

(b) Each annual report of the IFC to its Board of Governors shall be filed with the Commission within 10 days after the

[13] 22 U.S.C. 282k(a).
[14] 22 U.S.C. 282k(b).
[15] 5 U.S.C. 553(b), 553(c).
[16] 5 U.S.C. 605(b).
[17] 22 U.S.C. 282m.
[18] 15 U.S.C. 77s(a).

submission of such report to the Board of Governors.

§ 289.3 Reports with respect to proposed distribution of primary obligations.

The IFC shall file with the Commission, on or prior to the date on which it sells any of its primary obligations in connection with a distribution of such obligations in the United States, a report containing the information and documents specified in Schedule A of this part. The term "sell" as used in this section and in Schedule A of this Part means a completed sale, or a firm commitment to sell to an underwriter.

§ 289.4 Preparation and filing of reports.

(a) Every report required by this regulation shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the IFC by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to § 289.3 may be filed in the form of a prospectus to the extent that such prospectus contains the information specified in Schedule A of this Part.

§ 289.101 Schedule A. Information required in reports pursuant to § 289.3.

This schedule specifies the information and documents to be furnished in a report pursuant to § 289.3 with respect to a proposed distribution of primary obligations of the IFC. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

Item 1: Description of obligations.

As to each issue of primary obligations of the IFC that is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payments dates.

(c) The maturity date or, if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of:

(i) Any redemption provisions, and

(ii) Any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the IFC will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the IFC will, as to the payment of interest and principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority, to the extent known.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holder thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the IFC with respect thereto.

(i) The name and address of the fiscal or paying agent of the IFC, if any.

Item 2: Distribution of obligations.

(a) Outline briefly the plan of distribution of the obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the IFC or to any principal underwriter named above designed to stabilize the market for the obligations for the account of the IFC or the principal underwriters as a group and indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

Item 3: Distribution spread.

The following information shall be given, in substantially the tabular form indicated, as to all primary obligations that are to be offered for cash (estimate, if necessary):

	Price to the public	Selling discounts & commissions	Proceeds to the IFC
Per Unit	—	—	—
Total	—	—	—

Item 4: Discounts and commissions to sub-underwriters and dealers.

State briefly the discounts and commissions to be allowed or paid to dealers. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice, without giving the additional amounts to be so paid.

Item 5: Other expenses of the distribution.

Furnish a reasonably itemized statement of all expenses of the IFC in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions that are provided in Items 2, 3 and 4.

Instruction

Insofar as practicable, the itemization shall include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

Item 6: Application of proceeds.

Make a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds to the IFC from the obligations are to be used, and state the approximate amount to be used for each such purpose.

Item 7: Exhibits to be furnished.

A copy of each of the following documents shall be attached to or otherwise furnished as a part of the report:

(a) Each constituent instrument defining the rights evidenced by the obligations.

(b) An opinion of counsel, written in the English language, as to the legality of the obligations.

(c) Each material contract pertaining to the issuance or distribution of the obligations, to which the IFC or any principal underwriter of the obligations is or is to be party, except selling group agreements.

(d) Each prospectus or other sales literature to be provided by the IFC or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

Dated: July 8, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission,

hereby certify, pursuant to 5 U.S.C. 605(b), that the rules contained in 17 CFR part 289 relating to exemptive regulations for the securities of the International Finance Corporation (the "IFC") will not, if promulgated, have a significant economic impact upon a substantial number of small entities. The reason for this certification is that the rules apply only to the IFC, which is not a small entity as defined in 17 CFR 240.0–10.

Dated: July 3, 1991.

Richard C. Breeden,

Chairman.

[FR Doc. 91–16707 Filed 7–12–91; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Part 290

[Release Nos. 33–6904; 34–29411; 39–2269; International Series Release No. 298]

Primary Offerings by the European Bank for Reconstruction and Development

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today is adopting a new regulation specifying the periodic and other reports to be filed with it by the European Bank for Reconstruction and Development pursuant to the European Bank for Reconstruction and Development Act. The regulation is virtually identical to the regulations previously adopted by the Commission in connection with primary distributions of securities issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank and the African Development Bank. The regulation will ensure the availability of information about the European Bank for Reconstruction and Development for investors who may purchase securities issued by the European Bank for Reconstruction and Development and distributed in the United States.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Amy N. Kroll, (202) 272–3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today adopted rules and regulations specifying the periodic and other reports to be filed with it in connection with the primary distribution of securities issued by the European Bank for Reconstruction and Development (the "EBRD"). The regulation, which is designated Regulation EBRD,[1] is virtually identical to Regulations BW,[2], IA [3] AD,[4] and AFDB,[5] which prescribe the reports to be filed by the International Bank for Reconstruction and Development ("IBRD"), the Inter-American Development Bank ("IAD"), the Asian Development Bank ("AD") and the African Development Bank ("AFDB"), respectively. (These four may be referred to herein collectively as the "Development Banks".)

I. Background

United States membership in the EBRD was authorized on November 5, 1990 by the European Bank for Reconstruction and Development Act (the "EBRD Act").[6] The EBRD Act provides that securities issued by the EBRD in connection with the raising of funds for inclusion in the EBRD's ordinary capital resources or guaranteed by the EBRD as to both principal and interest are "exempted securties" within the meaning of section 3(a)(2) of the Securities Act of 1933 (the "Securities Act") and section 3(a)(12) of the Securities Exchange Act of 1934 (the "Exchange Act").[7] The EBRD Act directs the EBRD to file with the Commission such annual and other reports with regard to such securities as the Commission shall determine to be necessary in the public interest or for the protection of investors.[8] An exemption is also available under section 304(a)(4) of the Trust Indenture Act of 1939.[9]

The organization and financing of the EBRD is similar to that of the Development Banks, which differ somewhat from traditional banks. The EBRD is a financial institution that does not accept deposits or make short-term loans. Its shareholders are 39 governments, including the United States, and two international organizations, the European Economic Community and the European Investment Bank. The EBRD is organized to make loans fostering economic and social development within certain limitations embodied in its charter. These activities are financed primarily through paid-in capital by members and through borrowing in international capital markets.

The EBRD was established in 1991 to foster the transition of Central and Eastern European countries towards open market-oriented economies and the promotion of private and entrepreneurial initiatives. To achieve this the EBRD shall assist recipient member countries to implement structural and sectoral economic privatization, to help their economies gradually become fully integrated into the international economy.[10]

The EBRD intends to begin borrowing globally, including in the United States, during 1991. As is the case with the other Development Banks, public offerings in the United States of securities issued by the EBRD would be subject to a number of safeguards both in the EBRD's charter and provided for in the EBRD Act.

The EBRD capital structure is such that its obligations, in effect, rest ultimately on the credit of its members, one of which is the United States. Members subscribe to capital shares, a percentage of which a re paidin and a percentage of which are subject to call if necessary to meet the EBRD's obligations. In the event of a default, the EBRD may issue a call, if necessary, on a pro rata basis, to members for the amount necessary to meet the obligations.

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[1] 17 CFR part 290.

[2] 17 CFR part 285.

[3] 17 CFR part 288.

[4] 17 CFR part 287.

[5] 17 CFR part 288.

[6] 11 U.S.C. 290*i*. Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Public Law 101–513, title V, 104 Stat. 1979, 2034.

[7] 22 U.S.C. 290*i*–9(a). Securities issued by the EBRD would be government securities as defined in section 3(a)(42)(C) of the Exchange Act, 15 U.S.C. 78c(a)(42)(C). Persons acting as brokers or dealers in EBRD securities would be government securities brokers or government securities dealers within the meaning of section 3(a)(43) or section 3(a)(44) of the Exchange Act, 15 U.S.C. 78c (a)(43) or (a)(44), and those persons would be subject to the registration and other requirements of section 15C of the Exchange Act, 15 U.S.C. 78*o*–5.

[8] 22 U.S.C. 290*i*–9(a).

[9] 15 U.S.C. 77ddd(a)(4).

[10] The EBRD will provide funding to both government controlled or owned entities and privately owned entities. To the extent that the EBRD lends to governments, government owned entities, government controlled entities, or public projects, the EBRD may require that the member country or countries receiving the loan or involved in the project guarantee the EBRD's loan or investment. To the extent that the EBRD lends to private sector enterprises, it will follow the policy, adhered to by the Development Banks and required of the International Finance Corporation, of not requiring a member government guarantee. Agreement Establishing the European Bank for Reconstruction and Development, Article 14 and Notes there o

In addition, the EBRD Act provides safeguards, modeled on the provisions governing the other Development Banks in which the United States participates. First, prior to the issuance of any dollar-denominated EBRD securities in the United States or any other jurisdiction, the EBRD must obtain approval from the National Advisory Council on International Monetary and Financial Policies ("NAC").[11] Second, the EBRD Act provides that the EBRD will file with the Commission such annual and other reports as the Commission considers appropriate.[12] Finally, the EBRD Act authorizes the Commission, after consulting with the NAC, to suspend the exemption in whole or in part at any time.[13]

II. Synopsis of Regulation EBRD

Regulation EBRD, and the rules thereunder, require the EBRD to file with the Commission copies of the EBRD's regular quarterly financial reports and copies of the annual report to its governing board. The quarterly financial reports will be required to be filed with the Commission within 45 days after the end of each fiscal quarter. This time period is consistent with that provided in Regulations IBRD and IAD. While the period is shorter than the time provided in Regulations AFBD and IA, 15 days additional was given the AFDB and the AD because their main offices are located in Africa and the Philippines, respectively, while the main offices of the IBRD and the IAD are located in the United States. The proximity of the EBRD main office in London to the United States supports the shorter time period for filing the EBRD's reports. The EBRD Annual Report, like the annual reports of the Development Banks, is required to be filed with the Commission within 10 days of its submission to the EBRD Board of Governors.

The EBRD will be required to file an additional report with the Commission on or prior to the date on which any of its primary obligations are sold to the public in the United States. Schedule A under Regulation EBRD sets forth the information and documents to be furnished in a report filed with respect to a distribution of primary obligations of the EBRD. The information provided in the report includes a description of the primary obligation being offered, a description of the plan of distribution and any arrangements with underwriters, sub-underwriters and dealers, including arrangements for compensation, a statement of any other expenses to be incurred in connection with the sale of the obligations, a statement of the purposes for which the proceeds from the sale of the obligations will be used, and exhibits, including copies of instruments defining the rights evidenced by the obligations, opinions of counsel, material contracts, and prospectuses or other sales literature.

The Commission has been informed by the EBRD that no public offering of securities other than primary obligations is presently contemplated in the United States. Accordingly, the new rules, insofar as they require the reporting of the proposed public sale of securities, are limited to the sale of primary obligations of the EBRD. Rules with respect to reporting the sale of securities guaranteed by the EBRD as to both interest and principal will be proposed by the Commission if and when the need arises. Regulations BW, IA, AD and AFDB also are limited to primary obligations.

III. Administrative Procedure Act and Other Statutory Findings

The Commission finds that the notice and public comment procedures pursuant to the Administrative Procedure Act [14] are unnecessary for the following reasons: (1) The regulations adopted herein are virtually identical to those for the Development Banks, each of which was adopted without prior exposure to public comments; (2) the ownership structure and operations of the EBRD, like that of the Development Banks, are unique; and (3) the views of the EBRD have been received and considered. The Commission finds also that the notice and comment procedures pursuant to the Administrative Procedure Act are impracticable because of the time sensitivity of the EBRD's funding activities and the EBRD's current intention to commence borrowing in the near future.

In addition, the Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Policies, has express authority to suspend the exemption at any time. The Commission finds that this consititutes a substantial investor protection measure.

The Commission further finds that, because the rules are in the nature of exemptive rules, and because the effected party has and has had actual notice of the rules, there is good cause to dispense with the 30 days advance publication prior to effectiveness requirement pursuant to 5 U.S.C. 553(d), and therefore the rules shall be effective on July 15, 1991. The EBRD will be in a position to proceed immediately with public offerings of its primary obligations in the United States.

IV. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[15] the Chairman of the Commission has certified that adoption of Regulation EBRD will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, is attached to this release as appendix A.

V. Statutory Basis of New Rules

Part 290 of the Code of the Federal Register is being adopted pursuant to section 9 of the European Bank for Reconstruction and Development Act [16] and section 19(a) of the Securities Act.[17]

List of Subjects in 17 CFR Part 290

Reporting and recordkeeping requirements, Securities.

VI. Text of Amendment

In accordance with the foregoing, title 17. chapter II of the Code of Federal Regulations is amended as follows:

1. By adding new part 290 to read as follows:

PART 290—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 9(a) OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT ACT

Sec.

290.1 Applicability of this part.
290.2 Periodic reports.

[11] 22 U.S.C. 290*l*–4. See 22 U.S.C. 286b. The NAC was created to coordinate the policies and operations of representatives of the United States on the Development Banks or on agencies otherwise engaged in foreign financial transactions. It is composed of the Secretary of the Treasury (Chairman), who has delegated authority to approve the issuance of dollar denominated securities issued by the EBRD and the Development Banks, the Secretaries of State and Commerce, the Chairman of the Federal Reserve Board and the President of the Export-Import Bank of the United States. 22 U.S.C. 286b. See Executive Order No. 11269 of February 14, 1966 (as amended by Ex. Or. No. 11335, March 2, 1967, 32 FR 3933 (providing that the Chairman may consult with interested but unrepresented agencies and may invite them to designate representatives to participate in NAC deliberations); Ex. Or. No. 11808, Sept. 30, 1974, 39 FR 35563; Ex. Or. No. 11977, Mar. 14, 1977, 42 FR 14671; Ex. Or. No. 12164, Sept. 29, 1979, 44 FR 56681; Ex. Or. No. 12188, Jan. 2, 1980, 45 FR 989; Ex. Or. No. 12403, Feb. 8, 1983, 48 FR 6087; Ex. Or. No. 12567, Oct. 2, 1986, 51 FR 35395; Ex. Or. No. 12647, Aug. 2, 1988, 53 FR 29323.

[12] 22 U.S.C. 290*l*–9(a).

[13] 22 U.S C. 290*l*–9(b).

[14] 5 U.S.C. 553(b), 553(c).

[15] 5 U.S.C. 605(b).

[16] 22 U.S.C. 290*l*–9.

[17] 22 U.S.C. 77*s*(a).

Sec.
290.3 Reports with respect to proposed distribution of obligations.
290.4 Preparation and filing of reports.
290.101 Schedule A. Information required in reports pursuant to § 290.3.

Authority: 15 U.S.C. 77s(a); 22 U.S.C. 290*l*–9.

§ 290.1 Applicability of this part.

This part (Regulation EBRD) prescribes the reports to be filed with the Securities and Exchange Commission by the European Bank for Reconstruction and Development ("EBRD") pursuant to section 9(a) of the European Bank for Reconstruction and Development Act.

§ 290.2 Periodic reports.

(a) Within 45 days after the end of each of its fiscal quarters the EBRD shall file with the Commission the following information:

(1) Two copies of information as to any purchases or sales by the EBRD of its primary obligations during such quarter;

(2) Two copies of the EBRD's regular quarterly financial statement; and

(3) Two copies of any material modifications or amendments during such quarter of any exhibits (other than constituent documents defining the rights of holders of securities of other issuers guaranteed by the EBRD, and loan guaranty agreements to which the EBRD is a party) previously filed with the Commission under any statute.

(b) Each annual report of the EBRD to its Board of Governors shall be filed with the Commission within 10 days after the submission of such report to the Board of Governors.

§ 290.3 Reports with respect to proposed distribution of obligations.

The EBRD shall file with the Commission, on or prior to the date on which it sells any of its primary obligations in connection with a distribution of such obligations in the United States, a report containing the information and documents specified in Schedule A of this Part. The term "sell" as used in this section and in Schedule A of this Part means a completed sale, or a firm committment to sell to an underwriter.

§ 290.4 Preparation and filing of reports.

(a) Every report required by this regulation shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the EBRD by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to § 290.3 may be filed in the form of a prospectus to the extent that such prospectus contains the information specified in Schedule A of this Part.

§ 290.101 Schedule A. Information required in reports pursuant to § 290.3.

This schedule specifies the information and documents to be furnished in a report pursuant to § 290.3 with respect to a proposed distribution of primary obligations of the EBRD. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

Item 1: Description of obligations.

As to each issue of primary obligations of the EBRD that is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payment dates.

(c) The maturity date or, if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of:

(i) Any redemption provisions and

(ii) Any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the EBRD will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the EBRD will, as to the payment of interest and principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority, to the extent known.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holders thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the EBRD with respect thereto.

(i) The name and address of the fiscal or paying agent of the EBRD, if any.

Item 2: Distribution of obligations.

(a) Outline briefly the plan of distribution of obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the EBRD or to any principal underwriter named above designed to stabilize the market for the obligations for the account of the EBRD or the principal underwriters as a group and indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

Item 3: Distribution spread.

The following information shall be given, in substantially the tabular form indicated, as to all primary obligations that are to be offered for cash (estimate, if necessary):

	Price to the public	Selling discounts & commis-sions	Proceeds to the EBRD
Per Unit	—	—	—
Total	—	—	—

Item 4: Discounts and commissions to sub-underwriters and dealers.

State briefly the discounts and commissions to be allowed or paid to dealers. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice, without giving the additional amounts to be so paid.

Item 5: Other expenses of the distribution.

Furnish a reasonably itemized statement of all expenses of the EBRD in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions that are provided in Items 2, 3 and 4.

Instruction

Insofar as practicable, the itemization shall

include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

Item 6. Application of proceeds.

Make a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds to the EBRD from the obligations are to be used, and state the approximate amount to be used for each such purpose.

Item 7: Exhibits to be furnished.

A copy of each of the following documents shall be attached to or otherwise furnished as a part of the report:

(a) Each constituent instrument defining the rights evidenced by the obligations.

(b) An opinion of counsel, written in the English language, as to the legality of the obligations.

(c) Each material contract pertaining to the issuance or distribution of the obligations, to which the EBRD or any principal underwriter of the obligations is or is to be a party, except selling group agreements.

(d) Any prospectus or other sales literature to be provided by the EBRD or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

Dated: July 8, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the rules contained in 17 CFR part 290 relating to exemptive regulations for the securities of the European Bank for Reconstruction and Development (the "EBRD") will not, if promulgated, have a significant economic impact upon a substantial number of small entities. The reason for this certification is that the rules apply only to the EBRD, which is not a small entity as defined in 17 CFR 240.0–10.

Dated: July 3, 1991.

Richard C. Breeden,

Chairman.

[FR Doc. 91–16708 Filed 7–12–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 91–60]

Customs Regulations Amendment Removing Nicaragua From List of Nations Relating to Foreign Clearance of Vessels

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing Nicaragua from the list of countries for which vessels may not be cleared until complete foreign manifests and all required shipper's export declarations are filed with the district director of Customs. The Department of State has informed Customs that the democratic election held recently in Nicaragua ended any threat to U.S. national security previously posed by the Nicaraguan government.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Carrier Rulings Branch (202–566–5706).

SUPPLEMENTAL INFORMATION:

Background

Section 4.75, Customs Regulations (19 CFR 4.75), sets out the clearance procedures for vessels bound for foreign ports, which have incomplete cargo declarations, incomplete export declarations, and bonds given in lieu thereof. Section 4.75(c) lists the countries for which outbound vessels may not be cleared until complete foreign manifests and all required shipper's export declarations have been filed with the appropriate district director of Customs. Such action is a necessary aid to Customs in the enforcement of export laws and regulations.

Because Nicaragua had posed immediate potential export control risks, it was determined in Executive Order (E.O.) 12513 dated May 1, 1985, that the policies and actions of the Nicaraguan government constituted an unusual and extraordinary threat to the national security and foreign policy of the U.S. As a result, a national emergency was declared and trade with Nicaragua was prohibited. The national emergency described in the E.O. prohibiting trade with Nicaragua was continued by subsequent annual Presidential Notices through 1989.

Accordingly, by T.D. 87–1, published in the Federal Register on January 5, 1987 (52 FR 254), Nicaragua was added to the list of countries in § 4.75(c), Customs Regulations (19 CFR 4.75(c)). Under § 4.75(c), as noted, vessels may not be cleared to proceed to ports in any of the countries listed thereunder until complete outward foreign manifests and all required shipper's export declarations have been filed with the appropriate district director of Customs.

When a democratic national election was held in February 1990 in Nicaragua, thus effectively ending the unusual and extraordinary threat to the national security and foreign policy of the U.S. posed by the previous Nicaraguan government, the President terminated the national emergency by E.O. 12707 dated March 13, 1990.

By letter dated August 29, 1990, the Department of State informed Customs that the need to continue the national emergency declared on May 1, 1985, had ended, and recommended that Nicaragua be removed from the list of countries in § 4.75(c) for which complete foreign manifests and export declarations were required.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Because Nicaragua no longer poses immediate potential export control risks to the U.S., it would be contrary to the public interest to delay implementation of the change by seeking comments. Therefore, it has been determined that good cause exists for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and, for the same reason, under 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Inapplicability of Executive Order 12291 and Regulatory Flexibility Act

Because this document will not result in a "major rule" as defined in E.O. 12291, Customs has not prepared a regulatory impact analysis. Nor is this document subject to the regulatory analysis or other requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) or any other statute.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs inspection and duties, Harbors, Vessels.

Amendment to the Regulations

For the reasons set forth in the preamble, part 4, Customs Regulations (19 CFR part 4) is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for part 4 continues in part to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 2103, and 46 U.S.C. App. 3:

* * * * *

§ 4.75 also issued under 46 U.S.C. App. 91

* * * * *

§ 4.75 [Amended]

2. Section 4.75(c), Customs Regulations (19 CFR 4.75(c)), is amended by removing "Nicaragua" from the list of countries set forth.

Carol Hallett,

Commissioner of Customs.

Approved: July 9, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91-16738 Filed 7-12-91; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Parts 122 and 178

[T.D. 91-61]

Documents Required Aboard Private Aircraft

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations, part 122; to provide that the documents to be aboard private aircraft upon arrival in the U.S., and to be presented for inspection at such time when requested by a Customs officer, must include a valid pilot certificate/license, medical certificate, authorization, or license, and for U.S.-registered aircraft arriving from a foreign place, a valid certificate of registration which would not include a so-called "pink slip", a "pink slip" being nothing more than a duplicate copy of the application form (FAA Form AC 8050-1) for a certificate of registration. The penalty provisions of part 122 are also amended to make express reference to these documentary requirements. The purpose of this rule is to achieve greater enforcement capability in processing private aircraft arriving from foreign, and to combat the continuing problem of drug smuggling by air.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Phyllis Isom, Office of Passenger Enforcement and Facilitation, (202)-566-5607.

Per Jensen, Office of Aviation Operations, (202)-535-9051.

SUPPLEMENTARY INFORMATION:

Background

As amended by Public Law 99-570, on October 27, 1986, 19 U.S.C. 1433 provides, in paragraph (d), that an "aircraft pilot" shall present to Customs officers such documents, papers, or manifests as the Secretary shall by regulation prescribe." Heretofore, however, the documents required in § 122.27, Customs Regulations (19 CFR 122.27), with reference to private aircraft arriving from foreign, have essentially pertained only to baggage declarations for crewmembers and passengers, and if found necessary, written declarations of articles acquired in foreign areas.

In order to give greater enforcement capability in processing private aircraft arriving from abroad, and to combat the problem of drug smuggling by air, Customs published a notice of proposed rulemaking in the **Federal Register** on February 14, 1990 (55 FR 5225), soliciting public comment on a proposed amendment to § 122.27, to require that the documents to be aboard an aircraft upon arrival from foreign, and to be presented at such time for inspection when requested by a Customs officer, include a valid pilot certificate, flight instructor certificate, medical certificate, authorization or license, and for U.S.-registered aircraft, a valid certificate of registration. In this latter regard, 49 U.S.C. App. 1401(g) also requires that "(t)he operator of an aircraft shall make available for inspection an aircraft's certificate of registration upon request by a Federal, State, or local law enforcement officer." A certificate of registration would not include a so-called "pink slip" (FAA Form AC 8050-1), a "pink slip" being nothing more than a duplicate copy of the application for a certificate of registration.

Furthermore, inasmuch as an essential part of the inspection process is document review, to help insure compliance with the proposed document requirements, the penalty provisions set forth in subpart Q of part 122, specifically § 122.161 (19 CFR 122.161), which include seizure and forfeiture of the aircraft, were also proposed to be amended so as to explicitly apply to private aircraft which do not have aboard a valid certificate of registration upon arrival.

Eighteen comments were received in response to the notice of proposed rulemaking. An analysis of these comments is set forth below.

Analysis of Comments

Comment: Many of the commenters indicated that the proposed documentary requirements would unduly burden the legitimate flyer. They believed that the proposed rule would not deter the smuggler, that the criminal would ignore the rule or forge the documents. Along these lines, one commenter observed that drug smugglers did not stop for Customs, and that Customs should specifically target the smuggler.

Response: Section 122.27 does not impose any additional burden upon flyers beyond that which FAA already requires at the present time. While it is true that the documents in question could potentially be forged, the requirement that they be presented for inspection offers Customs the opportunity to establish the legitimacy of the pilot and the aircraft.

Comment: One commenter suggested that theft of pilot documents was a common occurrence when pilots were in a foreign country, and that the proposed amendment of § 122.161 contained sanctions which were too drastic for these instances.

Response: The sanctions available for failure to produce the required documents upon request fall within the purview of 19 U.S.C. 1436. Customs administrative procedures provide for unexpected and emergency situations to be taken into account in mitigating penalties and assessing the specific penalty appropriate to the circumstances.

Comment: Numerous commenters stated that the proposed rule was a duplication of FAA's responsibilities, and that Customs should not be involved in the area of aircraft and pilot documentation. One such commenter indicated that the proposed amendment was a strategic attempt by Customs to amass excessive enforcement power.

Response: Customs enforces the laws of many other agencies, and having an enforcement presence at points of arrival in the U.S., Customs is, accordingly, in a position to effectively enforce FAA and other agency regulations. In addition to this, Customs itself has been given direct enforcement authority in this area (19 U.S.C. 1433(d)). By handling the failure to produce the relevant documentation under Customs

authority, the administrative burden on the Government should be reduced.

Comment: Several commenters stated that the effect of not accepting a pink slip as a valid registration would be to virtually immobilize the aircraft.

Response: A pink slip is not considered a valid registration by the FAA. Customs understands that the FAA is currently modernizing its processing procedures with respect to the issuance of aircraft registrations and pilot certificates.

Comment: A number of commenters indicated that Customs should not be involved with the pilot's medical certificate.

Response: Customs position is to use the existing documents, as required by the FAA, which identify a pilot as eligible to fly. The medical certificate is a critical component of this documentation.

Comment: One commenter asked that Customs treat private aircraft the same as vehicular traffic in Michigan and Montana.

Response: Customs has long maintained that different modes of transport pose different smuggling threats and enforcement problems. These threats change frequently, and Customs attempts to address them with flexibility and foresight. Customs regards vehicular traffic arriving from Canada, and private aircraft arriving from areas south of the U.S., as significantly different and warranting different degrees of attention.

Comment: One commenter advocated that the term "commander" in proposed § 122.27(c)(1) be replaced with "certificated aircrew", in order to require that all persons acting as crewmembers aboard a private aircraft arriving from foreign, such as the copilot and navigator, be subject to the same requirement for presentation of the specified documentation.

Response: Customs finds merit in this request and will study the possibility of extending the rule to "certificated aircrew". Customs will also study the possibility of expanding the scope of § 122.27(c)(2) to include "private aircraft" as defined in § 122.23(a) (19 CFR 122.23(a)), which covers certain aircraft carrying passengers or cargo for hire. Any decision to further expand the scope of § 122.27(c), would, however, be the subject of a separate document.

Conclusion

After careful consideration of the comments received and further review of the matter, it has been determined that the amendments with the modifications hereinafter discussed should be adopted. In this latter regard, the term "pilot license" appearing in the headings of § 122.27(c) and (c)(1) is changed to "pilot certificate/license", in order to accord with FAA regulations and to avoid confusion among the U.S. pilot community, where "pilot certificate" is generally used to refer to a license. To conform with this, the term "pilot certificate" in § 122.27(c)(1) is likewise changed accordingly. In addition, § 122.27(c)(1) is revised by deleting the requirement for a "flight certificate". The presentation of a flight certificate is considered unnecessary since the "pilot certificate/license" will always be required.

Executive Order 12291

The document does not meet the criteria for a "major rule" as defined in section (1)(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final regulation is in § 122.27. The collection of information contained in this regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515–0175. The estimated average burden associated with this collection of information is .0166 hour per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 122

Air transportation, Airports, Airport security.

19 CFR Part 178

Collection of information, Paperwork requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, parts 122 and 178, Customs Regulations (19 CFR parts 122, 178), are amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues in part to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644, 49 U.S.C. App. 1509. * * *

2. Section 122.27 is amended by adding a new paragraph (c) to read as follows:

§ 122.27 Documents required.

* * * * *

(c) *Pilot certificate/license, certificate of registration.*—(1) *Pilot certificate/license.* A commander of a private aircraft arriving in the U.S. must present for inspection a valid pilot certificate/license, medical certificate, authorization, or license held by that person, when presentation for inspection is requested by a Customs officer.

(2) *Certificate of registration.* A valid certificate of registration for private aircraft which are U.S.-registered must also be presented upon arrival in the U.S., when presentation for inspection is requested by a Customs officer. A so-called "pink slip" is a duplicate copy of the Aircraft Registration Application (FAA Form AC 8050–1), and does not constitute a valid certificate of registration authorizing travel internationally.

3. Section 122.161 is revised to read as follows:

§ 122.161 In general.

Except as provided in § 122.14, any person who violates any Customs requirements stated in this part, or any regulation that applies to aircraft under § 122.2, is, in addition to any other applicable penalty, subject to civil penalty of $5,000 as provided by 49 U.S.C. App. 1474, except for overages, and failure to manifest narcotics or marihuana, in which cases the penalties set forth in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) apply. or for failure to report arrival or to

present the documents required by § 122.27(c) of this part in which cases the penalties set forth in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436) apply, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the Customs laws. A penalty or forfeiture may be mitigated under part 171 of this chapter.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

§ 178.2 [Amended]

2. Section 178.2 is amended by adding the following in the appropriate numerical sequence according to the section number under the columns indicated:

19 CFR section	Description	OMB control No.
*	*	*
§ 122.27	Documents required aboard private aircraft	1515-0175
*	*	*

Carol Hallett,
Commissioner of Customs.
Approved: July 9, 1991.
Peter K. Nunez,
Assistant Secretary of the Treasury.
[FR Doc. 91-16739 Filed 7-12-91; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 58

[Docket No. 90N-0095]

Good Laboratory Practice Regulations; Removal of Examples of Methods of Animal Identification

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations on good laboratory practice (GLP) for nonclinical laboratory studies to remove the examples of methods of animal identification given in 21 CFR 58.90(d). FDA has concluded that adequate Federal guidance is available on the humane care and use of research animals and that the change does not affect the responsibility of testing facilities to select humane methods of animal identification. This action is being taken in response to a citizen petition.

EFFECTIVE DATE: September 13, 1991.

FOR FURTHER INFORMATION CONTACT: Paul D. Lepore, Division of Compliance Policy (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2390.

SUPPLEMENTARY INFORMATION:

I. Background

In a document published in the **Federal Register** on July 3, 1990 (55 FR 27476), FDA proposed to amend the GLP regulations for nonclinical laboratory studies to remove the examples of methods of animal identification given in 21 CFR 58.90(d). FDA received 15 comments on the proposal, as follows: 7 were from private citizens; 5 were from representatives of animal welfare interest groups; and 3 were from members of the research or scientific community. All comments agreed with the agency's proposal to remove two animal identification procedures; i.e., ear tag and ear punch, from the GLP regulations. Two comments, however, urged the adoption of the proposal made by the petitioners (People for the Ethical Treatment of Animals, P.O. Box 42516, Washington, DC 20015 and New England Anti-Vivisection Society, 330 Washington St., Boston, MA 02108) to remove references to ear tag and ear punch in 21 CFR 58.90(d) and to add a reference to microchip transponder as an appropriate means of warmblooded animal identification. One of the comments also suggested that the words "and humane" be inserted after the word "appropriate" in the regulation.

In support of these proposals, one comment asserted that the purpose of the GLP is "to provide guidance to our nation's laboratories regarding the best methods by which to promote the humane treatment of animals while being used in medical research and testing." Accordingly, that comment suggested that it is incumbent upon FDA "to step into a leadership role in the area of laboratory identification." Another comment suggested that neither the Animal Welfare Act (7 U.S.C. 2131, *et seq.*), the National Institutes of Health publication entitled "Guide For The Care And Use of Laboratory Animals," nor the Public Health Service's Policy on Humane Care and Use of Laboratory Animals provided adequate guidance on appropriate methods of animal identification.

While the agency agrees that the GLP regulations are intended to foster the humane care and treatment of animals used in nonclinical laboratory studies, it disagrees with the comments' opinions that FDA should prescribe by regulation acceptable and humane methods of animal identification. It would not be feasible for the agency to develop a comprehensive listing of acceptable identification methods which would be considered humane and suit every experimental situation. For example, the comments asserted that the GLP regulations should list color code, tattoo, and microchip transponder as acceptable identification methods, but FDA understands that a number of other procedures are in use; e.g., cage cards, neck chains, collars, leg and wing bands, fur stains, freeze marking, color patterns, and photographs. Each of these methods may be considered humane and useful in certain circumstances, and it may be unrealistic to achieve scientific and ethical consensus on the most humane methods. Finally, a prescribed listing could stifle research efforts on the development of new, more humane methods of animal identification.

The agency also disagrees with the comment's suggestion that adequate Federal guidance on the humane care and use of research animals does not exist. The Animal Welfare Act and the Department of Agriculture's implementing regulations (9 CFR 2.30 through 2.38) require each research facility to appoint an institutional animal care and use committee (IACUC), composed of members qualified through experience and expertise, to review and inspect the research facility's program for humane care and use of the animals. One of the functions of the IACUC is to assure that procedures will avoid or minimize discomfort and pain to the animals (9 CFR 2.31). The agency does not believe it prudent to restrict such committees' powers in the crucial matter of proper animal identification.

Accordingly, FDA has concluded that the received comments proposing additional references to acceptable animal identification methods are not persuasive, and the proposed rule is being finalized as proposed. This amendment will not change any substantive requirements of the GLP regulations, and it does not affect the responsibility of testing facilities to use humane methods of animal identification.

II. Economic Impact

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 and under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 58 is amended as follows:

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

1. The authority citation for 21 CFR part 58 continues to read as follows:

Authority: Secs. 402, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 512–516, 518–520, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360b–360f, 360h–360j, 371, 376, 381); secs. 215, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 262, 263b–263n).

§ 58.90 [Amended]

2. Section 58.90 Animal care is amended in paragraph (d) by removing the second parenthetical expression.

Dated: July 3, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–16730 Filed 7–12–91; 8:45 am]

BILLING CODE 4160–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning July 1, 1991. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in May 1991 through July 1991. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8850 ((202) 778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning July 1, 1991, the interest charged on the underpayment of taxes will be at a rate of 10 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the July 1 through September 30, 1991, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending appendix B to Part 2610 to add the vested benefits valuation rates for plan years beginning in May through July of 1991.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100

million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, appendix A and appendix B to part 2610 and appendix A to part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307 (1988), as amended by sec. 7881(h), Pub. L. 101–239, 103 Stat. 2106, 2242.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning July 1, 1991, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
*	*	*
July 1, 991	September 30, 1991.	10

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in May through July of 1991, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
*	*
May 1991	6.57
June 1991	6.62
July 1991	6.78

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 9312, 9313, Pub. L. 100–203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning April 1, 1991, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
*	*	*
July 1, 1991	September 30, 1991.	10

Issued in Washington, DC, this 10th day of July 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91–16752 Filed 7–12–91; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from July 1, 1991, to September 30, 1991.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Harold Ashner, Assistant General Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the

interest rate of 8½ percent, which will be effective from July 1, 1991 through September 30, 1991. This rate represents a decrease of one half percent from the rate in effect for the second quarter of 1991. This rate is based on the prime rate in effect on June 17, 1991.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of the public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

2. Appendix A is amended by adding to the end of the table therein a new entry as follows:

From	To	Date of quotation	Rate (percent)
*	*	*	*
07/01/91.....	09/30/91 ..	06/17/91	8½

Issued in Washington, DC, on this 10th day of July 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91–16751 Filed 7–12–91; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of August 1991.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_u
*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
August 1991.....	.075	.07375	.0725	.07125	.07	.0675	.0675	.0675	.0675	.0675	.0625	.0625	.0625	.0625	.0625	.05875

Issued at Washington, DC, on this 10th day of July 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-16750 Filed 7-12-91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219-AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of stay of final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the stay of the effective date of the final rule revising its safety standards for explosives at metal and nonmetal mines until September 13, 1991.

EFFECTIVE DATE: The final rule, published on January 18, 1991 (56 FR 2070), is stayed until September 13, 1991, except for the provisions in 30 CFR 56.6000, 56.6306, 56.6130, 56.6131, 56.6501, 57.6000, 57.6306, 57.6130, 57.6131, and 57.6501 stayed indefinitely on April 10, 1991 (56 FR 14470).

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 18, 1991, MSHA published a final rule revising its safety standards for explosives at metal and nonmetal mines. These standards were to take effect on March 19, 1991. On March 7, 1991, after further review of information regarding several provisions of the final rule, MSHA extended the effective date until May 20, 1991 (56 FR 9626). On April 10, 1991, MSHA indefinitely stayed the effective date of several provisions and reopened the rulemaking record. On May 17, 1991, based on comments received from mine operators and explosives manufacturers and a request by the Institute of Makers of Explosives (IME) for a reconsideration of the rule, the Agency stayed the effective date of the final rule until July 16, 1991 (56 FR 22825).

By this notice, the Agency is further staying the rule until September 13, 1991. During this time, MSHA will continue to reassess the rulemaking record and consider the IME request for reconsideration of the rule. This notice does not affect the indefinite stay by MSHA of four provisions of the rule on April 10, 1991 (56 FR 14470). MSHA will publish a further notice concerning this rulemaking prior to the expiration date of the stay.

During the period of the stay, the existing regulations in subpart E of parts 56 and 57 of 30 CFR continue in effect.

This document is issued under 30 U.S.C. 811.

Dated: July 9, 1991.

Edward C. Hugler,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-16731 Filed 7-12-91; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB23

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends rules governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS) to address sulphur exploration, development, and production operations with more specificity. This final rule modifies 30 CFR Part 250, subpart P, Sulphur Operations. The OCS Order No. 10, Sulphur Drilling Procedures, issued by the Gulf of Mexico (GOM) OCS Region, which addresses sulphur operations, is rescinded.

EFFECTIVE DATE: This regulation is effective August 14, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 14, 1991.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Acting Chief, Engineering and Standards; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070-4817, or telephone (703) 787-1600 or (FTS) 393-1600.

SUPPLEMENTARY INFORMATION: The Minerals Management Service (MMS) published a notice of proposed rulemaking on March 18, 1986 (51 FR 9316), to consolidate, update, and restructure rules governing oil, gas, and sulphur operations in the OCS. Two of the comments received in response to the proposed rule suggested a need for requirements that would specifically address sulphur operations in the OCS. One of the commenters suggested specific provisions that should be included in rules governing sulphur operations, and the other recommended that rules governing sulphur operations be subject to public comment prior to publication of final rules.

Sulphur leasehold activities in the OCS have been managed by requiring compliance with the regulations in 30 CFR part 250, OCS Order No. 10 for the GOM Region, and review and approval of Exploration and Development and Production Plans on a case-by-case basis. While this approach has been an effective means of providing for safety in operations and protection of the environment, MMS proposed to issue rules that address sulphur operations with more specificity. A proposed rule published in March of 1986 would have rescinded OCS Order No. 10 and relied entirely on the revised provisions of 30 CFR part 250. It was subsequently determined that OCS Order No. 10 should remain in effect during the development of the revised subpart P of 30 CFR part 250 to address sulphur exploration, development, and production operations in the OCS with more specificity.

On August 31, 1989 (54 FR 36244), MMS issued a notice of proposed rulemaking to address sulphur exploration, development, and production operations in the OCS with more specificity. The MMS received five responses containing comments and recommendations during the 60-day comment period which was open through October 30, 1989. The respondents were comprised of three oil and gas exploration and production companies, one sulphur exploration and production operation company, and one company engaged in both oil and gas and sulphur operations. Their comments and recommendations touched on most aspects of the proposed rule, with few areas of conflict among the submitted comments. The majority of areas commented upon received only a single response.

One commenter requested a meeting with MMS, which was held on December 8, 1989, to discuss the technical background of their comments At the start of the meeting, it was established that since the comment period had closed October 30, 1989, there should be no new or additional comments discussed regarding the proposed regulations. The commenter recognized this restriction and discussed only the technical issues that were

addressed in the comments previously submitted.

The following summarizes the significant changes in the final rule from the proposed rule.

1. A provision in § 250.14, Reinjection and subsurface storage of gas, in subpart A, has been added that will allow gas to be reinjected or stored in the cap rock of a salt dome that is known to contain sulphur only when the applicant can demonstrate that such activity will not interfere with sulphur mining operations.

2. A provision in § 250.263, Well casing and cementing, in subpart P, has been added that requires cap rock casing to be set and cemented through formations known to contain oil and gas.

3. Sections 250.291 and 250.292 have been revised to clearly identify the design, installation, and operational requirements for both sulphur production facilities and associated fuel gas handling systems.

These changes are discussed in greater detail in the responses to comments.

Training requirements

The MMS specifically requested comments regarding proposed provisions that would require workers involved in sulphur drilling operations in the OCS to receive the same training as those involved in oil and gas drilling operations, while sulphur workers engaged in well-completions, well-workover, and production operations would be trained to meet more general training requirements. Two comments were received regarding this specific request.

Comment. One commenter stated that sulphur well operations are specific to the sulphur industry and are diversified; yet, the operations are very repetitive. The commenter further stated that sulphur rig workers undergo training as required by regulations in subpart O of 30 CFR part 250 and are also subject to specific training with respect to their job responsibilities, the hazards of their work area, and the job at hand. The commenter also noted that a "Shallow Depth Well Control Program" has been developed specifically for sulphur mining.

Response. These comments indicate that the sulphur industry trains drilling personnel under the same requirements as those involved in oil and gas drilling operations, while workers engaged in other sulphur-related activities are trained with respect to job responsibilities and associated hazards. These training practices are consistent with the training requirements proposed in this rulemaking. With respect to the specific well-control program for sulphur mining mentioned by the commenter, MMS is encouraged that the sulphur mining industry has given such thought to the needs for specialized well-control training.

Comment. One commenter believed that additional training for sulphur workers should be required but gave no specific suggestions for supplemental training.

Response. The MMS has evaluated the comments concerning training requirements and has determined that the training requirements in the final rule are sufficient to promote safe and workmanlike sulphur operations in the OCS.

The MMS also invited specific comments and recommendations on three subject areas concerning oil and gas drilling versus sulphur drilling operations, well casing string uses, and protection of personnel in sulphur mining operations. These specific subject areas are listed below.

Subject area 1—specific differences between sulphur well-drilling operations and oil and gas well-drilling operations and the manner by which MMS's regulations should handle those differences.

Comment. One commenter elaborated on the differences between sulphur operations and oil and gas operations for exploration, development, and production drilling; well completions; and well workovers. The commenter made no recommendations to MMS regarding the handling of differences between the two types of operations in response to this question; however, the commenter provided numerous section-by-section recommendations concerning the regulation of sulphur drilling and production activities in the OCS.

Response. The MMS appreciates the effort taken by this commenter and has considered this information in its analysis and revision of sections concerning sulphur drilling operations.

Subject area 2—procedures that the sulphur industry has developed to protect its personnel from the hydrogen sulfide (H_2S) present in sulphur-bearing formations.

Comment. One commenter identified three potential sources of H_2S encountered during the Frasch sulphur mining process and stated that the sulphur industry has effective and efficient safety and environmental programs and contingency plans to deal with the routine and extraordinary occurrences of H_2S. The three H_2S sources identified were bleedwater, liquid sulphur storage/transportation vessels, and blowouts involving sour gas. The first two sources occur as a result of routine Frasch operations and because industry has experience with these sources, comprehensive safety programs and emission/bleedwater disposal techniques have been developed to protect human life, property, and the environment. Blowouts represent an operational upset for which a detailed, site-specific contingency plan is developed and implemented. No recommendations for modification to the proposed rule were made.

Response. The MMS appreciates the effort taken by this commenter to discuss the potential sources of H_2S and the general measures industry has taken to protect human life, property, and the environment.

Comment. One commenter stated that additional precautions are necessary for working with sulphur in the OCS and suggested that the proposed rules should contain some references or standards regarding sulfide stress but provided no specific recommendations.

Response. The final rule references appropriate standards regarding sulfide stress in § 250.254(b), Hydrogen sulfide, by requiring lessees to comply with the requirements in § 250.67. Provisions in § 250.67 require that equipment used in H_2S environments shall be constructed of materials whose metallurgical properties resist or prevent sulfide stress cracking or H_2S embrittlement. These properties shall conform to the National Association of Corrosion Engineers Standard MR-01-75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment.

Subject area 3—differences between the use of casing strings in sulphur wells and the use of casing strings in oil and gas wells together with a discussion of the casing requirements appropriate for wells used in the production of sulphur.

Comment. One commenter stated that the differences between the uses of casing strings for oil and gas wells versus sulphur wells in the OCS have been recognized and are generally handled well in the proposed rules.

Response. The MMS appreciates the positive support for the manner in which MMS has addressed the casing requirements for sulphur operations in the OCS.

General Comments

Comment. One commenter thought that MMS should take caution when incorporating oil and gas rules by reference into this subpart due to the myriad of fundamentally different

operational characteristics of the oil and gas industry versus the sulphur industry.

Response. The MMS appreciates the commenter's concern regarding the potentially inappropriate application of oil and gas standards and practices to the regulation of sulphur operations in the OCS. The MMS carefully reviewed the oil and gas standards and practices that were incorporated in the proposed regulations for sulphur operations and determined that they were being applied appropriately to the drilling and production of sulphur in the OCS. Following the public review and comment on the proposed regulations, MMS again reviewed those standards and practices before making them part of the final rule for sulphur operations.

Comment. One commenter suggested that the comment period should be extended to allow oil and gas operators a greater opportunity to comment.

Response. Since four of the five commenters were oil and gas operators, it is apparent that the 60-day period provided for comment was an adequate timeframe for the oil and gas industry and interested public to review and comment on the proposed rule.

Comment. Two commenters stated that the proposed rule will cause a serious hardship to oil and gas operators who have reserves in the same cap rock that is being mined for sulphur. These commenters indicated that the proposed rule will result in the loss of otherwise recoverable oil and gas resources, provide very little protection for oil and gas lessees, and should contain a provision that comments on proposed sulphur operations must be obtained from the current operator of any other mineral leasehold due to possible concurrent operations.

Response. The final rule to govern sulphur operations will not result in serious loss or damage to recoverable oil and gas or sulphur resources in the OCS. The Director of MMS is required to regulate operations conducted under an OCS mineral lease to promote orderly exploration, development, and production and to prevent any unreasonable harm, damage, or waste to any mineral deposits whether leased or unleased. In some instances, it may be necessary for MMS to require a sulphur lessee to delay its development activities to assure that the potential for negative impact upon the recovery of oil and gas is reduced to an acceptable level. In other cases, modification of the proposed sulphur exploration or development activity may be all that is necessary to properly protect OCS oil, gas, and sulphur resources. The decision to delay or modify any proposed activities will be made by the Regional Supervisor at the time that such proposals are submitted for approval. The final rule has not been modified to require sulphur lessees to notify OCS oil and gas lessees of proposed sulphur activities. The MMS expects, and when necessary will require, OCS oil and gas lessees and OCS sulphur lessees to coordinate their development of interspersed oil and gas and sulphur resources.

Comment. One commenter thought that the proposed rule should contain a provision for reimbursement of losses to the initial leaseholder due to problems of negligence.

Response. This final rule restructures and updates the regulations governing OCS sulphur operations. Allegations of inappropriate or potentially wasteful operations by oil and gas or sulphur lessees will be investigated by MMS, and when appropriate, remedial actions to correct the situation will be ordered by MMS. This final rule is not the appropriate mechanism to address the reimbursement or compensation of a leaseholder for losses involving negligence of another lessee.

Section-Specific Comments

Section 250.0 Authority for information collection.

Comment. One commenter stated that the Office of Management and Budget's (OMB) assigned clearance number for information collection must be included in the final regulations.

Response. The OMB clearance number (1010–0086) has been included in the final rule as § 250.0(y).

Section 250.14 Reinjection and subsurface storage of gas.

Comment. Commenters provided four widely varying suggestions for paragraph (f) of § 250.14. One commenter recommended that paragraph (f) should be revised to state that the reinjection or storage of gas in the cap rock of a salt dome will not be approved when the salt dome is known to contain an economically recoverable sulphur deposit. Another commenter recommended that paragraph (f) should either be omitted or be amended to allow the Regional Supervisor to determine whether to approve the reinjection or storage of gas in cap rock on a case-by-case basis. A third commenter wanted to modify paragraph (f) to prohibit the injection of any gas or fluids not utilized in sulphur mining into any portion of a salt dome known to contain a sulphur deposit because it would create unnecessary risks to sulphur mining. The fourth commenter totally supported the paragraph as currently proposed.

Response. Paragraph (f) of § 250.14 has been revised in the final rule to state that the reinjection or subsurface storage of gas will not be approved when gas is to be injected into the cap rock of a salt dome known to contain a sulphur deposit, unless the injection of gas is necessary to the recovery of oil and gas from the cap rock, and the applicant can demonstrate to the satisfaction of the Regional Supervisor that the injection of gas will not significantly increase potential hazards to present or future sulphur mining operations. This revision will allow the Regional Supervisor to approve the reinjection or subsurface storage of gas into cap rock to enhance the recovery of oil where sulphur deposits are not suitable to mine economically or where the proposed injection will not significantly increase potential hazards to sulphur mining activities. In cases where there is development potential for the sulphur in the cap rock of a salt dome, the reinjection of gas will not be permitted unless the reinjection of gas is approved as part of an enhanced oil recovery project involving oil contained within the cap rock.

Section 250.30 General requirements.

Comment. One commenter stated that sulphur lessees should provide copies of sulphur operation proposals to oil and gas lessees occupying the same tract so that oil and gas lessees will have the opportunity to review and provide comments to the Regional Supervisor regarding the proposed sulphur operations. This process would ensure that the Regional Supervisor has input from the oil and gas lessee as well as the sulphur lessee concerning the maximum recovery of both sulphur and hydrocarbons, as well as other aspects of the operation.

Response. The final rule does not require sulphur lessees to submit copies of operational proposals to oil and gas lessees located on the same tract, nor does it require oil and gas lessees to submit copies of proposed oil and gas activities to sulphur lessees located in the same tract. The MMS does expect sulphur lessees and oil and gas lessees to discuss proposed activities with other lessees of the same tract and to cooperate in the development of coordinated plans for the development and production of OCS mineral resources. The MMS will initiate and participate in these discussions, as necessary, to ensure that mineral resources are developed and produced in a manner that safeguards life,

protects the environment, and reduces the potential for negative impact on the development and recovery of other resources.

Section 250.32 Location and spacing of wells.

Comment. One commenter suggested that the word "area" in paragraph (a) of § 250.32 should be "areal."

Response. The word "area" has been removed from the paragraph so that the phrase now reads "* * * extent and thickness of the sulphur deposit * * *" Section 250.32 has also been modified to show that well spacing approved for the development of sulphur deposits may be impacted by well spacing approved for the development of hydrocarbon reservoirs and vice versa.

Comment. One commenter recommended that in cases where the same OCS tract is likely to produce both hydrocarbons and sulphur, a "no activity zone" should be established around hydrocarbon producing platforms so that an appropriate drilling rig may be positioned to drill or rework the oil and gas wells when necessary.

Response. Most active OCS sulphur leases have a stipulation that allows MMS to impose operational constraints or requirements, including the establishment of "no activity zones" when appropriate. The MMS will consider the need for requiring a "no activity zone" during its review of Exploration and Development and Production Plans for OCS sulphur and OCS oil and gas lease operations. The MMS will review these plans on a case-by-case basis and will consider initiating discussions and/or developing agreements between OCS sulphur and oil and gas lessees before making a decision whether to establish a "no activity zone" in the vicinity of OCS oil and gas or sulphur production platforms.

Section 250.34 Development and Production Plan

Comment. One commenter recommended that Development and Production Plans for sulphur operations should also give special attention to the effects of subsidence on the geologic faulting in and above the cap rock in addition to its effects on pipelines and structures. The commenter indicated that the Frasch mining process coupled with movement induced by subsidence along fault planes could provide a path for leakage of hydrocarbons and injected water to the seabed.

Response. This recommendation was not adopted. The rule, as written, requires the lessee to submit supporting information describing measures that will be taken to assure safety of operations and protection of the environment. Any concerns related to fault plane movement and associated development of pathways for hydrocarbon leakage are already covered by this provision and will be considered by MMS during the review and assessment of Development and Production Plans and Development Operations Coordination Documents.

Comment. A commenter advised that a provision should be added to require that a lessee discuss the potential effects of sulphur production on existing or potential production of oil or gas from the same OCS tract.

Response. The MMS has added a provision to § 250.34 that specifically requires OCS oil and gas and sulphur lessees to discuss technologies and recovery practices and procedures to assure the optimum recovery of oil and gas and sulphur including, but not limited to, the potential effects of subsidence due to oil and gas or sulphur production on existing or potential production of oil and gas or sulphur from the same tract.

Section 250.154 Safety equipment requirements for DOI pipelines

Comment. One commenter cautioned that the "15 percent above and below the normal operating pressure" settings for high- and low-pressure sensors may be too narrow a range for low pressure natural gas fuel lines coming into sulphur platforms.

Response. This section has been revised to read "15 percent or 5 psi, whichever is greater, above and below the normal operating pressure range" in order to recognize that incoming fuel gas pipelines may have low operating pressure. If this pressure range is still too narrow for setting high- and low-pressure sensors, then the natural gas fuel line coming to a platform shall be equipped with a flow safety valve.

Section 250.190 Authority and requirements for unitization

Comment. A commenter noted that this is the first place in the regulations that "salt" is considered to be a product.

Response. Salt is considered to be a mineral and royalty is to be paid on salt that is taken off a lease. Salt is allowed to be produced and used royalty-free in the sulphur production process.

Section 250.194 Model unit agreements

Comment. One commenter indicated support for the approach MMS has taken for handling future unit agreements for sulphur operations.

Response. The MMS appreciates the support for this provision of the regulations.

Section 250.250 Performance standard.

Comment. One commenter agreed that operations to discover, develop, and produce sulphur should be conducted in a manner to protect other mineral deposits.

Response. The MMS appreciates the support for this provision of the regulations.

Section 250.253 Determination of sulphur deposit.

Comment. A commenter recommended that the requirements of this section should be included as a new paragraph in § 250.11, Determination of well producibility, for the purpose of consistency.

Response. In subpart P, Sulphur Operations, many section titles or subjects addressed in other subparts have been repeated (e.g., Well casing and cementing, Control of wells, and Blowout prevention equipment) because similar, yet different requirements are necessary to regulate sulphur operations. This is the case with § 250.253, Determination of sulphur deposit. In addition, § 250.253 deals with quantifying the production capability of an entire sulphur deposit in paying quantities while § 250.11 deals with the producibility of an individual oil or gas well in paying quantities.

Section 250.254 General requirements.

Comment. One commenter reminded MMS that oil and gas lease terms have always provided that no sulphur or other mineral lease shall authorize or permit the lessee thereunder to unreasonably interfere with or endanger the operations of the oil and gas lessee and recommended that MMS add a provision to this section reiterating this component of the lease terms.

Response. This recommendation was not adopted. It is not necessary or appropriate to include OCS mineral lease terms and conditions in these regulations.

Comment. One commenter advised MMS to require oil and gas and sulphur lessees to give a precautionary notice of the intent to drill or workover a well to surrounding operators so that proper measures may be taken to assure the safety of their personnel.

Response. This recommendation was not adopted. It is not necessary for OCS lessees to give a notice to surrounding lessees regarding the initiation of routine drilling or workover operations. Lessees are required to conduct drilling and workover operations in a safe and workmanlike manner in accordance with an approved plan. In areas where the occurrence of H_2S is known o.

unknown, each lessee is required to take all appropriate precautions to protect life and property. If the proximity of a platform causes concern regarding the safety of personnel on another platform, then the lessees involved are required to take the appropriate precautionary measures, including the consideration of personnel safety on other platforms.

Comment. One commenter stated that the District Supervisor should have the discretion to determine whether the lessee will be required to comply with the requirements in § 250.67 if the H_2S encountered during operations is not generated as a component of a natural gas reservoir.

Response. The application of the requirements in § 250.67 is not a discretionary action to be determined by the District Supervisor. Section 250.67 applies to OCS sulphur drilling, well-completion, well-workover, or production operations conducted in a potential H_2S environment. To clarify this point, the final rule has been revised to ensure that the requirements in § 250.67 apply to H_2S that is generated in the routine Frasch mining process, i.e., H_2S generated in liquid sulphur storage vessels. The H_2S gas generated during the mining process shall be detected, monitored, and handled in compliance with the lessee's approved H_2S Contingency Plan.

Section 250.260 Drilling requirements.

Comment. One commenter recommended that the fitness of a drilling unit operating in a sulphur environment should be reevaluated periodically due to concerns of sulfide stress.

Response. It is not necessary to include a requirement to periodically reevaluate the fitness of a drilling unit in the regulations. The District Supervisor has the discretionary authority to require the lessee to resubmit information regarding the fitness of a drilling unit at any time.

Comment. One commenter advised that the coring of drill holes should be mandatory only for exploration wells. Once the existence and configuration of a body of ore has been determined, then the logging of drill holes would provide sufficient geological information.

Response. This section has been revised to recognize that the coring of all wells drilled during sulphur operations may not be appropriate. The revised section now reads "Lessees shall drill and take cores and/or run well and mud logs through the objective interval to determine the presence, quality, and quantity of sulphur and other minerals (e.g., oil and gas) in the cap rock * * *" The District Supervisor will approve the application for permit to drill (APD) and may require that wells be cored when appropriate.

Comment. Another commenter recommended that all cored wells should be cemented across oil and gas bearing zones to prevent the flow of water used in the sulphur mining process into potential hydrocarbon producing zones. If these core holes were not sealed off, then the injected water could cause oil wells to prematurely water out and impact the amount of oil recovered.

Response. The concerns of the commenter are covered by these rules. The casing and cementing requirements for sulphur wells are covered in § 250.263, Well casing and cementing. This section requires all wells to be cased and cemented in a manner necessary to provide a means of control of formation pressures and fluids. This section states that "Conductor and cap rock casing design and setting depths shall be based upon relevant engineering and geologic factors including the presence or absence of hydrocarbons * * *" The District Supervisor will consider these factors when reviewing and approving the drilling and completion elements of APD's for sulphur wells. In addition, a provision has been added to § 250.263 that requires cap rock casing to be set and cemented through formations known to contain hydrocarbons.

Section 250.261 Control of wells

Comment. One commenter advised MMS to recognize that oil, as well as gas, might flow or kick during sulphur drilling operations.

Response. The section has been revised to be consistent with § 250.50 requiring the lessee to utilize the best available and safest drilling technology and state-of-the-art well control methods for all occasions, not just when gas is present in formations above the cap rock.

Section 250.262 Field rules

Comment. One commenter recommended that proposed field rules that modify specific requirements of this subpart should be given to oil and gas lessees of the same tract and surrounding tracts in order that they may review and comment on such rules.

Response. This recommendation was not adopted. The MMS expects communication between sulphur lessees and the appropriate oil and gas lessees regarding development and production activities on the same tract. The MMS will initiate and participate in these discussions, if necessary, to ensure that the resources are developed and produced in a manner that safeguards life, protects the environment, and reduces the potential for negative impact on the development and recovery of the other resources.

Section 250.263 Well casing and cementing.

Comment. One commenter suggested that when proposed casing setting depths are varied from those approved in an application for permit to drill, the District Supervisor's approval should be in writing to protect both MMS and the lessee.

Response. This requirement is already contained in § 250.6. The applicant is required to obtain the District Supervisor's approval prior to varying proposed casing setting depths. Either written or oral approval for new setting depths could be issued by the District Supervisor. The requirements for written confirmation of oral approvals are specified in § 250.6(a).

Comment. One commenter requested that bobtail casing be lapped into the previous casing string only a minimum of 50 feet versus 100 feet because 50 feet of casing lap will still be sufficient to achieve a good cement bond. The commenter contended that 50 feet of casing lap would also allow a single well to be sidetracked a greater number of times since each sidetrack takes place above the top of the previous bobtail casing.

Response. This recommendation was not adopted. The rule as written provides a minimum specified lap distance. Exceptions can be approved where the lessee can demonstrate why and how a shorter liner lap serves to preserve the safety of operations while reaching other operational goals.

Comment. One commenter stated that the production liner should be cemented through any oil and gas portions of cap rock to help prevent the immediate movement of water injected for sulphur mining into an oil and gas column and cause premature watering out of hydrocarbon producers.

Response. This recommendation has been adopted. The final rule has been revised to require lessees to case and cement production liner through formations known to contain hydrocarbons at a minimum. In those instances where the cap rock contains oil or gas, sufficient cement must be used to cement the production liner in place to fill the annular space to the top of the production liner.

Section 250.265 Blowout preventer systems and system components.

Comment. One commenter recommended that the requirement for remotely controlled choke and kill valves be deleted because the choke manifold is not expected to be used for circulating out a kick making the cost and upkeep associated with remotely controlled valves unnecessary.

Response. This recommendation was not adopted. Remotely controlled valves are required in case a major incident occurs that prevents immediate access to primary choke and kill valves.

Sections 250.266 and 250.285 Blowout preventer systems and system maintenance; Blowout preventer system testing, records, and drills

Comment. One commenter stated that it was not necessary to test blowout preventer (BOP) equipment at its rated working pressures for sulphur drilling operations because of the generally low formation pressures encountered. The commenter also stated that pumps on a sulphur platform are not generally capable of pressuring to most BOP's rated working pressures. The commenter proposed an alternate testing procedure in which the BOP's and choke manifold would be tested to 10 percent above the maximum expected formation pressure.

Response. The recommended revision was not adopted. The rule provides the District Supervisor with the authority to approve alternate test pressures for ram-type and annular BOP's where warranted. In addition, these sections have been revised to identify with greater specificity the information that must be recorded by the lessee to describe testing of the lessee's BOP and auxiliary equipment. The revision includes a provision that allows MMS to request information concerning pressure conditions during testing of BOP's and auxiliary equipment. These changes were necessary to verify the adequacy of lessee-conducted tests that are needed to assure that BOP's and auxiliary well-control equipment, if needed, will operate effectively. The revision enables MMS personnel to better assess the effectiveness of a BOP system during their review of the documentation of the method and procedures used by a lessee to conduct a BOP test and the results obtained.

Section 250.270 Securing of wells

Comment. One commenter requested that the regulations be revised to allow the use of BOP's for securing wells where cap rock casing has been set without requiring District Supervisor's approval. The commenter also requested that the regulations allow the use of BOP's for securing wells during drilling operations prior to setting cap rock casing with the District Supervisor's approval.

Response. These recommendations were not adopted. The use of BOP's to secure wells is not appropriate in all circumstances. The District Supervisor will make the determination when it is appropriate to use BOP's to secure a well. The MMS also does not consider the use of BOP's as an appropriate means for securing wells when drilling operations are interrupted prior to the setting of cap rock casing by an event which forces evacuation of the drilling crew, prevents station keeping, or requires repair to major drilling units or well-control equipment.

Section 250.282 Approvals and reporting of well-completion and well-workover operations

Comment. One commenter stated that approvals to complete a well and any subsequent workover operations of a sulphur well should be included in the approval of the APD.

Response. The rules at § 250.282(b) allow an OCS sulphur well to be completed without additional approval provided a description of well-completion procedures has been previously approved with the APD (Form MMS–331C), and there are no significant changes from that description. Well-workover operations will have to be submitted to and approved by the District Supervisor prior to commencing workover operations. The MMS will not have the information needed to approve workover operations at the time an APD is submitted for approval.

Section 250.283 Well-control fluids, equipment, and operations

Comment. One commenter observed that there appears to be a number missing between the words "every" and "stands."

Response. The number five was inadvertently left out in the **Federal Register** Notice of the proposed rule. The final rule reads "* * * every five stands of drill pipe * * *"

Section 250.284 Blowout prevention equipment

Comment. One commenter stated that a BOP stack is not necessary while performing well-workover operations inside of the sulphur line with the tree in place. Workover operations are normally performed with a crane which would make the placement of a BOP stack on the well a difficult, if not dangerous, task. In addition, the air line inside the sulphur line cannot be changed with a BOP in place, and the time required to put on and remove the BOP would cause a significant increase in the number of wells that would plug due to sulphur freezing in the sulphur line. The commenter recommended that no BOP equipment be required for air line changes and that a tubing stripper or annular BOP would be sufficient for other work inside the sulphur line.

Response. This recommendation was adopted. The installation of BOP equipment will not be required for air line changes if the well has been killed prior to commencing workover operations. For other workover operations inside of the sulphur line with the tree in place, a tubing stripper or annular preventer shall be installed prior to beginning operations.

Section 250.291 Design, installation, and operation of production systems

Comment. One commenter stated that the requirements in paragraph (b) of § 250.291 are for hydrocarbon handling vessels associated with oil and gas production operations and recommended that this paragraph be clarified to recognize this fact. The commenter further stated that the sulphur industry does not handle hydrocarbons in the production sense.

Response. Section 250.291 has been revised to clearly identify the design, installation, and operational requirements for both sulphur production facilities and fuel gas handling systems. Paragraph (b) of revised § 250.291 addresses the design and installation requirements for sulphur production facilities, while paragraphs (c) and (d) have been revised to specifically address the requirements for a fuel gas handling system. The requirements contained in paragraphs (c) and (d) are necessary in order to cover the various types of fuel gas systems that could be used on an OCS sulphur production platform. At some locations in the OCS, it may be economically feasible for a sulphur facility to use raw gas from a nearby oil and gas operation as its primary source of fuel. In this situation, these requirements are necessary to address the design and installation of vessels handling raw gas.

Section 250.292 Additional production and fuel gas system requirements

Comment. One commenter contended that "pressure relief valves" should be renamed "pressure safety valves" because relief valves are installed for the protection of equipment in case of

an upset and are not tested on a regular basis, while safety valves are installed for protection of personnel and equipment and are tested periodically.

Response. The term "relief valve" has been replaced with the term "safety relief valve" to avoid confusion regarding the design, installation, and maintenance of these valves. Section I of the American National Standards Institute/American Society of Mechanical Engineers' Boiler and Pressure Vessel Code identifies a safety valve as an automatic pressure relieving device actuated by static pressure upstream of the valve, and it is used for gas or vapor service. A relief valve is similarly defined except it is used primarily for liquid service. A safety relief valve is suitable for use either as a safety valve or relief valve, depending on application. Regardless of the terminology, a pressure relieving valve shall be designed, installed, and maintained in accordance with the applicable provisions of the Boiler and Pressure Vessel Code. This change has been completed throughout the final rule.

Comment. One commenter objected to the requirement in paragraph (b)(1)(ii) of § 250.292 that pressure recorders be used to establish operating pressure ranges because natural gas for fuel is supplied by pipeline through gas pressure reduction stations and not from gas production facilities on the platform. The commenter further noted that the operating ranges for pressure vessels are established by the manufacturer of each vessel. The commenter recommended that the paragraph be deleted.

Response. This recommendation was not adopted. The procedures for operating all pressure vessels installed on OCS sulphur production platforms are required to meet the provisions of this section. As discussed in the response to the comment on § 250.291, it is possible that raw gas from a nearby oil and gas operation could be used as a sulphur platform's primary source of fuel. In this situation, pressure vessels used to process raw gas into usable fuel gas would be required to meet the provisions in this paragraph. For fuel gas handling safety systems where the gas is supplied by pipeline through gas pressure reduction stations and not from gas production facilities on the platform, the provisions of this paragraph shall apply, as appropriate.

Comment. One commenter offered the following comments on the requirements for fire suppression systems: (1) A fixed water spray system installed in an enclosed well-bay area is not necessary for sulphur operations and should be deleted from the regulations; (2) water spray systems should not be used in control room centers, and (3) steam smothering lines are the state-of-the-art system for fire suppression in enclosed vessels containing sulphur and should be required in the regulations.

Response. The requirement for a fixed water spray system installed in an enclosed well-bay area has been deleted; however, the District Supervisor may require that such a system be installed if circumstances in a well bay warrant its use. This rule does not mandate that steam smothering lines be utilized for fire suppression, nor does this rule preclude the use of this firefighting system. The regulations at § 250.3(a) allow the use of new or alternative technologies provided the technology affords equal or greater protection than that intended to be achieved by the regulations of this part. The District Supervisor will review and evaluate each lessee's proposed fire suppression and firefighting system for OCS sulphur platforms on a case-by-case basis.

Section 250.293 Safety-system testing and records.

Comment. One commenter recommended that the reference to API RP 14C, appendix D should be deleted from the requirements for safety-system testing.

Response. This section has been revised to state that the inspection and testing techniques and analysis methods specified in API RP 14C are to be utilized for safety system components not specifically addressed in that standard.

Comment. One commenter advised MMS that many years of safe reliable operating experience have indicated that monthly inspection and testing of safety devices are unnecessary and suggested an alternate schedule that would require testing safety devices every 12 months.

Response. This recommendation was not adopted. The alternate schedule suggested by the commenter is not appropriate for testing safety system components on production platforms operating in the OCS.

Author

The principal author of this final rule is William S. Hauser, Offshore Rules and Operations Division, MMS.

Executive Order (E.O.) 12291

The Department of the Interior (DOI) has determined that this document does not constitute a major rule under E.O. 12291 because it will not result in a cost impact of more than $100 million annually. The decision to restructure and update prior existing sulphur regulations in subpart P was part of the decision to restructure and consolidate all OCS oil and gas and sulphur operating rules into 30 CFR part 250. Most of the provisions of this rule were previously located in other subparts of part 250 pertaining to oil, gas, and sulphur operations and do not represent new or added requirements. Therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that this final rule will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

Paperwork Reduction Act

The information collection requirements contained in Subpart P of this rule have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and have been assigned clearance number 1010–0086.

The following information collection requirements will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.*

1. The information collection requirements contained in 30 CFR 250.34(b)(5), (b)(8)(i)(B), (b)(9), and (b)(10) which relate to sulphur. The approved information collection requirements relating to oil and gas and assigned OMB Number 1010–0049 will be revised to include this requirement. Public reporting burden for this collection of information is estimated to average 438.6 hours per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

2. The information collection requirements contained in 30 CFR 250.42 which relate to sulphur. The approved information collection requirements relating to oil and gas and assigned OMB Number 1010–0057 will be revised to include this requirement. Public reporting burden for this collection of information is estimated to average 40.9 hours per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

3. The information collection requirements contained in 30 CFR 250.194(c) which relate to sulphur. The approved information collection requirements relating to oil and gas and assigned OMB Number 1010–0068 will be revised to include this requirement. Public reporting burden for this collection of information is estimated to average 23.8 hours per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the above collections of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Mail Stop 2300, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070, and the Office of Management and Budget, Paperwork Reduction Project (1010–XXXX), Washington, DC 20503.

Takings Implication Assessment

The DOI certifies that the final rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The MMS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: January 18, 1991.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set forth in the preamble, OCS Order No. 10 is rescinded and part 250 of title 30 of the Code of Federal Regulations is amended as follows:

1. The OCS Order No. 10, Sulphur Drilling Procedures, issued by the Gulf of Mexico OCS Region, is rescinded.

2. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 204, Public Law 95–372, 92 Stat. 629 (43 U.S.C. 1334).

3. Section 250.0 is amended by adding paragraph (y) to read as follows:

§ 250.0 Authority for information collection.

* * * * *

(y) The information collection requirements in subpart P, Sulphur Operations, have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0086. The information is collected to inform MMS about sulphur exploration and development operations in the OCS. The information concerns activities to discover, define, develop, produce, store, measure, and transport sulphur and is used to assure that leasehold operations comply with statutory requirements, provide for operational safety and environmental protection, and will result in proper and timely operations on OCS sulphur leases. The requirement to respond is mandatory in accordance with 43 U.S.C. 1334. Public reporting burden for this information is estimated to average 211 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments relative to this information collection should reference Paperwork Reduction Project 1010–0086.

4. Section 250.1 is amended by revising paragraphs (c)(1), (c)(2), (c)(3), (d)(3), (d)(9), (d)(11), (d)(12), (d)(13), and (d)(15) as follows:

§ 250.1 Documents incorporated by reference.

* * * * *

(c) * * *

(1) The ANSI/ASME Boiler and Pressure Vessel Code, section I, Power Boilers including Appendices, 1983 Edition, with Summer and Winter 1983 and 1984 and Summer 1985 Addenda, incorporated by reference at §§ 250.123 (b)(1) and (b)(1)(i); and 250.292 (b)(1) and (b)(1)(i).

(2) The ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers, including Nonmandatory Appendices A, B, C, D, E, F, H, I, and J and the Guide to Manufacturers Data Report Forms, 1983 Edition, with Summer and Winter 1983 and 1984 and Summer 1985 Addenda, incorporated by reference at §§ 250.123 (b)(1) and (b)(1)(i) and 250.292 (b)(1) and (b)(1)(i).

(3) The ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2, including Nonmandatory Appendices, 1983 Edition, with Summer and Winter 1983 and 1984 and Summer 1985 Addenda, incorporated by reference at §§ 250.123 (b)(1) and (b)(1)(i) and 250.292 (b)(1) and (b)(1)(i).

* * * * *

(d) * * *

(3) The API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Second Edition, June 1984, API Stock No. 811–00500, incorporated by reference at §§ 250.20(c) and 250.260(g) .

* * * * *

(9) The API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Fourth Edition, September 1, 1986, API Stock No. 811–07180, incorporated by reference at §§ 250.122 (b) and (e)(2); 250.123 (a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), and (c)(2); 250.124 (a) and (a)(5); 250.152(d); 250.291 (c) and (d)(2); 250.292 (b)(2) and (b)(4)(v); and 250.293(a).

* * * * *

(11) The API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fourth Edition, April 15, 1984, API Stock No. 811–07185, incorporated by reference at §§ 250.122(e)(3) and 250.291 (b)(2) and (d)(3).

(12) The API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms, Second Edition, July 1, 1985, API Stock No. 811–07190, incorporated by reference at §§ 250.53(c), 250.123(b)(9)(v), and 250.292(b)(4)(v).

(13) The API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Second Edition, May 1, 1986, API Stock No. 811–07194, incorporated by reference at §§ 250.123 (b)(8) and (b)(9)(v) and 250.292 (b)(3) and (b)(4)(v).

* * * * *

(15) The API RP 500B, Recommended Practice for Classification of Locations for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, Third Edition, October 1, 1987, API Stock No. 811–06000, incorporated by reference at §§ 250.53(b), 250.122(e)(4)(i), 250.123(b)(9)(i), 250.291 (b)(3) and (d)(4)(i), and 250.292(b)(4)(i).

* * * * *

5. Section 250.2 is amended to revise the definitions of "Correlative rights," "Exploration", and the first listing of "Facility", remove the definition of "Waste of oil and gas" and add in its place a new definition of "Waste oil, gas, or sulphur" as follows:

§ 250.2 Definitions.

* * * * *

Correlative rights when used with respect to lessees of adjacent tracts, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, minerals from a common source.

* * * * *

Exploration means the process of searching for minerals, including:

(1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals;

(2) Any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery that is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production; and

(3) Any drilling for sulphur, including the drilling of a well that indicates a sulphur deposit is present and the drilling of additional delineation wells needed to outline the sulphur deposit and enable the lessee to determine whether to proceed with development and production operations.

* * * * *

Facility as used in § 250.45 concerning air quality means any installation or device permanently or temporarily attached to the seabed which is used for exploration, development, and production activities for oil, gas, or sulphur and which emits or has the potential to emit any air pollutant from one or more sources. All equipment directly associated with the installation or device shall be considered part of a single facility if the equipment is dependent on, or affects the processes of, the installation or device. During production, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil or gas at a single site. Any vessel used to transfer production from an offshore facility shall be considered part of the facility while physically attached to it.

* * * * *

Waste of oil, gas, or sulphur means (1) the physical waste of oil, gas, or sulphur; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy; (3) the locating, spacing, drilling, equipping, operating, or producing of any oil, gas, or sulphur well(s) in a manner which causes or tends to cause a reduction in the quantity of oil, gas, or sulphur ultimately recoverable under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; or (4) the inefficient storage of oil.

* * * * *

6. Section 250.10 is amended to revise paragraph (a)(3), redesignate paragraph (d) as paragraph (d)(1), and to add a new paragraph (d)(2) to read as follows:

§ 250.10 Suspension of production or other operations.

(a) * * *

(3) To allow reasonable time to enter into a sales contract for oil, gas, or sulphur, when good faith efforts to secure such contract(s) are being made;

* * * * *

(d) * * *

(2) For sulphur operations, a suspension of production pursuant to paragraph (a)(1), (2), or (3) of this section may not be issued unless a deposit on the lease for which the suspension is requested has been drilled and determined to be producible in paying quantities in accordance with 30 CFR 250.253.

* * * * *

7. Section 250.14 is amended to add a new paragraph (f) to read as follows:

§ 250.14 Reinjection and subsurface storage of gas.

* * * * *

(f) Reinjection or storage of gas will not be approved when the gas is to be injected into the cap rock of a salt dome known to contain a sulphur deposit, unless the injection of gas is necessary to the recovery of oil and gas contained in the cap rock, and the applicant can demonstrate to the satisfaction of the Regional Supervisor that the injection of gas will not significantly increase potential hazards to present or future sulphur mining operations.

8. Section 250.32(a) is revised to read as follows:

§ 250.32 Well location and spacing.

(a) The Regional Supervisor is authorized to approve well location and spacing programs necessary for exploration and development of a leased sulphur deposit or fluid hydrocarbon reservoir giving consideration to, among other factors, the location of drilling units and platforms, extent and thickness of the sulphur deposit, geological and other reservoir characteristics, number of wells that can be economically drilled, protection of correlative rights, optimum recovery of resources, minimization of risk to the environment, and prevention of any unreasonable interference with other uses of the OCS. Well location and spacing programs shall be determined independently for each leased sulphur deposit or hydrocarbon-bearing reservoir in a manner that will locate wells in the optimum position for the most effective production of sulphur and/or reservoir fluids and avoid the drilling of unnecessary wells.

* * * * *

9. In § 250.34, paragraphs (b)(5) and (b)(8)(i)(B) are revised, paragraphs (b)(9) through (b)(15) are redesignated as paragraphs (b)(11) through (b)(17), and new paragraphs (b)(9) and (b)(10) are added to read as follows:

§ 250.34 Development and Production Plan.

* * * * *

(b) * * *

(5)(i) A description of technology and reservoir engineering practices intended to increase the ultimate recovery of oil and gas, i.e., secondary, tertiary, or other enhanced recovery practices;

(ii) A description of technology and recovery practices and procedures intended to assure optimum recovery of sulphur; or

(iii) A description of technology and recovery practices and procedures intended to assure optimum recovery of oil and gas and sulphur.

* * * * *

(8) * * *

(i) * * *

(B) The means proposed for transportation of oil, gas, and sulphur to shore; the routes to be followed by each mode of transportation; and the estimated quantities of oil, gas, and sulphur to be moved along such routes.

* * * * *

(9) For sulphur operations, the degree of subsidence that is expected at various stages of production, and measures that will be taken to assure safety of operations and protection of the environment. Special attention shall be given to the effects of subsidence on existing or potential oil and gas production, fixed bottom-founded structures, and pipelines.

(10) For sulphur operations, a discussion of the potential toxic or thermal effects on the environment caused by the discharge of bleedwater, including a description of the measures that will be taken into account to mitigate these impacts.

* * * * *

10. In § 250.40(a) the introductory text is revised to read as follows:

§ 250.40 Pollution prevention.

(a) During the exploration, development, production, and transportation of oil and gas or sulphur, the lessee shall take measures to

prevent unauthorized discharge of pollutants into the offshore waters. The lessee shall not create conditions that will pose unreasonable risk to public health, life, property, aquatic life, wildlife, recreation, navigation, commercial fishing, or other uses of the ocean.

* * * * *

11. In § 250.42, the first sentence in the introductory paragraph is revised to read as follows:

§ 250.42 Oil spill contingency plans.

Lessees conducting oil, gas, oil and gas, or sulphur operations in the OCS shall submit an Oil Spill Contingency Plan (OSCP) for approval by the Regional Supervisor with or prior to submitting an Exploration Plan or a Development and Production Plan. * * *

* * * * *

12 In § 250.43, the first sentence in paragraph (a) is revised to read as follows:

§ 250.43 Training and drills.

(a) Lessees conducting oil, gas, oil and gas, or sulphur operations in the OCS shall ensure that the oil spill response team is provided with hands-on training classes at least annually in the deployment and operation of the pollution control equipment to which they are assigned. * * *

* * * * *

13. Section 250.44, is amended to revise the definition of "Facility" as follows:

§ 250.44 Definitions concerning air quality.

* * * * *

Facility means any installation or device permanently or temporarily attached to the seabed which is used for exploration, development, and production activities for oil, gas, or sulphur and which emits or has the potential to emit any air pollutant from one or more sources. All equipment directly associated with the installation or device shall be considered part of a single facility if the equipment is dependent on, or affects the processes of, the installation or device. During production, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil, gas, or sulphur at a single site. Any vessel used to transfer production from an offshore facility shall be considered part of the facility while physically attached to it.

* * * * *

14. The headings of subparts D, E, F, H, K, and L of Part 250 are revised to read as follows:

Subpart D—Oil and Gas Drilling Operations

Subpart E—Oil and Gas Well-Completion Operations

Subpart F—Oil and Gas Well-Workover Operations

Subpart H—Oil and Gas Production Safety Systems

Subpart K—Oil and Gas Production Rates

Subpart L—Oil and Gas Production Measurement, Surface Commingling, and Security

15. In § 250.154, paragraph (b)(1) is redesignated as paragraph (b)(1)(i) and republished, and a new paragraph, (b)(1)(ii) is added to read as follows:

§ 250.154 Safety equipment requirements for DOI pipelines.

* * * * *

(b)(1)(i) Incoming pipelines to a platform shall be equipped with a flow safety valve (FSV).

(ii) For sulphur operations, incoming pipelines delivering gas to the power plant platform may be equipped with high- and low-pressure sensors (PSHL), which activate audible and visual alarms in lieu of requirements in paragraph (b)(1)(i) of this section. The PSHL shall be set at 15 percent or 5 psi, whichever is greater, above and below the normal operating pressure range.

* * * * *

16. In § 250.190, paragraph (c) is revised to read as follows:

§ 250.190 Authority and requirements for unitization.

* * * * *

(c) A unit area shall include the minimum number of leases or portions of leases to permit one or more mineral deposits, oil and gas reservoirs, or potential hydrocarbon accumulations to be served by a minimum number of platforms, facility installations, and wells necessary for efficient mineral exploration, development, and/or production.

* * * * *

17. Section 250.194 is amended to add a paragraph (c) to read as follows:

250.194 Model unit agreements.

* * * * *

(c) *Model unit agreement for sulphur operations.* Lessees conducting sulphur operations shall modify the model unit agreements found in paragraphs (a) and (b) of this section as appropriate for use with sulphur operations. Proposed unit agreements shall be submitted to MMS in accordance with § 250.192 or § 250.193 of this part.

18. Subpart P is revised to read as follows:

Subpart P—Sulphur Operations

Sec.

250.250 Performance standard.
250.251 Definitions.
250.252 Applicability.
250.253 Determination of sulphur deposit.
250.254 General requirements.
250.260 Drilling requirements.
250.261 Control of wells.
250.262 Field rules.
250.263 Well casing and cementing.
250.264 Pressure testing of casing.
250.265 Blowout preventer systems and system components.
250.266 Blowout preventer systems tests, actuations, inspections, and maintenance.
250.267 Well-control drills.
250.268 Diverter systems.
250.269 Mud program.
250.270 Securing of wells.
250.271 Supervision, surveillance, and training.
250 272 Application for permit to drill.
250.273 Sundry notices and reports on wells.
250.274 Well records.
250.280 Well-completion and well-workover requirements.
250.281 Crew instructions.
250.282 Approvals and reporting of well-completion and well-workover operations.
250.283 Well-control fluids, equipment, and operations.
250.284 Blowout prevention equipment.
250.285 Blowout preventer system testing, records, and drills.
250.286 Tubing and wellhead equipment.
250.290 Production requirements.
250.291 Design, installation, and operation of production systems.
250.292 Additional production and fuel gas system requirements.
250.293 Safety-system testing and records.
250.294 Safety device training.
250.295 Production rates.
250.296 Production measurement.
250.297 Site security.

Subpart P—Sulphur Operations

§ 250.250 Performance standard.

Operations to discover, develop, and produce sulphur in the OCS shall be in accordance with an approved Exploration Plan or Development and Production Plan and shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS including any mineral

deposits (in areas leased or not leased), the national security or defense, and the marine, coastal, or human environment.

§ 250.251 Definitions.

Terms used in this subpart shall have the meanings as defined below:

Air line means a tubing string that is used to inject air within a sulphur producing well to airlift sulphur out of the well.

Bleedwater means a mixture of mine water or booster water and connate water that is produced by a bleedwell.

Bleedwell means a well drilled into a producing sulphur deposit that is used to control the mine pressure generated by the injection of mine water.

Brine means the water containing dissolved salt obtained from a brine well by circulating water into and out of a cavity in the salt core of a salt dome.

Brine well means a well drilled through cap rock into the core at a salt dome for the purpose of producing brine.

Cap rock means the rock formation, a body of limestone, anhydride, and/or gypsum, overlying a salt dome.

Sulphur deposit means a formation of rock that contains elemental sulphur.

Sulphur production rate means the number of long tons of sulphur produced during a certain period of time, usually per day.

§ 250.252 Applicability.

(a) The requirements of this subpart P are applicable to all exploration, development, and production operations under an OCS sulphur lease. Sulphur operations include all activities conducted under a lease for the purpose of discovery or delineation of a sulphur deposit and for the development and production of elemental sulphur. Sulphur operations also include activities conducted for related purposes. Activities conducted for related purposes include, but are not limited to, production of other minerals, such as salt, for use in the exploration for or the development and production of sulphur. The lessee must have obtained the right to produce and/or use these other minerals.

(b) Lessees conducting sulphur operations in the OCS shall comply with the requirements of the applicable provisions of subparts A, B, C, G, I, J, M, N, and O of this part.

(c) Lessees conducting sulphur operations in the OCS are also required to comply with the requirements in the applicable provisions of subparts D, E, F, H, K, and L of this part where such provisions specifically are referenced in this subpart.

§ 250.253 Determination of sulphur deposit.

(a) Upon receipt of a written request from the lessee, the District Supervisor will determine whether a sulphur deposit has been defined that contains sulphur in paying quantities (i.e., sulphur in quantities sufficient to yield a return in excess of the costs, after completion of the wells, of producing minerals at the wellheads).

(b) A determination under paragraph (a) of this section shall be based upon the following:

(1) Core analyses that indicate the presence of a producible sulphur deposit (including an assay of elemental sulphur);

(2) An estimate of the amount of recoverable sulphur in long tons over a specified period of time; and

(3) Contour map of the cap rock together with isopach map showing the extent and estimated thickness of the sulphur deposit.

§ 250.254 General requirements.

Sulphur lessees shall comply with requirements of this section when conducting well-drilling, well-completion, well-workover, or production operations.

(a) *Equipment movement.* The movement of well-drilling, well-completion, or well-workover rigs and related equipment on and off an offshore platform, or from one well to another well on the same offshore platform, including rigging up and rigging down, shall be conducted in a safe manner.

(b) *Hydrogen sulfide (H_2S).* When a drilling, well-completion, well-workover, or production operation is being conducted on a well in zones known to contain H_2S or in zones where the presence of H_2S is unknown (as defined in 30 CFR 250.67 of this part), the lessee shall take appropriate precautions to protect life and property, especially during operations such as dismantling wellhead equipment and flow lines and circulating the well. The lessee shall also take appropriate precautions when H_2S is generated as a result of sulphur production operations. The lessee shall comply with the requirements in § 250.67 of this part as well as the requirements of this subpart.

(c) *Welding and burning practices and procedures.* All welding, burning, and hot-tapping activities involved in drilling, well-completion, well-workover or production operations shall be conducted with properly maintained equipment, trained personnel, and appropriate procedures in order to minimize the danger to life and property according to the specific requirements in § 250.52 of this part.

(d) *Electrical requirements.* All electrical equipment and systems involved in drilling, well-completion, well-workover, and production operations shall be designed, installed, equipped, protected, operated, and maintained so as to minimize the danger to life and property in accordance with the requirements of § 250.53 of this part.

(e) *Structures on fixed OCS platforms.* Derricks, cranes, masts, substructures, and related equipment shall be selected, designed, installed, used, and maintained so as to be adequate for the potential loads and conditions of loading that may be encountered during the operations. Prior to moving equipment such as a well-drilling, well-completion, or well-workover rig or associated equipment or productior equipment onto a platform, the lessee shall determine the structural capability of the platform to safely support the equipment and operations, taking into consideration corrosion protection, platform age, and previous stresses.

(f) *Traveling-block safety device.* After August 14, 1992, all drilling units being used for drilling, well-completion, or well-workover operations that have both a traveling block and a crown block shall be equipped with a safety device that is designed to prevent the traveling block from striking the crown block. The device shall be checked for proper operation weekly and after each drill-line slipping operation. The results of the operational check shall be entered in the operations log.

§ 250.260 Drilling requirements.

(a) Lessees of OCS sulphur leases shall conduct drilling operations in accordance with §§ 250.260 through 250.274 of this subpart and with other requirements of this part, as appropriate.

(b) *Fitness of drilling unit.* (1) Drilling units shall be capable of withstanding the oceanographic and meteorological conditions for the proposed season and location of operations.

(2) Prior to commencing operation, drilling units shall be made available for a complete inspection by the District Supervisor.

(3) The lessee shall provide information and data on the fitness of the drilling unit to perform the proposed drilling operation. The information shall be submitted with, or prior to, the submission of Form MMS–331C, Application for Permit to Drill (APD), in accordance with § 250.272 of this subpart. After a drilling unit has been approved by an MMS district office, the information required in this paragraph need not be resubmitted unless required by the District Supervisor or there are

changes in the equipment that affect the rated capacity of the unit.

(c) *Oceanographic, meteorological, and drilling unit performance data.* Where oceanographic, meteorological, and drilling unit performance data are not otherwise readily available, lessees shall collect and report such data upon request to the District Supervisor. The type of information to be collected and reported will be determined by the District Supervisor in the interests of safety in the conduct of operations and the structural integrity of the drilling unit.

(d) *Foundation requirements.* When the lessee fails to provide sufficient information pursuant to §§ 250.33 and 250.34 of this part to support a determination that the seafloor is capable of supporting a specific bottom-founded drilling unit under the site-specific soil and oceanographic conditions, the District Supervisor may require that additional surveys and soil borings be performed and the results submitted for review and evaluation by the District Supervisor before approval is granted for commencing drilling operations.

(e) *Tests, surveys, and samples.*(1) Lessees shall drill and take cores and/or run well and mud logs through the objective interval to determine the presence, quality, and quantity of sulphur and other minerals (e.g., oil and gas) in the cap rock and the outline of the commercial sulphur deposit.

(2) Inclinational surveys shall be obtained on all vertical wells at intervals not exceeding 1,000 feet during the normal course of drilling. Directional surveys giving both inclination and azimuth shall be obtained on all directionally drilled wells at intervals not exceeding 500 feet during the normal course of drilling and at intervals not exceeding 200 feet in all planned angle-change portions of the borehole.

(3) Directional surveys giving both inclination and azimuth shall be obtained on both vertically and directionally drilled wells at intervals not exceeding 500 feet prior to or upon setting a string of casing, or production liner, and at total depth. Composite directional surveys shall be prepared with the interval shown from the bottom of the conductor casing. In calculating all surveys, a correction from the true north to Universal-Transverse-Mercator-Grid-north or Lambert-Grid-north shall be made after making the magnetic-to-true-north correction. A composite dipmeter directional survey or a composite measurement while-drilling directional survey will be acceptable as fulfilling the applicable requirements of this paragraph.

(4) Wells are classified as vertical if the calculated average of inclination readings weighted by the respective interval lengths between readings from surface to drilled depth does not exceed 3 degrees from the vertical. When the calculated average inclination readings weighted by the length of the respective interval between readings from the surface to drilled depth exceeds 3 degrees, the well is classified as directional.

(5) At the request of a holder of an adjoining lease, the Regional Supervisor may, for the protection of correlative rights, furnish a copy of the directional survey to that leaseholder.

(f) *Fixed drilling platforms.* Applications for installation of fixed drilling platforms or structures including artificial islands shall be submitted in accordance with the provisions of subpart I, Platforms and Structures, of this part. Mobile drilling units that have their jacking equipment removed or have been otherwise immobilized are classified as fixed bottom founded drilling platforms.

(g) *Crane operations.* Cranes installed on fixed bottom-founded platforms shall be operated and maintained in accordance with the provisions of American Petroleum Institute (API) Recommended Practice (RP) for Operation and Maintenance of Offshore Cranes (API RP 2D) to ensure the safety of facility operations. Records of inspection, testing, maintenance, and crane operator qualifications in accordance with the provisions of API RP 2D shall be kept by the lessee at the lessee's field office nearest the OCS facility for a period of 2 years.

(h) *Diesel-engine air intakes.* After August 14, 1992, diesel-engine air intakes shall be equipped with a device to shut down the diesel engine in the event of runaway. Diesel engines that are continuously attended shall be equipped with either remote-operated manual or automatic-shutdown devices. Diesel engines that are not continuously attended shall be equipped with automatic shutdown devices.

§ 250.261 Control of wells.

The lessee shall take necessary precautions to keep its wells under control at all times. Operations shall be conducted in a safe and workmanlike manner. The lessee shall utilize the best available and safest drilling technologies and state-of-the-art methods to evaluate and minimize the potential for a well to flow or kick. The lessee shall utilize personnel who are trained and competent and shall utilize and maintain equipment and materials necessary to assure the safety and protection of personnel, equipment, natural resources, and the environment.

§ 250.262 Field rules.

When geological and engineering information in a field enables a District Supervisor to determine specific operating requirements, field rules may be established for drilling, well completion, or well workover on the District Supervisor's initiative or in response to a request from a lessee; such rules may modify the specific requirements of this subpart. After field rules have been established, operations in the field shall be conducted in accordance with such rules and other requirements of this subpart. Field rules may be amended or canceled for cause at any time upon the initiative of the District Supervisor or upon the request of a lessee.

§ 250.263 Well casing and cementing.

(a) *General requirements.* (1) For the purpose of this subpart, the several casing strings in order of normal installation are:

(i) Drive or structural,

(ii) Conductor,

(iii) Cap rock casing,

(iv) Bobtail cap rock casing (required when the cap rock casing does not penetrate into the cap rock),

(v) Second cap rock casing (brine wells), and

(vi) Production liner.

(2) The lessee shall case and cement all wells with a sufficient number of strings of casing cemented in a manner necessary to prevent release of fluids from any stratum through the wellbore (directly or indirectly) into the sea, protect freshwater aquifers from contamination, support unconsolidated sediments, and otherwise provide a means of control of the formation pressures and fluids. Cement composition, placement techniques, and waiting time shall be designed and conducted so that the cement in place behind the bottom 500 feet of casing or total length of annular cement fill, if less, attains a minimum compressive strength of 160 pounds per square inch (psi).

(3) The lessee shall install casing designed to withstand the anticipated stresses imposed by tensile, compressive, and buckling loads; burst and collapse pressures; thermal effects; and combinations thereof. Safety factors in the drilling and casing program designs shall be of sufficient magnitude to provide well control during drilling and to assure safe operations for the life of the well.

(4) In cases where cement has filled the annular space back to the mud line, the cement may be washed out or displaced to a depth not exceeding the depth of the structural casing shoe to facilitate casing removal upon well abandonment if the District Supervisor determines that subsurface protection against damage to freshwater aquifers and against damage caused by adverse loads, pressures, and fluid flows is not jeopardized.

(5) If there are indications of inadequate cementing (such as lost returns, cement channeling, or mechanical failure of equipment), the lessee shall evaluate the adequacy of the cementing operations by pressure testing the casing shoe. If the test indicates inadequate cementing, the lessee shall initiate remedial action as approved by the District Supervisor. For cap rock casing, the test for adequacy of cementing shall be the pressure testing of the annulus between the cap rock and the conductor casings. The pressure shall not exceed 70 percent of the burst pressure of the conductor casing or 70 percent of the collapse pressure of the cap rock casing.

(b) *Drive or structural casing.* This casing shall be set by driving, jetting, or drilling to a minimum depth of 100 feet below the mud line or such other depth, as may be required or approved by the District Supervisor, in order to support unconsolidated deposits and to provide hole stability for initial drilling operations. If this portion of the hole is drilled, a quantity of cement sufficient to fill the annular space back to the mud line shall be used.

(c) *Conductor and cap rock casing setting and cementing requirements.* (1) Conductor and cap rock casing design and setting depths shall be based upon relevant engineering and geologic factors including the presence or absence of hydrocarbons, potential hazards, and water depths. The proposed casing setting depths may be varied, subject to District Supervisor approval, to permit the casing to be set in a competent formation or through formations determined desirable to be isolated from the wellbore by casing for safer drilling operations. However, the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas or, if unknown, upon encountering such formations. Cap rock casing shall be set and cemented through formations known to contain oil or gas or, if unknown, upon encountering such formations. Upon encountering unexpected formation pressures, the lessee shall submit a revised casing program to the District Supervisor for approval.

(2) Conductor casing shall be cemented with a quantity of cement that fills the calculated annular space back to the mud line. Cement fill shall be verified by the observation of cement returns. In the event that observation of cement returns is not feasible, additional quantities of cement shall be used to assure fill to the mud line.

(3) Cap rock casing shall be cemented with a quantity of cement that fills the calculated annular space to at least 200 feet inside the conductor casing. When geologic conditions such as near surface fractures and faulting exist, cap rock casing shall be cemented with a quantity of cement that fills the calculated annular space to the mud line, unless otherwise approved by the District Supervisor. In brine wells, the second cap rock casing shall be cemented with a quantity of cement that fills the calculated annular space to at least 200 feet above the setting depth of the first cap rock casing.

(d) *Bobtail cap rock casing setting and cementing requirements.* (1) Bobtail cap rock casing shall be set on or just in cap rock and lapped a minimum of 100 feet into the previous casing string.

(2) Sufficient cement shall be used to fill the annular space to the top of the bobtail cap rock casing.

(e) *Production liner setting and cementing requirements.* (1) Production liners for sulphur wells and bleedwells shall be set in cap rock at or above the bottom of the open hole (hole that is open in cap rock, below the bottom of the cap rock casing) and lapped into the previous casing string or to the surface. For brine wells, the liner shall be set in salt and lapped into the previous casing string or to the surface.

(2) The production liner is not required to be cemented unless the cap rock contains oil or gas. If the cap rock contains oil or gas, sufficient cement shall be used to fill the annular space to the top of the production liner.

§ 250.264 Pressure testing of casing.

(a) Prior to drilling the plug after cementing, all casing strings, except the drive or structural casing, shall be pressure tested. The conductor casing shall be tested to at least 200 psi. All casing strings below the conductor casing shall be tested to 500 psi or 0.22 psi/ft, whichever is greater. (When oil or gas is not present in the cap rock, the production liner need not be cemented in place; thus, it would not be subject to pressure testing.) If the pressure declines more than 10 percent in 30 minutes or if there is another indication of a leak, the casing shall be recemented, repaired, or an additional casing string run and the casing tested again. The above procedures shall be repeated until a satisfactory test is obtained. The time, conditions of testing, and results of all casing pressure tests shall be recorded in the driller's report.

(b) After cementing any string of casing other than structural, drilling shall not be resumed until there has been a timelapse of at least 8 hours under pressure for the conductor casing string or 12 hours under pressure for all other casing strings. Cement is considered under pressure if one or more float valves are shown to be holding the cement in place or when other means of holding pressure are used.

§ 250.265 Blowout preventer systems and system components.

(a) *General.* The blowout preventer (BOP) systems and system components shall be designed, installed, used, maintained, and tested to assure well control.

(b) *BOP stacks.* The BOP stacks shall consist of an annular preventer and the number of ram-type preventers as specified under paragraphs (e) and (f) of this section. The pipe rams shall be of proper size to fit the drill pipe in use.

(c) *Working pressure.* The working-pressure rating of any BOP shall exceed the surface pressure to which it may be anticipated to be subjected.

(d) *BOP equipment.* All BOP systems shall be equipped and provided with the following:

(1) An accumulator system that provides sufficient capacity to supply 1.5 times the volume necessary to close and hold closed all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure, without assistance from a charging system. After February 14, 1992, accumulator regulators supplied by rig air, which do not have a secondary source of pneumatic supply, shall be equipped with manual overrides or other devices alternately provided to ensure capability of hydraulic operations if rig air is lost.

(2) An automatic backup to the accumulator system. The backup system shall be supplied by a power source independent from the power source to the primary accumulator system. The automatic backup system shall possess sufficient capability to close the BOP and hold it closed.

(3) At least one operable remote BOP control station in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor.

(4) A drilling spool with side outlets, if side outlets are not provided in the body of the BOP stack, to provide for separate kill and choke lines.

(5) A choke line and a kill line each equipped with two full-opening valves. At least one of the valves on the choke line and one valve on the kill line shall be remotely controlled, except that a check valve may be installed on the kill line in lieu of the remotely controlled valve, provided that two readily accessible manual valves are in place and the check valve is placed between the manual valve and the pump.

(6) A fill-up line above the uppermost preventer.

(7) A choke manifold designed with consideration of anticipated pressures to which it may be subjected, method of well control to be employed, surrounding environment, and corrosiveness, volume, and abrasiveness of fluids. The choke manifold shall also meet the following requirements:

(i) Manifold and choke equipment subject to well and/or pump pressure shall have a rated working pressure at least as great as the rated working pressure of the ram-type BOP's or as otherwise approved by the District Supervisor;

(ii) All components of the choke manifold system shall be protected from freezing by heating, draining, or filling with proper fluids; and

(iii) When buffer tanks are installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together, isolation valves shall be installed on each line.

(8) Valves, pipes, flexible steel hoses, and other fittings upstream of, and including, the choke manifold with a pressure rating at least as great as the rated working pressure of the ram-type BOP's unless otherwise approved by the District Supervisor.

(9) A wellhead assembly with a rated working pressure that exceeds the pressure to which it might be subjected.

(10) The following system components:

(i) A kelly cock (an essentially full-opening valve) installed below the swivel and a similar valve of such design that it can be run through the BOP stack installed at the bottom of the kelly. A wrench to fit each valve shall be stored in a location readily accessible to the drilling crew;

(ii) An inside BOP and an essentially full-opening, drill-string safety valve in the open position on the rig floor at all times while drilling operations are being conducted. These valves shall be maintained on the rig floor to fit all connections that are in the drill string. A wrench to fit the drill-string safety valve shall be stored in a location readily accessible to the drilling crew;

(iii) A safety valve available on the rig floor assembled with the proper connection to fit the casing string being run in the hole; and

(iv) Locking devices installed on the ram-type preventers.

(e) *BOP requirements.* Prior to drilling below cap rock casing, a BOP system shall be installed consisting of at least three remote-controlled, hydraulically operated BOP's including at least one equipped with pipe rams, one with blind rams, and one annular type.

(f) *Tapered drill-string operations.* Prior to commencing tapered drill-string operations, the BOP stack shall be equipped with conventional and/or variable-bore pipe rams to provide either of the following:

(1) One set of variable bore rams capable of sealing around both sizes in the string and one set of blind rams, or

(2) One set of pipe rams capable of sealing around the larger size string, provided that blind-shear ram capability is present, and crossover subs to the larger size pipe are readily available on the rig floor.

§ 250.266 Blowout preventer systems tests, actuations, inspections, and maintenance.

(a) Prior to conducting high-pressure tests, all BOP systems shall be tested to a pressure of 200 to 300 psi.

(b) Ram-type BOP's and the choke manifold shall be pressure tested with water to rated working pressure or as otherwise approved by the District Supervisor. Annular type BOP's shall be pressure tested with water to 70 percent of rated working pressure or as otherwise approved by the District Supervisor.

(c) In conjunction with the weekly pressure test of BOP systems required in paragraph (d) of this section, the choke manifold valves, upper and lower kelly cocks, and drill-string safety valves shall be pressure tested to pipe-ram test pressures. Safety valves with proper casing connections shall be actuated prior to running casing.

(d) BOP system shall be pressure tested as follows:

(1) When installed;

(2) Before drilling out each string of casing or before continuing operations in cases where cement is not drilled out;

(3) At least once each week, but not exceeding 7 days between pressure tests, alternating between control stations. If either control system is not functional, further drilling operations shall be suspended until that system becomes operable. A period of more than 7 days between BOP tests is allowed when there is a stuck drill pipe or there are pressure control operations and remedial efforts are being performed, provided that the pressure tests are conducted as soon as possible and before normal operations resume. The date, time, and reason for postponing pressure testing shall be entered into the driller's report. Pressure testing shall be performed at intervals to allow each drilling crew to operate the equipment. The weekly pressure test is not required for blind and blind-shear rams;

(4) Bind and blind-shear rams shall be actuated at least once every 7 days. Closing pressure on the blind and blind-shear rams greater than necessary to indicate proper operation of the rams is not required;

(5) Variable bore-pipe rams shall be pressure tested against all sizes of pipe in use, excluding drill collars and bottomhole tools; and

(6) Following the disconnection or repair of any well-pressure containment seal in the wellhead/BOP stack assembly. In this situation, the pressure tests may be limited to the affected component.

(e) All BOP systems shall be inspected and maintained to assure that the equipment will function properly. The BOP systems shall be visually inspected at least once each day. The manufacturer's recommended inspection and maintenance procedures are acceptable as guidelines in complying with this requirement.

(f) The lessee shall record pressure conditions during BOP tests on pressure charts, unless otherwise approved by the District Supervisor. The test duration for each BOP component tested shall be sufficient to demonstrate that the component is effectively holding pressure. The charts shall be certified as correct by the operator's representative at the facility.

(g) The time, date, and results of all pressure tests, actuations, inspections, and crew drills of the BOP system and system components shall be recorded in the driller's report. The BOP tests shall be documented in accordance with the following:

(1) The documentation shall indicate the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. As an alternate, the documentation in the driller's report may reference a BOP test plan that contains the required information and is retained on file at the facility.

(2) The control station used during the test shall be identified in the driller's report.

(3) Any problems or irregularities observed during BOP and auxiliary equipment testing and any actions taken to remedy such problems or irregularities shall be noted in the driller's report.

(4) Documentation required to be entered in the driller's report may instead be referenced in the driller's report. All records, including pressure charts, driller's report, and referenced documents, pertaining to BOP tests, actuations, and inspections, shall be available for MMS review at the facility for the duration of the drilling activity. Following completion of the drilling activity, all drilling records shall be retained for a period of 2 years at the facility, at the lessee's field office nearest the OCS facility, or at another location conveniently available to the District Supervisor.

§ 250.267 Well-control drills.

Well-control drills shall be conducted for each drilling crew in accordance with the requirements set forth in § 250.58 of this part or as approved by the District Supervisor.

§ 250.268 Diverter systems.

(a) When drilling a conductor or cap rock hole, all drilling units shall be equipped with a diverter system consisting of a diverter sealing element, diverter lines, and control systems. The diverter system shall be designed, installed, and maintained so as to divert gases, water, mud, and other materials away from the facilities and personnel.

(b) After August 14, 1992, diverter systems shall be in compliance with the requirements of this section.

The requirements applicable to diverters that were in effect immediately prior to August 14, 1991, shall remain in effect until August 14, 1992.

(c) The diverter system shall be equipped with remote-control valves in the flow lines that can be operated from at least one remote-control station in addition to the one on the drilling floor. Any valve used in a diverter system shall be full opening. No manual or butterfly valves shall be installed in any part of a diverter system. There shall be a minimum number of turns in the vent line(s) downstream of the spool outlet flange, and the radius of curvature of turns shall be as large as practicable. Flexible hose may be used for diversion lines instead of rigid pipe if the flexible hose has integral end couplings. The entire diverter system shall be firmly anchored and supported to prevent whipping and vibrations. All diverter control equipment and lines shall be protected from physical damage from thrown and falling objects.

(d) For drilling operations conducted with a surface wellhead configuration, the following shall apply:

(1) If the diverter system utilizes only one spool outlet, branch lines shall be installed to provide downwind diversion capability, and

(2) No spool outlet or diverter line internal diameter shall be less than 10 inches, except that dual spool outlets are acceptable if each outlet has a minimum internal diameter of 8 inches, and both outlets are piped to overboard lines and that each line downstream of the changeover nipple at the spool has a minimum internal diameter of 10 inches.

(e) The diverter sealing element and diverter valves shall be pressure tested to a minimum of 200 psi when nipped upon conductor casing. No more than 7 days shall elapse between subsequent pressure tests. The diverter sealing element, diverter valves, and diverter control systems (including the remote) shall be actuation tested, and the diverter lines shall be tested for flow prior to spudding and thereafter at least once each 24-hour period alternating between control stations. All test times and results shall be recorded in the driller's report.

§ 250.269 Mud program.

(a) The quantities, characteristics, use, and testing of drilling mud and the related drilling procedures shall be designed and implemented to prevent the loss of well control.

(b) The lessee shall comply with requirements concerning mud control, mud test and monitoring equipment, mud quantities, and safety precautions in enclosed mud handling areas as prescribed in § 250.60 (b), (c), (d), and (e) of this part, except that the installation of an operable degasser in the mud system as required in § 250.60(b)(8) is not required for sulphur operations.

§ 250.270 Securing of wells.

A downhole-safety device such as a cement plug, bridge plug, or packer shall be timely installed when drilling operations are interrupted by events such as those that force evacuation of the drilling crew, prevent station keeping, or require repairs to major drilling units or well-control equipment. The use of blind-shear rams or pipe rams and an inside BOP may be approved by the District Supervisor in lieu of the above requirements if cap rock casing has been set.

§ 250.271 Supervision, surveillance, and training.

(a) The lessee shall provide onsite supervision of drilling operations at all times.

(b) From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the toolpusher shall maintain rig-floor surveillance continuously, unless the well is secured with BOP's, bridge plugs, packers, or cement plugs.

(c) Lessee and drilling contractor personnel shall be trained and qualified in accordance with the provisions of subpart O of this part. Records of specific training that lessee and drilling contractor personnel have successfully completed, the dates of completion, and the names and dates of the courses shall be maintained at the drill site.

§ 250.272 Application for permit to drill.

(a) Prior to commencing the drilling of a well under an approved Exploration Plan, Development and Production Plan, or Development Operations Coordination Document, the lessee shall file Form MMS–331C, APD, with the District Supervisor for approval. Prior to commencing operations, written approval from the District Supervisor must be received by the lessee unless oral approval has been given pursuant to § 250.6(a) of this part.

(b) An APD shall include rated capacities of the proposed drilling unit and of major drilling equipment. After a drilling unit has been approved for use in an MMS district, the information need not be resubmitted unless required by the District Supervisor or there are changes in the equipment that affect the rated capacity of the unit.

(c) An APD shall include a fully completed Form MMS–331C and the following:

(1) A plat, drawn to a scale of 2,000 feet to the inch, showing the surface and subsurface location of the well to be drilled and of all the wells previously drilled in the vicinity from which information is available. For development wells on a lease, the wells previously drilled in the vicinity need not be shown on the plat. Locations shall be indicated in feet from the nearest block line;

(2) The design criteria considered for the well and for well control, including the following:

(i) Pore pressure;

(ii) Formation fracture gradients;

(iii) Potential lost circulation zones;

(iv) Mud weights;

(v) Casing setting depths;

(vi) Anticipated surface pressures (which for purposes of this section are defined as the pressure that can reasonably be expected to be exerted upon a casing string and its related wellhead equipment). In the calculation of anticipated surface pressure, the lessee shall take into account the drilling, completion, and producing conditions. The lessee shall consider mud densities to be used below various casing strings, fracture gradients of the exposed formations, casing setting depths, and cementing intervals, total well depth, formation fluid type, and other pertinent conditions. Considerations for calculating anticipated surface pressure may vary for each segment of the well. The lessee shall include as a part of the statement of anticipated surface pressure the calculations used to determine this pressure during the drilling phase and the completion phase, including the anticipated surface pressure used for production string design; and

(vii) If a shallow hazards site survey is conducted, the lessee shall submit with or prior to the submittal of the APD, two copies of a summary report describing the geological and manmade conditions present. The lessee shall also submit two copies of the site maps and data records identified in the survey strategy.

(3) A BOP equipment program including the following:

(i) The pressure rating of BOP equipment,

(ii) A schematic drawing of the diverter system to be used (plan and elevation views) showing spool outlet internal diameter(s); diverter line lengths and diameters, burst strengths, and radius of curvature at each turn; valve type, size, working-pressure rating, and location; the control instrumentation logic; and the operating procedure to be used by personnel, and

(iii) A schematic drawing of the BOP stack showing the inside diameter of the BOP stack and the number of annular, pipe ram, variable-bore pipe ram, blind ram, and blind-shear ram preventers.

(4) A casing program including the following:

(i) Casing size, weight, grade, type of connection and setting depth, and

(ii) Casing design safety factors for tension, collapse, and burst with the assumptions made to arrive at these values.

(5) The drilling prognosis including the following:

(i) Estimated coring intervals,

(ii) Estimated depths to the top of significant marker formations, and

(iii) Estimated depths at which encounters with fresh water, sulphur, oil, gas, or abnormally pressured water are expected.

(6) A cementing program including type and amount of cement in cubic feet to be used for each casing string;

(7) A mud program including the minimum quantities of mud and mud materials, including weight materials, to be kept at the site;

(8) A directional survey program for directionally drilled wells;

(9) An H_2S Contingency Plan, if applicable, and if not previously submitted; and

(10) Such other information as may be required by the District Supervisor.

(d) Public information copies of the APD shall be submitted in accordance with § 250.17 of this part.

§ 250.273 Sundry notices and reports on wells.

(a) Notices of the lessee's intention to change plans, make changes in major drilling equipment, deepen, sidetrack, or plug back a well, or engage in similar activities and subsequent reports pertaining to such operations shall be submitted to the District Supervisor on Form MMS–331, Sundry Notices and Reports on Wells. Prior to commencing operations associated with the change, written approval must be received from the District Supervisor unless oral approval is obtained pursuant to § 250.6(a) of this part.

(b) The Form MMS–331 submittal shall contain a detailed statement of the proposed work that will materially change from the work described in the approved APD. Information submitted shall include the present state of the well, including the production liner and last string of casing, the well depth and production zone, and the well's capability to produce. Within 30 days after completion of the work, a subsequent detailed report of all the work done and the results obtained shall be submitted.

(c) Public information copies of Form MMS–331 shall be submitted in accordance with § 250.17 of this part.

§ 250.274 Well records.

(a) Complete and accurate records for each well and all well operations shall be retained for a period of 2 years at the lessee's field office nearest the OCS facility or at another location conveniently available to the District Supervisor. The records shall contain a description of any significant malfunction or problem; all the formations penetrated; the content and character of sulphur in each formation if cored and analyzed; the kind, weight, size, grade, and setting depth of casing; all well logs and surveys run in the wellbore; and all other information required by the District Supervisor in the interests of resource evaluation, prevention of waste, conservation of natural resources, protection of correlative rights, safety of operations, and environmental protection.

(b) When drilling operations are suspended or temporarily prohibited under the provisions of § 250.10 of this part, the lessee shall, within 30 days after termination of the suspension or temporary prohibition or within 30 days after the completion of any activities related to the suspension or prohibition, transmit to the District Supervisor duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition on, or attached to, Form MMS–330, Well (Re)Completion Report, or Form MMS–331, Sundry Notices and Reports on Wells, as appropriate.

(c) Upon request by the Regional or District Supervisor, the lessee shall furnish the following:

(1) Copies of the records of any of the well operations specified in paragraph (a) of this section;

(2) Copies of the driller's report at a frequency as determined by the District Supervisor. Items to be reported include spud dates, casing setting depths, cement quantities, casing characteristics, mud weights, lost returns, and any unusual activities; and

(3) Legible, exact copies of reports on cementing, acidizing, analyses of cores, testing, or other similar services.

(d) As soon as available, the lessee shall transmit copies of logs and charts developed by well-logging operations, directional-well surveys, and core analyses. Composite logs of multiple runs and directional-well surveys shall be transmitted to the District Supervisor in duplicate as soon as available but not later than 30 days after completion of such operations for each well.

(e) If the District Supervisor determines that circumstances warrant, the lessee shall submit any other reports and records of operations in the manner and form prescribed by the District Supervisor.

§ 250.280 Well-completion and well-workover requirements.

(a) Lessees shall conduct well-completion and well-workover operations in sulphur wells, bleedwells, and brine wells in accordance with §§ 250.280 through 250.286 of this part and other provisions of this part as appropriate (see §§ 250.71 and 250.91 of this part for the definition of well-completion and well-workover operations).

(b) Well-completion and well-workover operations shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS including any mineral deposits (in areas leased and not leased), the national security or defense, or the marine, coastal, or human environment.

§ 250.281 Crew instructions.

Prior to engaging in well-completion or well-workover operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for MMS review.

§ 250.282 Approvals and reporting of well-completion and well-workover operations.

(a) No well-completion or well-workover operation shall begin until the lessee receives written approval from the District Supervisor. Approval for such operations shall be requested on Form MMS–331. Approvals by the District Supervisor shall be based upon a determination that the operations will be conducted in a manner to protect against harm or damage to life, property, natural resources of the OCS, including any mineral deposits, the national security or defense, or the marine, coastal, or human environment.

(b) The following information shall be submitted with Form MMS–331 (or with Form MMS–331C):

(1) A brief description of the well-completion or well-workover procedures to be followed;

(2) When changes in existing subsurface equipment are proposed, a schematic drawing showing the well equipment; and

(3) Where the well is in zones known to contain H_2S or zones where the presence of H_2S is unknown, a description of the safety precautions to be implemented.

(c) (1) Within 30 days after completion, Form MMS–330, including a schematic of the tubing and the results of any well tests, shall be submitted to the District Supervisor.

(2) Within 30 days after completing the well-workover operation, except routine operations, Form MMS–331 shall be submitted to the District Supervisor and shall include the results of any well tests and a new schematic of the well if any subsurface equipment has been changed.

§ 250.283 Well-control fluids, equipment, and operations.

(a) Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances, including subfreezing conditions. The well shall be ccntinuously monitored during well-completion and well-workover operations and shall not be left unattended at any time unless the well is shut in and secured;

(b) The following well-control fluid equipment shall be installed, maintained, and utilized:

(1) A fill-up line above the uppermost BOP,

(2) A well-control fluid-volume measuring device for determining fluid volumes when filling the hole on trips, and

(3) A recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

(c) When coming out of the hole with drill pipe or a workover string, the annulus shall be filled with well-control fluid before the change in fluid level decreases the hydrostatic pressure 75 psi or every five stands of drill pipe or workover string, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hole shall be utilized.

§ 250.284 Blowout prevention equipment.

(a) The BOP system and system components and related well-control equipment shall be designed, used, maintained, and tested in a manner necessary to assure well control in foreseeable conditions and circumstances, including subfreezing conditions. The working pressure of the BOP system and system components shall equal or exceed the expected surface pressure to which they may be subjected.

(b) The minimum BOP stack for well-completion operations or for well-workover operations with the tree removed shall consist of the following:

(1) Three remote-controlled, hydraulically operated preventers including at least one equipped with pipe rams, one with blind rams, and one annular type.

(2) When a tapered string is used, the minimum BOP stack shall consist of either of the following:

(i) An annular preventer, one set of variable bore rams capable of sealing around both sizes in the string, and one set of blind rams; or

(ii) An annular preventer, one set of pipe rams capable of sealing around the larger size string, a preventer equipped with blind-shear rams, and a crossover sub to the larger size pipe that shall be readily available on the rig floor.

(c) The BOP systems for well-completion operations, or for well-workover operations with the tree removed, shall be equipped with the following:

(1) An accumulator system that provides sufficient capacity to supply 1.5 times the volume necessary to close and hold closed all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure without assistance from a charging system. After February 14, 1992, accumulator regulators supplied by rig air which do not have a secondary source of pneumatic supply shall be equipped with manual overrides or alternately other devices provided to ensure capability of hydraulic operations if rig air is lost;

(2) An automatic backup to the accumulator system supplied by a power source independent from the power source to the primary accumulator system and possessing sufficient capacity to close all BOP's and hold them closed;

(3) Locking devices for the pipe-ram preventers;

(4) At least one remote BOP-control station and one BOP-control station on the rig floor; and

(5) A choke line and a kill line each equipped with two full-opening valves and a choke manifold. One of the choke-line valves and one of the kill-line valves shall be remotely controlled except that a check valve may be installed on the kill line in lieu of the remotely-controlled valve provided that two readily accessible manual valves are in place, and the check valve is placed between the manual valve and the pump.

(d) The minimum BOP-stack components for well-workover operations with the tree in place and performed through the wellhead inside of the sulphur line using small diameter jointed pipe (usually ¾ inch to 1¼ inch) as a work string; i.e., small-tubing operations, shall consist of the following:

(1) For air line changes, the well shall be killed prior to beginning operations.

The procedures for killing the well shall be included in the description of well-workover procedures in accordance with § 250.282 of this part. Under these circumstances, no BOP equipment is required.

(2) For other work inside of the sulphur line, a tubing stripper or annular preventer shall be installed prior to beginning work.

(e) An essentially full-opening, work-string safety valve shall be maintained on the rig floor at all times during well-completion operations. A wrench to fit the work-string safety valve shall be readily available. Proper connections shall be readily available for inserting a safety valve in the work string.

§ 250.285 Blowout preventer system testing, records, and drills.

(a) Prior to conducting high-pressure tests, all BOP systems shall be tested to a pressure of 200 to 300 psi.

(b) Ram-type BOP's and the choke manifold shall be pressure tested with water to a rated working pressure or as otherwise approved by the District Supervisor. Annular type BOP's shall be pressure tested with water to 70 percent of rated working pressure or as otherwise approved by the District Supervisor.

(c) In conjunction with the weekly pressure test of BOP systems required in paragraph (d) of this section, the choke manifold valves, upper and lower kelly cocks, and drill-string safety valves shall be pressure tested to pipe-ram test pressures. Safety valves with proper casing connections shall be actuated prior to running casing.

(d) BOP system shall be pressure tested as follows:

(1) When installed;

(2) Before drilling out each string of casing or before continuing operations in cases where cement is not drilled out;

(3) At least once each week, but not exceeding 7 days between pressure tests, alternating between control stations. If either control system is not functional, further drilling operations shall be suspended until that system becomes operable. A period of more than 7 days between BOP tests is allowed when there is a stuck drill pipe or there are pressure control operations, and remedial efforts are being performed, provided that the pressure tests are conducted as soon as possible and before normal operations resume. The time, date, and reason for postponing pressure testing shall be entered into the driller's report. Pressure testing shall be performed at intervals to allow each drilling crew to operate the equipment. The weekly pressure test is not required for blind and blind-shear rams;

(4) Blind and blind-shear rams shall be actuated at least once every 7 days. Closing pressure on the blind and blind-shear rams greater than necessary to indicate proper operation of the rams is not required;

(5) Variable bore-pipe rams shall be pressure tested against all sizes of pipe in use, excluding drill collars and bottomhole tools; and

(6) Following the disconnection or repair of any well-pressure containment seal in the wellhead/BOP stack assembly, the pressure tests may be limited to the affected component.

(e) All personnel engaged in well-completion operations shall participate in a weekly BOP drill to familiarize crew members with appropriate safety measures.

(f) The lessee shall record pressure conditions during BOP tests on pressure charts, unless otherwise approved by the District Supervisor. The test duration for each BOP component tested shall be sufficient to demonstrate that the component is effectively holding pressure. The charts shall be certified as correct by the operator's representative at the facility.

(g) The time, date, and results of all pressure tests, actuations, inspections, and crew drills of the BOP system and system components shall be recorded in the operations log. The BOP tests shall be documented in accordance with the following:

(1) The documentation shall indicate the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. As an alternate, the documentation in the operations log may reference a BOP test plan that contains the required information and is retained on file at the facility.

(2) The control station used during the test shall be identified in the operations log.

(3) Any problems or irregularities observed during BOP and auxiliary equipment testing and any actions taken to remedy such problems or irregularities shall be noted in the operations log.

(4) Documentation required to be entered in the driller's report may instead be referenced in the driller's report. All records, including pressure charts, driller's report, and referenced documents, pertaining to BOP tests, actuations, and inspections shall be available for MMS review at the facility for the duration of the drilling activity. Following completion of the drilling activity, all drilling records shall be retained for a period of 2 years at the facility, at the lessee's field office nearest the OCS facility, or at another location conveniently available to the District Supervisor.

§ 250.286 Tubing and wellhead equipment.

(a) No tubing string shall be placed into service or continue to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

(b) Wellhead, tree, and related equipment shall be designed, installed, tested, used, and maintained so as to achieve and maintain pressure control.

§ 250.290 Production requirements.

(a) The lessee shall conduct sulphur production operations in compliance with the approved Development and Production Plan requirements of §§ 250.290 through 250.297 of this subpart and requirements of this part, as appropriate.

(b) Production safety equipment shall be designed, installed, used, maintained, and tested in a manner to assure the safety of operations and protection of the human, marine, and coastal environments.

§ 250.291 Design, installation, and operation of production systems.

(a) *General.* All production facilities shall be designed, installed, and maintained in a manner that provides for efficiency and safety of operations and protection of the environment.

(b) *Approval of design and installation features for sulphur production facilities.* Prior to installation, the lessee shall submit a sulphur production system application, in duplicate, to the District Supervisor for approval. The application shall include information relative to the proposed design and installation features. Information concerning approved design and installation features shall be maintained by the lessee at the lessee's offshore field office nearest the OCS facility or at another location conveniently available to the District Supervisor. All approvals are subject to field verification. The application shall include the following:

(1) A schematic flow diagram showing size, capacity, design, working pressure of separators, storage tanks, compressor pumps, metering devices, and other sulphur-handling vessels;

(2) A schematic piping diagram showing the size and maximum allowable working pressures as determined in accordance with API RP 14E, Recommended Practice for Design

and Installation of Offshore Production Platform Piping Systems;

(3) Electrical system information including a plan of each platform deck, outlining all hazardous areas classified in accordance with API RP 500B, Recommended Practice for Classification of Locations for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, and outlining areas in which potential ignition sources are to be installed;

(4) Certification that the design for the mechanical and electrical systems to be installed were approved by registered professional engineers. After these systems are installed, the lessee shall submit a statement to the District Supervisor certifying that the new installations conform to the approved designs of this subpart.

(c) *Hydrocarbon handling vessels associated with fuel gas system.* Hydrocarbon handling vessels associated with the fuel gas system shall be protected with a basic and ancillary surface safety system designed, analyzed, installed, tested, and maintained in operating condition in accordance with the provisions of API Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms (API RP 14C). If processing components are to be utilized, other than those for which Safety Analysis Checklists are included in API RP 14C, the analysis technique and documentation specified therein shall be utilized to determine the effects and requirements of these components upon the safety system.

(d) *Approval of safety-systems design and installation features for fuel gas system.* Prior to installation, the lessee shall submit a fuel gas safety system application, in duplicate, to the District Supervisor for approval. The application shall include information relative to the proposed design and installation features. Information concerning approved design and installation features shall be maintained by the lessee at the lessee's offshore field office nearest the OCS facility or at another location conveniently available to the District Supervisor. All approvals are subject to field verification. The application shall include the following:

(1) A schematic flow diagram showing size, capacity, design, working pressure of separators, storage tanks, compressor pumps, metering devices, and other hydrocarbon-handling vessels;

(2) A schematic flow diagram (API RP 14C, Figure E1) and the related Safety Analysis Function Evaluation chart (API RP 14C, subsection 4.3c);

(3) A schematic piping diagram showing the size and maximum allowable working pressures as determined in accordance with API RP 14E, Design and Installation of Offshore Production Platform Piping Systems;

(4) Electrical system information including the following:

(i) A plan of each platform deck, outlining all hazardous areas classified in accordance with API RP 500B and outlining areas in which potential ignition sources are to be installed;

(ii) All significant hydrocarbon sources and a description of the type of decking, ceiling, walls (e.g., grating or solid), and firewalls; and

(iii) Elementary electrical schematic of any platform safety shutdown system with a functional legend.

(5) Certification that the design for the mechanical and electrical systems to be installed was approved by registered professional engineers. After these systems are installed, the lessee shall submit a statement to the District Supervisor certifying that the new installations conform to the approved designs of this subpart; and

(6) Design and schematics of the installation and maintenance of all fire- and gas-detection systems including the following:

(i) Type, location, and number of detection heads;

(ii) Type and kind of alarm, including emergency equipment to be activated;

(iii) Method used for detection;

(iv) Method and frequency of calibration; and

(v) A functional block diagram of the detection system, including the electric power supply.

§ 250.292 Additional production and fuel gas system requirements.

(a) *General.* Lessees shall comply with the following production safety system requirements (some of which are in addition to those contained in § 250.291 of this part).

(b) *Design, installation, and operation of additional production systems, including fuel gas handling safety systems.* (1) Pressure and fired vessels shall be designed, fabricated, code stamped, and maintained in accordance with applicable provisions of section I, IV, and VIII of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

(i) Pressure safety relief valves shall be designed, installed, and maintained in accordance with applicable provisions of sections I, IV, and VIII of the ANSI/ASME Boiler and Pressure Vessel Code. The safety relief valves shall conform to the valve-sizing and pressure-relieving requirements specified in these documents; however, the safety relief valves shall be set no higher than the maximum-allowable working pressure of the vessel. All safety relief valves and vents shall be piped in such a way as to prevent fluid from striking personnel or ignition sources.

(ii) The lessee shall use pressure recorders to establish the operating pressure ranges of pressure vessels in order to establish the pressure-sensor settings. Pressure-recording charts used to determine operating pressure ranges shall be maintained by the lessee for a period of 2 years at the lessee's field office nearest the OCS facility or at another location conveniently available to the District Supervisor. The high-pressure sensor shall be set no higher than 15 percent or 5 psi, whichever is greater, above the highest operating pressure of the vessel. This setting shall also be set sufficiently below (15 percent or 5 psi, whichever is greater) the safety relief valve's set pressure to assure that the high-pressure sensor sounds an alarm before the safety relief valve starts relieving. The low-pressure sensor shall sound an alarm no lower than 15 percent or 5 psi, whichever is greater, below the lowest pressure in the operating range.

(2) *Engine exhaust.* Engine exhausts shall be equipped to comply with the insulation and personnel protection requirements of API RP 14C, section 4.2c(4). Exhaust piping from diesel engines shall be equipped with spark arresters.

(3) *Firefighting systems.* Firefighting systems shall conform to subsection 5.2, Fire Water Systems, of API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, and shall be subject to the approval of the District Supervisor. Additional requirements shall apply as follows:

(i) A firewater system consisting of rigid pipe with firehose stations shall be installed. The firewater system shall be installed to provide needed protection, especially in areas where fuel handling equipment is located.

(ii) Fuel or power for firewater pump drivers shall be available for at least 30 minutes of run time during platform shut-in time. If necessary, an alternate fuel or power supply shall be installed to provide for this pump-operating time unless an alternate firefighting system has been approved by the District Supervisor;

(iii) A firefighting system using chemicals may be used in lieu of a water system if the District Supervisor determines that the use of a chemical

system provides equivalent fire-protection control; and

(iv) A diagram of the firefighting system showing the location of all firefighting equipment shall be posted in a prominent place on the facility or structure.

(4) *Fire- and gas-detection system.* (i) Fire (flame, heat, or smoke) sensors shall be installed in all enclosed classified areas. Gas sensors shall be installed in all inadequately ventilated, enclosed classified areas. Adequate ventilation is defined as ventilation that is sufficient to prevent accumulation of significant quantities of vapor-air mixture in concentrations over 25 percent of the lower explosive limit. One approved method of providing adequate ventilation is a change of air volume each 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater. Enclosed areas (e.g., buildings, living quarters, or doghouses) are defined as those areas confined on more than four of their six possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to allow entry of personnel. A classified area is any area classified Class I, Group D, Division 1 or 2, following the provisions of API RP 500B.

(ii) All detection systems shall be capable of continuous monitoring. Fire-detection systems and portions of combustible gas-detection systems related to the higher gas concentration levels shall be of the manual-reset type. Combustible gas-detection systems related to the lower gas-concentration level may be of the automatic-reset type.

(iii) A fuel-gas odorant or an automatic gas-detection and alarm system is required in enclosed, continuously manned areas of the facility that are provided with fuel gas. Living quarters and doghouses not containing a gas source and not located in a classified area do not require a gas detection system.

(iv) The District Supervisor may require the installation and maintenance of a gas detector or alarm in any potentially hazardous area.

(v) Fire- and gas-detection systems shall be an approved type, designed and installed in accordance with API RP 14C, API RP 14G, and API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms.

(c) *General platform operations.* Safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Only the minimum number of safety devices shall be taken out of service. Personnel shall monitor the bypassed or blocked out functions until the safety devices are placed back in service. Any safety device that is temporarily out of service shall be flagged by the person taking such device out of service.

§ 250.293 Safety-system testing and records.

(a) *Inspection and testing.* Safety-system devices shall be successfully inspected and tested by the lessee at the interval specified below or more frequently if operating conditions warrant. Testing shall be in accordance with API RP 14C, appendix D or for safety-system devices other than those listed in API RP 14C, Appendix D the analysis technique and documentation specified therein shall be utilized for inspection and testing of these components, and the following:

(1) Safety relief valves on the natural gas feed system for power plant operations such as pressure safety valves shall be inspected and tested for operation at least once every 12 months. These valves shall be either bench tested or equipped to permit testing with an external pressure source.

(2) The following safety devices shall be inspected and tested at least once each calendar month, but at no time shall more than 6 weeks elapse between tests:

(i) All pressure safety high or pressure safety low, and

(ii) All level safety high and level safety low controls.

(3) All pumps for firewater systems shall be inspected and operated weekly.

(4) All fire- (flame, heat, or smoke) and gas-detection systems shall be inspected and tested for operation and recalibrated every 3 months provided that testing can be performed in a nondestructive manner.

(5) Prior to the commencement of production, the lessee shall notify the District Supervisor when the lessee is ready to conduct a preproduction test and inspection of the safety system. The lessee shall also notify the District Supervisor upon commencement of production in order that a complete inspection may be conducted.

(b) *Records.* The lessee shall maintain records for a period of 2 years for each safety device installed. These records shall be maintained by the lessee at the lessee's field office nearest the OCS facility or another location conveniently available to the District Supervisor. These records shall be available for MMS review. The records shall show the present status and history of each safety device, including dates and details of installation, removal, inspection, testing, repairing, adjustments, and reinstallation.

§ 250.294 Safety device training.

Prior to engaging in production operations on a lease and periodically thereafter, personnel installing, inspecting, testing, and maintaining safety devices shall be instructed in the safety requirements of the operations to be performed; possible hazards to be encountered; and general safety considerations to be taken to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for MMS review.

§ 250.295 Production rates.

Each sulphur deposit shall be produced at rates that will provide economic development and depletion of the deposit in a manner that would maximize the ultimate recovery of sulphur without resulting in waste (e.g., an undue reduction in the recovery of oil and gas from an associated hydrocarbon accumulation).

§ 250.296 Production measurement.

(a) *General.* Measurement equipment and security procedures shall be designed, installed, used, maintained, and tested so as to accurately and completely measure the sulphur produced on a lease for purposes of royalty determination.

(b) *Application and approval.* The lessee shall not commence production of sulphur until the Regional Supervisor has approved the method of measurement. The request for approval of the method of measurement shall contain sufficient information to demonstrate to the satisfaction of the Regional Supervisor that the method of measurement meets the requirements of paragraph (a) of this section.

§ 250.297 Site security.

(a) All locations where sulphur is produced, measured, or stored shall be operated and maintained to ensure against the loss or theft of produced sulphur and to assure accurate and complete measurement of produced sulphur for royalty purposes.

(b) Evidence of mishandling of produced sulphur from an offshore lease, or tampering or falsifying any measurement of production for an offshore lease, shall be reported to the Regional Supervisor as soon as possible but no later than the next business day after discovery of the evidence of mishandling.

[FR Doc. 91-14757 Filed 7-12-91; 8:45 a.m.]
BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 91-094]

Safety Zone Regulations; City of New London Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Emergency Rule.

SUMMARY: The Coast Guard is establishing a safety zone in New London Harbor, New London, CT. This safety zone is needed to protect marine traffic and the public from the safety hazard associated with a fireworks display in a narrow channel. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATE: This regulation becomes effective at 9:15 pm July 13, 1991. It terminates at 9:55 pm on July 13, 1991, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT David D. Skewes, Captain of the Port, Long Island Sound at (203) 468-4464.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect any marine traffic from the potential hazards involved.

Drafting Information

The drafters of this regulation are LT David D. Skewes, project officer for Captain of the Port Long Island Sound, and LT Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is a fireworks display in the navigable waters of the United States. This Safety Zone is needed to protect any transiting commercial or recreational marine traffic or the public from the hazards associated with the fireworks display.

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

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

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

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

2. A new section 165.T1094 is added to read as follows:

§ 165.T1094 Safety Zone: City of New London Fireworks.

(a) *Location.* The following area is a safety zone: All waters within a 1200' radius of the barges Bay 3, AM 1, and YPS3, anchored in New London Harbor. The barges will be anchored in approximate position (41 21.0'N, 72 05.0' W).

The boundaries of this zone will be marked with 8 large orange spheres/marker buoys positioned in a circle around the barges.

(b) *Effective date.* This regulation becomes effective on July 13, 1991 at 9:15 pm. It terminates at 9:55 pm July 13, 1991, unless terminated sooner by the Captain of the Port.

(c) *Regulations:*

In accordance with the general regulations in § 165.23 of this part, entry into this zone during the specified times is prohibited unless authorized by the Captain of the Port or his on scene representatives.

Dated: July 2, 1991.

H. Bruce Dickey,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 91-16636 Filed 7-12-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 91-090]

Safety Zone: Narragansett Bay, Quonset Point, RI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on July 26, 27, and 28, 1991 at Quonset Point, North Kingstown, RI. This temporary Safety Zone will only be in effect while the "Quonset International Charity Airshow" is in progress. The zone is needed to protect pleasure craft from potential hazards associated with an airshow. Entry into the safety zone is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

EFFECTIVE DATE: This regulation is effective 12 noon to 6 p.m. July 26, 27, and 28, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. P. O'Malley, USCG, c/o Captain Of The Port, U.S. Coast Guard Marine Safety Office, John O. Pastore Fed. Bldg., Providence, RI 02903-1790, telephone (401) 528-5335.

SUPPLEMENTARY INFORMATION: On February 22, 1991 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (56 FR 7316). Interested persons were requested to submit comments and (O) comments were received.

Drafting Information

The drafters of this regulation are Lieutenant M. P. O'Malley, project officer for the Captain of the Port, and Lieutenant R. E. Korroch, project attorney, for the First Coast Guard District Legal Office.

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

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). These regulations are considered to be nonsignificant under the policies outlined in DOT Order 2100.5.

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Since the 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.

List of Subjects in 33 CFR Part 165

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

Final Regulations

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

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

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

2. A new § 165.T0105 number is added to read as follows.

§ 165.T0105 Safety Zone: Narragansett Bay, Quonset Point, RI.

(a) *Location.* From Quonset Point Jetty, extending 1000 yards south to (41–34–41N, 71–24–41W), east to Quonset Channel Buoy #05, northwest to Buoy #08, north to Buoy #12, and northwest to Pier #1 Davisville Depot.

(b) *Effective Dates.* This regulation becomes effective from 12 noon to 6 p.m. on July 26, 27, and 28, 1991 unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: June 20, 1991.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 91–16497 Filed 7–12–91; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD1 91–100]

Safety Zone Regulations; Three Mile Harbor Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Three Mile Harbor of Gardiner's Bay, NY. This safety zone is needed to protect marine traffic and the public from the safety hazard associated with a fireworks display in a narrow channel. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATE: This regulation becomes effective at 8:45 p.m. July 13, 1991. It terminates at 9:30 p.m. on July 13, 1991, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lt David D. Skewes, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect any marine traffic from the potential hazards involved.

DRAFTING INFORMATION: The drafters of this regulation are LT David D. Skewes, project officer for Captain of the Port Long Island Sound, and LT Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation:

The event requiring this regulation is a fireworks display in the navigable waters of the United States. This Safety Zone is needed to protect any transiting commercial or recreational marine traffic or the public from the hazards associated with the fireworks display.

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

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

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

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

2. A new § 165.T1100 is added to read as follows:

§ 165.T1100 Safety Zone: Three Mile Harbor Fireworks.

(a) *Location.* The following area is a safety zone: All waters within a 900' radius of the barges 452 and 453, anchored in Three Mile Harbor, NY. The barges will be anchored in approximate position (41 01' 06"N, 72 11' 58"W). The boundaries of this zone will be marked with 8 large orange spheres/marker buoys positioned in a circle around the barges.

(b) *Effective date.* This regulation becomes effective on July 13, 1991 at 8:45 pm. It terminates at 9:30 pm July 13, 1991, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone during the specified times is prohibited unless authorized by the Captain of the Port or his on scene representatives.

Dated: 2 July 1991.

H. Bruce Dickey,

Captain, U.S. Coast Guard Captain of the Port Long Island Sound.

[FR Doc. 91–16496 Filed 7–12–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–3973–9]

RIN 2040–AB51

Drinking Water Regulations; Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: EPA is correcting errors in the effective date and the text of the national primary drinking water regulations for lead and copper that appeared in the **Federal Register** on June 7, 1991 [56 FR 26460].

FOR FURTHER INFORMATION CONTACT: Jeff Cohen at (202) 382–5456.

The United States Environmental Protection Agency promulgated national primary drinking water regulations (NPDWRs) for lead and copper on June 7, 1991 (56 FR 26460). The preamble and regulatory text contained in that **Federal Register** notice contained certain errors with regard to the effective dates of various provisions of the final rule, and the Agency inadvertently omitted from the text of the final rule a provision relating to sampling techniques for measuring lead and copper in drinking water. This notice corrects those mistakes.

The Agency intended to have the provisions of 40 CFR 141.86–.91, and part 142 become effective 30 days after publication of the final rule (July 7, 1991) and the remainder of the regulation become effective eighteen months after publication of the regulation (December 7, 1992). This notice corrects the language in the "Effective Dates" section of the preamble (56 FR 26460) and the section of the regulation relating to effective dates (§ 141.80(a)(2)) to reflect these dates.

As discussed in the preamble to the final rule, EPA determined that it is not feasible or appropriate to establish an MCL for lead and copper at the tap and the Agency consequently established a treatment technique for these contaminants. Because the treatment technique requirements are intended to result in comprehensive control of lead and copper drinking water contamination, and in light of the Agency's findings that establishment of a treatment technique in lieu of an MCL was appropriate for lead and copper, the final rule deleted the current MCL

contained in 40 CFR 141.11. The effective date of that deletion should have been December 7, 1992 (when the provisions of the new NPDWR will become effective), not November 9, 1992, and this notice corrects that error in the text of § 141.11.

Finally, this notice includes a sentence inadvertently omitted from § 141.86(b)(2), which was discussed in the preamble to the final rule, regarding the length of time after sampling during which samples can be acidified.

Dated: July 1, 1991.

James R. Elder,

Director, Office of Groundwater and Drinking Water.

The following corrections are made in FRL–3823–5, the preamble and national primary drinking water regulations for lead and copper published in the **Federal Register** on June 7, 1991 [56 FR 26460].

1. Page 26460, column one, the paragraph entitled **EFFECTIVE DATE** is revised to read as follows:

"**EFFECTIVE DATE:** The provisions 40 CFR 141.86, 141.89, 141.90, 141.91, 142.14, 142.15, 142.16, and 142.17 will be effective on July 7, 1991. The remainder of the rule shall become effective December 7, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1991."

§ 141.11 [Corrected]

2. Page 26548, column one, under § 141.11, paragraph (b), the second sentence should read as follows:

"The following maximum contaminant level for lead shall remain effective until December 7, 1992."

§ 141.80 [Corrected]

3. Page 26549, column one, § 141.80(a)(2) should read as follows:

"(2) The requirements set forth in §§ 141.86–141.91 shall take effect on July 7, 1991. The requirements in §§ 141.81–141.85 shall take effect on December 7, 1992."

§ 141.86 [Corrected]

4. Page 26556, column one, § 141.86(b)(2) is correctly added to read as follows:

(2) Each first draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be collected at an interior tap from which water is typically drawn for consumption. First draw samples may be collected by the system or the system may allow residents to collect first draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems of residents handling nitric acid, acidification of first draw samples may be done up to 14 days after the sample is collected. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

[FR Doc. 91–16749 Filed 7–12–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–30; RM–7600]

Television Broadcasting Services; Vanderbilt, MI

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 45 to Vanderbilt, Michigan, as that community's first local commercial television service in response to a petition filed by GRK Productions, Inc. See 56 FR 8974, March 4, 1991. Canadian concurrence has been obtained for this allotment at coordinates 45–08–42 and 84–39–36. Although no site restriction has been imposed on this allotment, Channel 45 at Vanderbilt will require a minus offset. The Commission has imposed a freeze on television allotments in certain metropolitan areas but Vanderbilt is not in one of the affected areas. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–30, adopted June 24, 1991, and released July 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments under Michigan, is amended by adding Channel 45, Vanderbilt.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–16681 Filed 7–12–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–613; RM–7559]

Radio Broadcasting Services; Britt, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hancock County Radio, allots Channel 258A to Britt, Iowa, as the community's first local FM service. See 55 FR 52186, December 20, 1990. Channel 258A can be allotted to Britt in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.3 kilometers (4.5 miles) west to avoid short-spacings to the construction permit for a new station on Channel 258A at Eldora, Iowa, and to Station KSJN (formerly WLOL), Channel 258C, Minneapolis, Minnesota. The coordinates for Channel 258A at Britt are North Latitude 43–06–04 and West Longitude 93–53–27. With this action, this proceeding is terminated.

DATES: Effective August 23, 1991. The window period for filing applications will open on August 26, 1991, and close on September 25, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–613, adopted June 24, 1991, and released July 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the

Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Channel 258A, Britt.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–16682 Filed 7–12–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–54; RM–7623]

Radio Broadcasting Services; Herington, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 289C3 for Channel 289A, Herington, Kansas, and modifies the construction permit for Station KDMM to specify operation on the higher class channel, in response to a petition filed by Marie Willis and Donald D. Willis. See 56 FR 11140, March 15, 1991. The coordinates for Channel 289C3 are 38–38–30 and 97–02–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–54, adopted June 24, 1991, and released July 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 289A and adding Channel 289C3 at Herington.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–16684 Filed 7–12–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–53; RM–7591]

Radio Broadcasting Services; Bronson, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel *234A to Bronson, Michigan, and reserves the channel for noncommercial educational use in response to a petition filed by Spring Arbor College Communications. See 56 FR 11140, March 15, 1991. There is a site restriction 12.5 kilometers (7.8 miles) southwest of the community. Canadian concurrence has been obtained for this allotment at coordinates 41–46–41 and 85–16–32. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–53, adopted June 24, 1991, and released July 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel *234A, Bronson.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–16685 Filed 7–12–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–55; RM–7624]

Radio Broadcasting Services; Missoula, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261C1 for Channel 261C3, and modifies the construction permit for Station KZOQ–FM, Missoula, Montana, in response to a petition filed by Smith Broadcasting, Inc. See 56 FR 11141, March 15, 1991. Canadian concurrence has been obtained for this allotment at coordinates 46–48–08 and 113–58–20. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–55, adopted June 24, 1991, and released July 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended

by removing Channel 261C3 and adding Channel 261C1 at Missoula.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-16683 Filed 7-12-91; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1806, 1807, 1825, 1839, 1842, 1845, 1852, and 1853

RIN 2700-AB09

[NASA FAR Supplement Directive 89-8]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Clarification of contract closeout procedures; (2) Removal of redundancies caused by FAC 90-4; (3) Reference change to reflect revised FAR numbering in FAC 90-4; (4) Implementation of section 110 of Public Law 101-611 by revising the NASA Domestic Preference regulations; and (5) Revision of NFS coverage on assignment of contract administration.

EFFECTIVE DATE: June 30, 1991.

FOR FURTHER INFORMATION CONTACT: David K. Beck, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, telephone: (202) 453-8250.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700-0042.

List of Subjects in 48 CFR Parts 1804, 1806, 1807, 1825, 1842, 1839, 1842, 1845, 1852, and 1853

Government procurement.

Don G. Bush,

Acting Assistant Administrator for Procurement.

1. The authority citation for 48 CFR part 1804, 1806, 1807, 1825, 1842, 1845, 1852, and 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Subpart 1804.8 is amended by revising section 1804.804-5 to read as follows:

1804.804-5 Detailed procedures for closing out contract files.

(a) When the contracting office retains contract administration (excluding small purchases), the contracting officer shall comply with FAR 4.804-5(a) by completing NASA Form 1612, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record. To comply with FAR 4.804-5(b), the contracting officer shall complete NASA Form 1611, Contract Completion Statement.

(b) For small purchase files, the contracting officer shall file signed statements that all contract actions are complete.

PART 1806—COMPETITION REQUIREMENTS

1806.304 [Amended]

3. In section 1806.304, paragraph (a), the title "Deputy Director" is revised to read "Competition Advocate."

PART 1807—ACQUISITION PLANNING

1807.7102 [Amended]

4. In section 1807.7102, paragraph (a), the reference "1807.103(b)(2)" is revised to read "1807.103(b)(1)."

PART 1825—FOREIGN ACQUISITION

5. Part 1825 is amended as set forth below:

1825.407 and 1825.407-70 [Removed]

a. Sections 1825.407 and 1825.407-70 are removed in their entirety.

1825.703 [Amended]

b. In section 1825.703, the reference "FAR 25.702" is revised to read "FAR 25.702(a)."

c. Section 1825.7100 is revised to read as follows:

1825.7100 Scope of subpart.

This subpart implements Sec. 209 of Public Law 100-685, the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, and Sec. 110 of Public Law 101-611, the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991, and applies only to solicitations and contracts which are more than 50% funded with Fiscal Year 1989 or 1991 funds. There is no corresponding requirement for Fiscal Year 1990 funds.

1825.7101 [Amended]

d. In section 1825.7101, definition "Domestic product," the number "50" is revised to read "51".

e. In section 1825.7104, the introductory text is revised to read as follows:

1825.7104 Determination by United States Trade Representative.

The United States Trade Representative has determined that when NASA is procuring supply-type products, application of the domestic preference established by the NASA Authorization Acts for Fiscal Years 1989 and 1991 would violate the General Agreement on Tariffs and Trade and certain international agreements to which the United States is a party, when the following conditions exist:

* * * * *

f. Section 1825.7105 is revised to read as follows:

1825.7105 Solicitation provision and contract clause.

The contracting officer shall insert the provision at 1852.225-74, NASA Domestic Preference Certificate, and the clause at 1825.225-75, NASA Domestic Preference, in all competitive solicitations and contracts for supplies which are more than 50% funded with Fiscal Year 1989 or 1991 funds.

6. Part 1839 consisting of subpart 1839.70 is revised to read as follows:

PART 1839—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES

Subpart 1839.70—NASA Procedures

1839.7000 Scope of subpart.
1839.7001 Policy.
1839.7002 Applicability.
1839.7003 Requests from installations.
1839.7003–1 Responsibility.
1839.7003–2 Request format.
1839.7003–3 Submission.
1839.7004 FIP resources acquisition plans.
1839.7005 Coordination.
1839.7006 DPA transmittal.
1839.7007 Numbering provisions and clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1839.70—NASA Procedures

1839.7000 Scope of subpart.

This subpart prescribes the internal NASA procedures to be used by installations in obtaining General Services Administration (GSA) authorization to contract for Federal information processing (FIP) resources.

1839.7001 Policy.

(a) NASA policies and procedures on the acquisition of FIP resources are prescribed in NHB 2410.1, Information Processing Resources Management, chapter 4. See NFS 1804.470 regarding NASA policy on automated information security.

(b) The Designated Senior Official (DSO), the Associate administrator for Management, has responsibility and accountability for interpreting, applying, and overseeing the implementation of the FIRMR within NASA. The DSO, with the concurrence of the Assistant Administrator for Procurement, has the responsibility for submitting agency procurement requests (APRs) to the GSA to obtain delegations of procurement authority (DPAs) for FIP resources.

1839.7002 Applicability.

This subpart is applicable to all procurements of FIP resources for which the Federal Information Resources Management Regulation (FIRMR) requires issuance of specific DPAs.

1839.7003 Requests from installations.

1839.7003–1 Responsibility.

The installation's procurement officer is responsible for ensuring the following actions are taken:

(a) Determining whether or not an APR should be initiated. This activity will include:

(1) Reviewing the requirements and determining how those requirements will be satisfied, whether FIP resources will be involved, and the categories and value of those FIP resources to be acquired or used. Each category of FIP resources (FIP equipment, FIP software, FIP services, FIP support services (including FIP maintenance), and FIP related supplies) must be individually identified as accurately as possible.

(2) Determining whether the agency has authority to acquire the FIP resources by virtue of a regulatory or agency delegation, or whether a specific DPA must be obtained. This activity will include comparing the requirements and individual FIP resources to the criteria and thresholds specified in FIRMR 201–20.305. (Currently NASA may contract for FIP resources without obtaining a specific agency delegation when the dollar value of any individual type of FIP resources, including all optional quantities and periods over the life of the contract does not exceed $2 million; except that the dollar value for a specific make and model specification or for requirements available from only one responsible source may not exceed $200,000.)

(i) If the dollar value of any individual type of FIP resource, including all optional quantities and periods over the life of the contract, exceeds the applicable dollar threshold for the regulatory or agency delegation authority, then a specific DPA is required and an APR must be prepared.

(ii) If no category of FIP resources being acquired exceeds the dollar threshold, an APR is not required. (FIP related supplies have an unlimited regulatory authority, regardless of the acquisition, but a DPA may still be required for the acquisition if other categories of FIP resources are acquired which exceed the applicable thresholds.)

(b) Ensuring that installation prescribed approvals have been obtained to allow initiation of the acquisition.

(c) Ensuring that required documentation is uniquely identifiable, complete, adequate, severable, and readily available in files controlled by the contracting office.

(d) Timely submission of the APR to the Headquarters Office of Procurement (Code HS) and Information Resources Management Division (Code NTD) in accordance with 1839.7003–2.

(e) Conducting the acquisition in compliance with the DPA ensuring that the values of the applicable categories of FIP resources do not exceed the values contained in the approved APR.

(f) Initiating a request for a revised DPA if events invalidate the existing DPA or require additional or modified authorization from GSA.

1839.7003–2 Request format.

(a) FIRMR 201–20.305–3 requires NASA to prepare APRs as indicated by instructions in the FIRMR Bulletin series. APRs under the Trail Boss Program will be submitted in the format provided in FIRMR Bulletin C–7, entitled "Trail Boss Program". APRs for all other FIP resources, including telecommunication services, will be submitted in the format provided in FIRMR Bulletin C–5, entitled "Instructions for Preparing an Agency Procurement Request (APR)"; and installation will augment these APRs, with the following additional information:

(1) Include in "FIP Resources to be acquired" the maximum contract value that includes (i) all contract options and (ii) maximum quantities under indefinite-delivery types of contracts.

(2) Procurement officer signature is required under "Authorization". (Prior to submitting the APR to GSA, Headquarters Office of Management (Code NTD) will obtain the appropriate signature required by 1839.7003–3(c).)

(3) In addition to the APR attachments required by FIRMR Bulletin C–5, attach a copy of the Justification For Other Than Full and Open Competition (JOFOC), if applicable. The JOFOC should, at a minimum, be certified by the requiring activity.

(b) The following matrix is provided to help in deciding if a document is required by the APR under "Regulatory compliance":

Type of item	Procurement documentation									
	1	2	3	4	5	6	7	8	9	10
FIP Equipment	R	R	P	S	P	P	R	C	C	C
FIP Software	R	R	N	N	P	P	R	N	N	N
FIP Services	R	R	P	S	P	N	R	C	C	C

Type of item	Procurement documentation									
	1	2	3	4	5	6	7	8	9	10
FIP Support Services	R	R	P	S	P	P	R	C	C	C
FIP Related Supplies	R	R	N	N	P	P	R	N	N	N

1=Requirements analysis.
2=Analysis of alternatives.
3=Determination to support the use of hardware capability limited requirements.
4=Software conversion study.
5=Certified data to support any requirements available from only one responsible source.
6=Certified data to support any use of a specific make and model specification (that cites FIRMR 201-39.601-3).
7=Description of planned actions necessary to foster competition for subsequent acquisitions.
8=Justification for more than one agency to provide switching facilities or services at building locations.
9=Exception to the use of FTS 2000 mandatory network services.
10=Exception to the use of GSA mandatory consolidated local telecommunications services.
R=Required.
N=Not required.
P=Required if one or more of the procurement restrictions covered by items 4, 6 and 7 apply.
C=Required if telecommunications exceptions are sought.
S=Required if conditions for a software conversion study hold for equipment or services.

1839.7003-3 Submission.

(a) Forward the original of the APR submittal (the APR and all required documentation in final form) to the Headquarters Office of Management (Code NTD) with a floppy disk formatted for use on an IBM compatible PC and containing the APR in ASCII text. Code NTD will further augment the APR to include the APR control number, the NASA point of contact for GSA, and the agency-authorized signature. Allow a minimum of seven weeks for processing the APR and obtaining the DPA.

(b) Concurrently, provide a copy of the APR submittal to the Assistant Administrator for Procurement (Attn: Code HS).

(c) The Director, IRM Policy Division (Code NTD) signs APRs, including amendments, of less than $10 million; the Assistant Associate Administrator for Information Resources Management (Code NT) signs APRs between $10 million and $25 million; and the Associate Administrator for Management (Code N) signs APRs $25 million or greater and all requests for Trail Boss delegations. Code NTD is responsible for transmitting APRs to GSA.

1839.7004 FIP resources acquisition plans.

When NHB 2410.1 provides for approval of a FIP resources acquisition plan at the local level, a copy of the approved plan shall be enclosed with the request for a DPA unless it has previously been sent to Code NTD.

1839.7005 Coordination.

(a) Requests for DPAs are subject to comparison with acquisition plans and general review by Codes HS and NTD before submission of an APR to GSA.

(b) Communications with GSA regarding APRs shall be through the Headquarters Information Resources Management Policy Division (Code NTD), unless that office directs otherwise. Installations may respond to contacts initiated by GSA, but should inform Code NTD of the contact and its nature.

(c) NASA will not normally make presentations to GSA regarding APRs unless requested by GSA. Any exceptions are subject to coordination by Codes HS and NTD.

1839.7006 DPA transmittal.

(a) The DSO must explicitly re-delegate specific procurement authority for FIP resources, from GSA to the contracting organization, before the contracting officer has authority to obligate NASA. Delegation of regulatory and agency procurement authority will be handled in accordance with the Associate Administrator for Management (Code N) procedures.

(b) GSA's delegations of specific procurement authority to NASA are transmitted to Code N or designee (Code NTD), and are redelegated to the appropriate procurement officer by transmitting the approved APR and the signed DPA with a cover letter containing additional instructions and guidance which shall be retained in the contract file.

(c) DPAs may be contingent upon the contracting officer submitting supplementary information, including pre-award and post-award reports. These reports, when required, shall be forwarded to Code NTD for forwarding to GSA. A copy shall also be forwarded to Code HS. Questions regarding the DPA shall be referred to Code NTD.

1839.7007 Numbering provisions and clauses.

When adherence to the FIRMR results in the use of provisions or clauses not prescribed in the FAR or NFS, use the FIRMR number and FIRMR provision or clause title.

PART 1842—CONTRACT ADMINISTRATION

7. Subpart 1842.2 is amended by revising sections 1842.202 and 1842.202-70(a) to read as follows:

1842.202 Assignment of contract administration.

(a) *Policy.* (1) It is NASA policy that maximum use be made of those contract administration and contract audit services available from DOD, subject to the recognition that certain functions may be withheld as being necessary for program management, or other reasons. Those services will normally be performed by the Department of Defense (DOD) in accordance with the terms of the NASA contracts and applicable DOD regulations and procedures, unless special NASA requirements necessitate other arrangements.

(2) Contracting officers should carefully determine for each contract award the optimum division of contract administration functions between those performed with NASA resources and those performed by DOD and other Government agencies. Factors affecting the assignment of contract administration include—

(i) Place of contract performance;

(ii) Nature of the supplies or services being acquired;

(iii) Extent of general existing DOD contractor oversight;

(iv) Extent of subcontracting to be performed by the prime contractor;

(v) Quality assurance requirements;

(vi) Security requirements; and

(vii) Government property administration requirements.

(3) Since NASA reimburses DOD for all contract administraion performed on NASA contracts, only those functions that can be performed more efficiently and effectively by DOD, given the circumstances of the procurement, should be delegated.

(b) *Assignable functions.* With the exception of the functions listed under paragraph (c) of this section, any or all of the functions listed in FAR 42.302 may be delegated to DOD for performance based on the contracting officer's assessment of what will lead to the most efficient and effective contract management for the individual procurement. A blanket delegation of all assignable functions listed in FAR 42.302(a), with the exception of the non-assignable functions listed in paragraph (c) of this section, is generally appropriate when the contract place of performance is the contractor's facility and onsite DOD contract administration services are available. However, each function must be reviewed to ascertain if the function could better be performed by the NASA contracting officer.

(c) *Non-assignable functions.* The functions listed below may not be delegated.

(1) Approval of the final voucher (FAR 42.302(a)(7)).

(2) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (FAR 42.302(a)(8)).

(3) Issuance of decisions under the disputes clause (FAR 42.302(a)(10)).

(4) Contract payment (FAR 42.302(a)(13)).

(5) Execution of supplemental agreements involving spare parts or other items selected through provisioning procedures. However, delegation of the negotiation of supplemental agreements for spare parts and other items and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(a)(22)).

(6) Execution of change orders (FAR 42.302(b)(8)). However, delegation of the negotiation of supplemental agreements for change order definitization and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(b)(1)).

(7) Issuing termination notices and executing supplemental agreements for settlement of termination for default or for convenience of the Government. However, delegation of the negotiation of termination settlements and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(a)(23)).

1842.202–70 Delegations to contract administration offices.

(a) *General.* The following procedures apply to delegations to contract administration offices (for delegations to audit and security offices, see 1842.202–71 and 1842.202–72, respectively):

(1) At the time of contract award the NASA contracting officer shall review contract performance requirements to determine the nature and extent of expected contract administration functions. This review shall be coordinated with appropriate installation functional representatives, including program managers, to ensure that all essential requirements are incorporated in the delegation. A similar review shall be made before amending letters of delegation.

(2) In most cases, contracting officers should contact the cognizant contract administration office and discuss planned delegation(s) with the administrative contracting officer. The contracting officer should elevate disagreements with the cognizant contract administration office to higher levels for resolution.

(3) A post-award planning conference shall be held with representatives of the contract administration office when—

(i) A contract is expected to exceed $5,000,000;

(ii) Contract performance is required at or near a NASA installation or NASA-controlled launch site;

(iii) The delegation will impose an abnormal demand on the resources of the contract administration office receiving the delegation; or

(iv) Complex contract management problems are expected.

(4) Procurement officer approval is required to waive a post-award planning conference for contracts meeting any of the criteria in paragraph (a)(3) of this section. The request for procurement officer approval to waive a post-award conference shall address action taken and planned to ensure effective communication with the contract administration office during the performance of the contract.

(5) When functions are to be delegated (or when prior delegations require modification), contracting officers shall—

(i) Within 15 days after contract award, prepare and forward NASA Form 1430, Letter of Contract Administration Delegation, General, to the contract administration office. NASA Form 1430A, Letter of Contract Administration, Special Instructions, will supplement the NASA Form 1430, to modify previously delegated functions and provide additional or particular information considered necessary to ensure clear understanding of all delegated functions.

(ii) Forward NASA Form 1431, Letter of Acceptance of Contract Administration, with each NASA Form 1430 or 1430A. If the NASA Form 1431 has not been returned within 45 days of transmittal, the contracting officer shall initiate follow-up inquiry to determine the status of the delegation request. Contracting officers shall use the returned NASA Form 1431 as contract file documentation that the delegation has been accepted, modified or rejected by the contract administration office and as a reference for points of contact for each of the functional areas delegated.

(iii) Modify existing delegations, as necessary, consistent with paragraphs (a)(5) (i) and (ii) of this section.

(6) Letters of delegation shall clearly and specifically state which functions are delegated. Delegations and delegation amendments shall be accompanied by documentation and supporting information that will ensure a complete understanding of the contract administration services to be performed. The contracting officer shall keep the contract administration office fully informed of any actions that may affect the performance of the delegated functions. Copies of all significant documents shall be furnished to the contract administration office throughout the period of performance. Significant documents include, but are not limited to—

(i) All contractual documents such as the contract and any specifications and drawings, change orders, supplemental agreements or contractor proposals referenced in the contract;

(ii) Negotiation memoranda covering negotiations of contracts or contract changes in excess of $100,000;

(iii) Copies of any delegation and amendments it sent to other contract administration offices that have a bearing on the contract, including those issued pursuant to 1842.102–70; and

(iv) Any other correspondence affecting contract performance under the contract.

(7) Delegations shall be sent to DOD contract administration offices in accordance with the instructions in the DOD Directory of Contract Administration Services Components (DLAH 4105.4).

(8) The contracting officer shall distribute copies of the contract and letters of delegation for contract administration (including amendments) as follows:

(i) To Defense Contract Management Command (DCMC) and all other Government contract administration offices except DOD military contract administration offices, when two or more functional areas are delegated: Five copies of the contract and NASA Form 1430 and three NASA Forms 1431.

(ii) To DOD military component offices when two or more functional areas are delegated: Three copies of the

contract and three NASA Forms 1430 and 1431.

(iii) To any contract administration office when a single functional area is delegated: Two copies of the contract and two NASA Forms 1430 and 1431.

(iv) To the contractor: One NASA Form 1430.

* * * * *

PART 1845—GOVERNMENT PROPERTY

8. Subpart 1845.3 is amended as set forth below:

1845.302-71 [Amended]

a. In section 1845.302–71, paragraph (b), the quotation marks are removed.

1845.302-72 [Amended]

b. In section 1845.302–72, the reference "1807.170–1(i)" is revised to read "1807.170–1(b)(10)(i)".

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Part 1852 is amended as set forth below:

1852.208-80 [Amended]

a. In section 1852.208–80, the reference "1808.309" in the introductory paragraph is revised to read "1808.309(d)."

1852.208-81 [Amended]

b. In the provision of section 1852.208–81, the date "(DECEMBER 1988)" is revised to read "(JUNE 1991)," and paragraphs (c) and (d) are revised and paragraph (e) is added to read as follows:

* * * * *

(c) The Contractor is authorized to duplicate production units by offset platemaking, copy-processing machines, or lithograph presses when negatives or metal plates are not required. The Contractor shall not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such plates may not exceed a maximum image size of 10¾ by 14¼ inches. A "production unit" is one sheet, size 8½×11 inches (215×280 mm), one side only, and one color.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract; or administrative printing, for example, forms and instructional materials necessary to be used by the contractor to respond to the terms of the contract.

(e) If the Contractor has reason to believe that any activity required under this contract violates the regulations referred to in paragraph (a) of this clause, the Contractor shall provide the Contracting Officer with immediate notice in writing and request approval prior to accomplishment of the activity

End of Clause

1852.225-72 [Removed]

c. Section 1852.225–72 is removed in its entirety.

1852.225-74 [Amended]

d. In the provision of section 1852.225–74, the date "(APR 1989)" is revised to read "(APR 1991)."

e. In the provision of section 1852.225–74, paragraph (a), definition "Domestic product," and paragraph (c), the number "50" is revised to read "51".

1852.225-75 [Amended]

f. In the clause of section 1852.225–75, the date "(APRIL 1989)" is revised to read "(APRIL 1991)."

g. In the clause of section 1852.225–75, paragraph (a), the reference "(Pub. L. 100–147, 101 Stat. 866)" is revised to read "(Pub. L. 100–147 and Pub. L. 101–611)."

h. In the clause of section 1852.225–75, paragraph (b), the number "50" is revised to read "51".

1852.242-70 [Amended]

i. In section 1852.242–70, paragraph (b)(3) of the clause is revised to read:

(a) * * *

(b) * * *

(1) * * *

(2) * * *

(3) Constitutes a basis for any increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

* * * * *

PART 1853—FORMS

10. In section 1853.204–70, paragraph (l) is revised to read as follows:

* * * * *

(l) NASA Form 1611, Contract Completion Statement. As prescribed at 1804.804–2 and 1804.804–5(b), NASA Form 1611 shall be used for closeout of all contracts above the small purchase threshold.

* * * * *

[FR Doc. 91–16517 Filed 7–12–91; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184–1042]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director of the NMFS, Alaska Region, has determined that the 1991 hook-and-line share of the Pacific halibut prohibited species catch limit (PSC) in the Gulf of Alaska (GOA) has been reached. The Secretary of Commerce (Secretary) is prohibiting fishing for groundfish by domestic annual processing (DAP) vessels with hook-and-line gear for the remainder of the fishing year. This action is necessary to prevent the 1991 allocation of Pacific halibut to the hook-and-line fishery from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving Pacific halibut stocks.

DATES: Effective 12 noon Alaska local time (A.l.t.), July 9, 1991, through December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Alaska Region NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the Exclusive Economic Zone in the GOA under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Under 50 CFR 672.20 (f)(2), an annual Pacific halibut PSC limit was established and apportioned to DAP trawl and hook-and-line gear for the 1991 fishing year in the GOA. The notice of final specifications of groundfish total allowable catch (TAC) and Pacific halibut bycatch (56 FR 8723; March 1, 1991) established the 1991 Pacific halibut PSC apportionment of 750 metric tons (mt) and seasonal allowances on a trimester basis for hook-and-line gear as follows: first trimester—January 1 through May 14, 200 mt; second trimester—May 15 through August 31, 500 mt; third trimester—September 1 through December 31, 50 mt.

The Director has determined that U.S. fishing vessels using hook-and-line gear have caught all of their remaining apportionment of Pacific halibut in the GOA for 1991. Therefore, under § 672.20(f)(1)(ii), the Secretary is prohibiting fishing for groundfish with hook-and-line gear in the GOA from 12 noon, A.l.t., July 9, 1991, through December 31, 1991. All groundfish caught with hook-and-line gear in the GOA must be treated as prohibited species and discarded.

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: July 9, 1991.

David S. Crestin,

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

[FR Doc. 91-16692 Filed 7-9-91; 3:46 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 135
Monday, July 15, 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 52

[FV-88-202]

United States Standards for Grades of Canned Green Beans and Canned Wax Beans

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to revise the current voluntary U.S. Standards for Grades of Canned Green Beans and Canned Wax Beans. The proposed rule was developed by the U.S. Department of Agriculture (USDA) at the request of the National Food Processors Association (NFPA). Its effect would be to improve the standards by: (1) Providing for the "individual attributes" procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects) being published in the standards; (2) replacing duel grade nomenclature with single letter grade designations, such as "U.S. Grade A" or "U.S. Fancy," with "U.S. Grade A;" (3) bringing the grade standards in line with Food and Drug Administration (FDA) minimum quality standards; (4) slightly reducing the recommended minimum drained weights for French style in 8 ounce Tall and 303 containers and whole style in No. 300 and 303 containers; (5) eliminating the quality factor for clearness of liquor; and (6) providing a uniform format consistent with other recently revised U.S. grade standards by adopting definitions for terms and replacing textual descriptions with easy-to-read tables. This proposed rule also includes conforming and editorial changes.

DATES: Comments must be received on or before October 15, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 0709, South Building, Washington, DC 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: Leon R. Cary, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 0709, South Building, Washington, DC 20090–6456, Telephone: (202) 447–6247.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures, Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Agencies are required to periodically review existing regulations. An objective of the regulatory review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96–354 (5 U.S.C. 601 et seq.). The proposed changes reflect current marketing practices. The use of these standards is voluntary. A small entity may avoid incurring any economic impact by not employing the standards.

In 1984, the standards subcommittee of the Fruit and Vegetable Committee, National Food Processors Association (NFPA), requested that USDA prepare a draft revision of the U.S. grade standards for canned green beans and canned wax beans. The draft was to incorporate a grading system where individual tolerances would be assigned to each individual defeat. This system of grading, referred to as "individual attributes," would provide statistically derived acceptable quality levels (AQL's) based on the tolerances in the current grade standards.

In addition to their original request, in March 1988, NFPA asked USDA to modify the draft revised standards to reduce the recommended minimum drained weight for whole beans in No. 303 (303 × 406) containers by one-half (0.5) ounce. After studying the petition, USDA determined that to maintain consistency in the standards the minimum drained weight for whole beans in No. 300 (300 × 409) containers should also be reduced by one-half (0.5) ounce.

At this time NFPA also asked for a reduction in the minimum drained weight for French style (sliced lengthwise) beans in 8 ounce Tall (211 x 304) containers by two-tenths (0.2) ounce, and in No. 303 (303 × 406) containers by forty-five hundredths (0.45) ounce. NFPA stated that virtually none of its members packing whole or French style green or wax beans in these containers even under optimum operating conditions was able to meet the current recommended minimum drained weight. They explained that attempts to do so resulted in unacceptable damage to the beans and, more seriously, in false seams, knocked down flanges, and other seam defects that compromised the commercial sterility of the product.

USDA then prepared another draft incorporating the requested changes in drained weights and several other minor editorial changes. USDA staff discussed this draft with the NFPA Subcommittee on Standards in January 1989. At this meeting the Subcommittee asked USDA to revise the draft standards again to include the sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers for lot inspection.

The proposed standards incorporate these suggestions. In addition, they would implement USDA's policy of replacing dual grade nomenclature with single letter grade designations. Under

the proposal, "U.S. Grade A" (or "U.S. Fancy"), "U.S. Grade B" (or "U.S. Extra Standard") and "U.S. Grade C" (or "U.S. Standard") would simply become "U.S. Grade A," "U.S. Grade B," and "U.S. Grade C."

The proposed revision of the voluntary grade standards would also bring the quality factors of stems, and extraneous vegetable material (EVM) in line with the Food and Drug Administration minimum quality standards and eliminate the quality factor "clearness of liquor" as it does not reflect quality in canned green and canned wax beans.

In addition to these substantive changes, this proposed rulemaking would modify the standards so as to present them in a simplified easier to use format. Consistent with recent revisions of other U.S. grade standards, definitions of terms and easy-to-read tables would replace the textual descriptions. These changes are intended to facilitate a better understanding and more uniform application of the grade standards.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Report and record keeping requirements, Vegetables.

For the reasons set forth in the preamble, the U.S. Department of Agriculture proposes that 7 CFR part 52 be amended as follows:

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

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

2. The subpart—United States Standards for Grades of Canned Green Beans and Canned Wax Beans, 7 CFR 52.441—52.453, (formerly §§ 52.441 through 52.456) is revised to read as follows:

Subpart—United States Standards for Grades of Canned Beans and Canned Wax Beans

Sec.

52.441 Product description.
52.442 Styles.
52.443 Definitions of terms.
52.444 Recommended fill of container.
52.445 Recommended minimum drained weights.
52.446 Types.
52.447 Sizes.
52.448 Kinds of pack.
52.449 Grades.
52.450 Factors of quality.
52.451 Allowances for defects.
52.452 Sample size.
52.453 Quality requirements criteria.

§ 52.441 Product description.

Canned green beans and canned wax beans are the products defined in the Food and Drug Standard of Identity for canned green beans and canned wax beans (21 CFR 155.120). For the purposes of these standards and unless the text indicates otherwise, the terms "canned beans" or "beans" referred to in this text mean canned green beans or canned wax beans.

§ 52.442 Styles.

(a) *Whole* means canned beans that consist of whole pods, including pods which after removal of either or both ends are not less than 44 mm (1.75 in) in length or transversely cut pods not less than 70 mm (2.75 in) in length and, except for "vertical pack" or "asparagus" style, are not arranged in any definite position in the container.

(b) *Whole vertical pack* means canned beans that are "whole" and are packed parallel to the sides of the container.

(c) *Whole asparagus style* means canned beans that are "whole" and consist of pods that are cut at both ends, are of substantially equal lengths, and are packed parallel to the sides of the container.

(d) *Sliced lengthwise, Shoestring, Julienne, or French style* means canned beans consisting of pods that are sliced lengthwise.

(e) *Cut or cuts* means canned beans consisting of pods that are cut transversely into pieces less than 70 mm (2.75 in), but not less than 19 mm (0.75 in), in length, and may contain shorter end pieces which result from cutting.

(f) *Short cut or short cuts* means canned beans consisting of pieces of pods of which not less than 75 percent are less than 19 mm (0.75 in) in length and nor more than 1 percent are more than 32 mm (1.25 in) in length.

(g) *Mixed or mixture means* a mixture of two or more of the following styles of canned beans: "whole;" "sliced lengthwise;" "cuts;" or "short cuts".

§ 52.443 Definitions of terms.

(a) *Acceptable Quality level (AQL)* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Blemish—(1) Minor blemished* means any unit which is affected by scars, pathological injury, insect injury or other means in which the aggregate area affected exceeds the area of a circle 3 mm (0.125 in) in diameter or the appearance or eating quality of the unit is slightly affected.

(2) *Major blemished* means any unit which is affected or damaged by discoloration or any other means to the extent that the appearance or eating quality of the unit is more than slightly affected.

(c) *Character.* (1) Round type—Green Beans.

(i) *Good character (A)* means the pods are full fleshed; the pods are tender.

(ii) *Reasonably good character (B)* means the pods are reasonably fleshy; the pods are tender.

(iii) *Fairly good character (C)* means the pods have not entirely lost their fleshy structure; the pods are fairly tender.

(iv) *Poor character (Sstd)* means the beans fail the requirements for "fairly good character."

(2) Round type—Wax Beans.

(i) *Good character (A)* means the pods are full fleshed and may show slight breakdown of the flesh between seed cavities; the pods are tender

(ii) *Reasonably good character (B)* means the pods are reasonably fleshy and may show substantial breakdown of the flesh between the seed cavities; the pods are reasonably tender.

(iii) *Fairly good character (C)* means the pods may show total breakdown of the flesh between the seed cavities with no definite seed pocket, but still retain flesh on the inside pod wall; the pods are fairly tender.

(iv) *Poor character (Sstd)* means the beans fail the requirements for "fairly good character."

(3) Romano or Italian type.

(i) *Good character (A)* means the pods have a full inner membrane, typical of the variety and are tender.

(ii) *Reasonably good character (B)* means the pods have a reasonably well developed inner membrane and are reasonably tender.

(iii) *Fairly good character (C)* means the pods may lack an inner membrane; the pods are fairly tender.

(iv) *Poor character (Sstd)* means the beans fail the requirements for "fairly good character."

(d) *Color defective* means any unit that varies markedly from the color that is normally expected for the variety and grade.

(e) *Defect* means any nonconformance of a unit(s) of product from a specified requirement of a single quality characteristic.

(f) *Extraneous vegetable material (EVM)* means any harmless vegetable material (other than the bean pods) including, but not limited to, stalk, vine material, stem material attached to vine, leaves of the bean plant, and leaves or portions of other harmless plants.

(g) Flavor and odor. *Good flavor and odor* means the product has a good characteristic flavor and odor and is free from objectionable flavors and odors.

(h) Fiber.

(1) *Edible fiber* means fiber developed in the wall of the bean pod that is noticeable upon chewing, but may be consumed with the rest of the bean material without objection.

(2) *Inedible fiber* means fiber developed in the wall of the bean pod that is objectionable upon chewing and tends to separate from the rest of the bean material.

(i) *Mechanical damage* means any unit that is broken or split into two parts, (equals 1 defect) or has ragged edges that are greater than 5/16 inch, or is crushed or is damaged by mechanical means to such an extent that the appearance is seriously affected.

(j) *Single sample unit* means the amount of product specified (1200 grams for French style and 400 units for all other styles) to be used for unofficial inspection. It may be:

(1) The entire contents of a container;

(2) A portion of the contents of a container; or

(3) A combination of the contents of two or more containers.

(k) *Short piece* means any unit in cut style, mixed style or short cut style that is less than 13 mm (0.50 in) in length, and any unit in whole style that is less than 32 mm (1.25 in) in length, measured along the longest dimension parallel to the bean suture line.

(l) *Sloughing* means the separation of the outer surface layer of tissue from the pod.

(m) *Small pieces and odd cuts*, in French style, mean pieces of pod less than 13 mm (0.50 in) in length or pieces of pod not conforming to the normal appearance of a sliced lengthwise bean unit.

(n) *Stem* means any part or portion (loose or attached) of the hard or tough fibrous material that attaches the bean pod to the vine and is objectionable upon eating.

(o) *Tolerance* means the percentage of defective units allowed for each quality factor.

(p) *Tough strings* means strings or pieces of strings, removed from the cooked bean pod, that will support a 277g (½ lb) weight for not less than five (5) seconds.

(q) *Unit* means a bean pod or any individual portion thereof.

§ 52.444 Recommended fill of container.

The recommended fill of container is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of canned beans be filled with beans as full as practicable without impairment of quality and that the product and packing medium occupy not less than 90 percent of the total capacity of container.

§ 52.445 Recommended minimum drained weights.

(a) The drained weight recommendations in Tables No. I and Ia of this section are not incorporated in the grades of the finished product since drained weight, as such, is not factor of quality for the purposes of these grades.

(b) The drained weight of beans is determined by emptying the contents of the container upon a United States Standard No. 8 circular sieve of proper diameter containing 8 meshes to the inch (0.0937-inch 3% square openings) so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for 2 minutes. A sieve 8 inches in diameter is used for No. 2½ size cans (401x411) and smaller sizes, and a sieve 12 inches in diameter is used for containers larger than the No. 2½ size can.

(c) Compliance with the recommended minimum drained weights for canned beans in Table I and Table Ia of this section is determined by averaging the drained weights from all of the containers in the sample which is representative of a specific lot and such lot is considered as meeting the recommendations if the following criteria are met:

(1) The average of the drained weights from all of the containers in the sample meets the recommended minimum drained weight for the applicable style.

(2) The drained weights from the containers which do not meet the recommended minimum drained weight are not more than:

(i) 19.9g (0.7 oz) lower than the recommended minimum average for No. 3 cylinder can size and smaller.

(ii) 56.7g (2.0 oz) lower than the recommended minimum average for No. 10 cans.

(3) The number of containers in the sample which do not meet the requirements of paragraph (c)(2) of this section does not exceed the acceptance numbers prescribed for the sample size as outlined in 7 CFR 52.1 through 52.83.

TABLE I.—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR CANNED GREEN BEANS AND WAX BEANS; OUNCES—ENGLISH (AVOIRDUPOIS SYSTEM)

Container size or designation	Whole	Whole vertical pack and whole asparagus style	Short cuts and cuts less than 1½ inches	Cuts—1½ inches and longer	Mixed-cuts and short cuts	Sliced length wise or French style
8 oz tall	4.0	4.6	4.5	4.1	4.5	3.9
8 oz glass	3.9	4.5	4.4	4.0	4.4	4.0
No. 1 (picnic)	5.6	6.1	6.0	5.7	6.0	5.7
No. 300	7.7	9.2	8.5	8.2	8.5	8.2
No. 300 glass	8.2	9.2	8.5	8.2	8.5	8.2
No. 1 tall	8.5	9.5	9.2	8.7	9.2	8.7
No. 303	8.0	9.5	9.2	8.7	9.2	8.25
No. 303 glass	9.0	10.0	9.7	9.2	9.7	9.2
No. 2	10.5	11.9	11.2	11.0	11.2	11.0
No. 2½	16.0	17.0	16.4	16.2	16.4	16.2
No. 2½ glass	15.8	16.8	16.2	16.0	16.2	16.0
No. 3 cylinder	26.6	N/A	27.3	27.0	27.3	27.0
No. 10	57.5	N/A	63.0	60.0	63.0	59.0

TABLE Ia.—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR CANNED GREEN BEANS AND WAX BEANS; METRIC (SYSTEME INTERNATIONAL) GRAMS

Container size or designation	Whole	Whole vertical pack and whole asparagus style	Short cuts and cuts less than 1½ inches	Cuts—1½ inches and longer	Mixed-cuts and short cuts	Sliced length wise or French style
8 oz tall	113.4	130.4	127.6	116.2	127.6	110.6
8 oz glass	110.6	127.6	124.7	113.4	124.7	113.4
No. 1 (picnic)	158.8	172.9	170.1	161.6	170.1	161.6
No. 300	218.3	260.8	241.0	232.5	241.0	232.5
No. 300 glass	232.5	260.8	241.0	232.5	241.0	232.5
No. 1 tall	241.0	269.3	260.8	246.6	260.8	246.6
No. 303	226.8	269.3	260.8	246.6	260.8	233.9
No. 303 glass	255.2	283.5	275.0	260.0	275.0	260.8
No. 2	297.7	337.4	317.5	311.9	317.5	311.9
No. 2½	453.6	482.0	464.9	459.3	464.9	459.3
No. 2½ glass	447.9	476.3	459.3	453.6	459.3	453.6
No. 3 cylinder	745.1	N/A	774.0	765.5	774.0	765.5
No. 10	1630.1	N/A	1786.1	1701.0	1786.1	1672.7

§ 52.446 Types.

The type of canned beans is not incorporated in the grades of finished product, since it is not a factor of quality. The types of canned beans are described as "round type" and "Romano or Italian type."

(a) *Round type* means canned beans having a width not greater than 1½ times the thickness of the beans.

(b) *Romano or Italian type* means canned beans having a width greater than 1½ times the thickness of the beans.

§ 52.447 Sizes.

The size of canned beans is not a factor of quality for the purposes of these grades. The size of a whole, cut, or short cut bean is determined by measuring the thickness at the shorter diameter of the bean transversely to the long axis at the thickest portion of the pod. The designations of the various sizes of round type and flat type (Romano or Italian) beans are shown in Tables II and IIa below.

TABLE II.—SIZES OF ROUND TYPE BEANS

Number designation	Word designation		Thickness in 1/64 inch	Thickness in millimeters
	Whole	Cut or short		
Size 1	Tiny	Small	Less than 14½	Less than 5.8.
Size 2	Small	Small	14½ to 18½	5.8 to 7.3.
Size 3	Medium	Small	18½ to 21	7.3 to 8.3.
Size 4	Medium large	Medium	21 to 24	8.3 to 9.5.
Size 5	Large	Large	24 to 27	9.5 to 10.7.
Size 6	Extra large	Extra large	27 or more	10.7 or more.

TABLE IIa.—Sizes of Romano or Italian-Type Beans

Number designations	Word Designation		Thickness in 1/64 inch	Thickness in millimeters
	Whole	Cut or short		
Size 2	Small	Small	Less than 14½	Less than 5.8.
Size 3	Medium	Medium	14½ to 18½	5.8 to 7.3.
Size 4	Medium large	Medium large	18½ to 21	7.3 to 8.3.
Size 5	Large	Large	21 to 24	8.3 to 9.5
Size 6	Extra large	Extra large	24 or more	9.5 or more.

§ 52.448 Kinds of pack.

The kind of pack of canned beans is not incorporated in the grades of finished product, since it is not a factor of quality. The kinds of pack of canned beans are described as "regular pack" and "special pack."

(a) *Regular pack* means canned beans that are packed containing single varietal characteristics.

(b) *Special pack* means canned beans that are intentionally packed containing two or more varietal characteristics (such as a mixture of green and wax beans).

§ 52.449 Grades.

(a) *U.S. Grade A* is the quality of canned green and canned wax beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except "special packs");

(ii) Have a good flavor and odor;

(iii) Have a good appearance;

(iv) Are not materially affected by sloughing;

(v) Are practically free from small pieces (units less than 13 mm (0.50 in) in length) and odd cut units (units not representative of the intended shape of cut) for the style of "sliced lengthwise;"

(2) Is within the limits for defects as specified in tables III, IV, V, VI, or VII in § 52.451 as applicable for the style.

(b) *U.S. Grade B* is the quality of canned green beans and canned wax beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except "special packs");

(ii) Have a good flavor and odor;

(iii) Have a reasonably good appearance;

(iv) Are not materially affected by sloughing;

(v) Are reasonably free from small pieces (units less than 13 mm (0.50 in) in length) and odd cut units (units not representative of the intended shape of cut) for the style of "sliced lengthwise;"

(2) Is within the limits for defects as specified in tables III, IV, V, VI, or VII in § 52.451 as applicable for the style.

(c) *U.S. Grade B* is the quality of canned green beans and canned wax beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except "special packs");

(ii) Have a good flavor and odor;

(iii) Have a fairly good appearance;

(iv) Are not seriously affected by sloughing;

(2) Is within the limits for defects as specified in tables III, IV, V, VI, or VII in § 52.451 as applicable for the style.

(d) Substandard is the quality of canned greens beans and canned wax beans that fail the requirements of U.S. Grade C.

§ 52.450 Factors of quality.

The grade of canned green and canned wax beans is based on requirements for the following quality factors:

(a) Varietal characteristics (except "special packs");

(b) Flavor and odor;

(c) Sloughing;

(d) Small pieces and odd cuts (sliced lengthwise style only);

(e) Appearance;

(f) Extraneous vegetable material (EVM);

(g) Stems;

(h) Major blemished;

(i) Total blemished; (includes major blemished and minor blemished);

(j) Mechanical damage;

(k) Short pieces (except sliced lengthwise style);

(l) Color;

(m) Character;

(n) Tough strings;

(o) Inedible fiber;

(p) Edible fiber.

§ 52.451 Allowances for defects.

TABLE III.—ACCEPTANCE NUMBERS FOR WHOLE STYLE CANNED GREEN BEANS

Units of product	Grade A					Grade B					Grade C				
	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600
Extraneous vegetable material	8	15	28	43	57	12	22	43	67	89	39	73	149	234	318
Stems	25	46	92	144	195	39	73	149	234	318	59	112	232	366	499
Major blemishes	12	22	43	67	89	25	46	92	144	195	39	73	149	234	318
Total blemishes (major + minor)	25	46	92	144	195	39	73	149	234	318	92	176	368	584	799
Mechanical damage	59	112	232	366	499	92	176	368	584	799	118	227	476	758	1037
Short pieces	262	512	1087	1740	2391					No	Limit				
Tough strings	18	32	64	99	134	39	73	149	234	318	118	227	476	758	1037
Edible fiber	18	32	64	99	134	39	73	149	234	318	118	227	476	758	1037
Inedible fiber	1	2	4	6	8	18	32	64	99	134	59	112	232	366	499
Color defectives	59	112	232	366	499	118	227	476	758	1037	200	388	822	1314	1803
"B" character	118	227	476	758	1037					No	Limit				
"C" character	18	32	64	99	134	118	227	476	758	1037		No	Limit		
"Sstd" character	8	15	28	43	57	18	32	64	99	134	118	227	476	758	1037

TABLE IIIA.—TOLERANCES AND ACCEPTABLE QUALITY LEVELS (AQL'S) FOR WHOLE STYLE CANNED GREEN BEANS

Quality factor	Grade A		Grade B		Grade C	
	Tolerance	AQL	Tolerance	AQL	Tolerance	AQL
EVM	1.00	0.40	1.25	0.65	3.75	2.50
Stems	2.50	1.50	3.75	2.50	5.50	4.00
Blemished—major	1.25	0.65	2.50	1.50	3.75	2.50
Blemished—total	2.50	1.50	3.75	2.50	8.50	6.50
Mechanical damage	5.50	4.00	8.50	6.50	10.75	8.50
Short pieces	23.25	20.00	N/A	N/A	N/A	N/A
Tough strings	1.75	1.00	3.75	2.50	10.75	8.50
Color defectives	5.50	4.00	10.75	8.50	17.75	15.00
Character—"B"	10.75	8.50	N/A	N/A	N/A	N/A
Character—"C"	1.75	1.00	10.75	8.50	N/A	N/A
Character—Sstd	1.00	0.40	1.75	1.00	10.75	8.50
Edible fiber	1.75	1.00	5.50	4.00	10.75	8.50
Inedible fiber	0.10	0.04	1.75	1.00	5.50	4.00

TABLE IV.—ACCEPTANCE NUMBERS FOR CUT STYLE CANNED GREEN BEANS

Units of Product	Grade A					Grade B					Grade C				
	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600
Estraneous Vegetable Material	8	15	28	43	57	12	22	43	67	89	25	46	92	144	195
Stems	25	46	92	144	195	39	73	149	234	318	59	112	232	366	499
Major Blemishes	12	22	43	67	89	25	46	92	144	195	39	73	149	234	318
Total Blemishes (Major + Minor)	25	46	92	144	195	39	73	149	234	318	92	176	368	584	799
Mechanical Damage	39	73	149	234	318	59	112	232	366	499	118	227	476	758	1037
Short Pieces	39	73	149	234	318	59	112	232	366	499	118	227	476	758	1037
Tough Strings	18	32	64	99	134	39	73	149	234	318	92	176	368	584	799
Edible Fiber	18	32	64	99	134	39	73	149	234	318	92	176	368	584	799
Inedible Fiber	1	2	4	6	8	12	22	43	67	89	39	73	149	234	318
Color Defectives	59	112	232	366	499	118	227	476	758	1037	200	388	822	1314	1803
"B" Character	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
"C" Character	18	32	64	99	134	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)
"Sstd" Character	8	15	28	43	57	18	32	64	99	134	118	227	476	758	1037

[1] No limit.

TABLE IVa.—TOLERANCES AND ACCEPTABLE QUALITY LEVELS (AQL'S) FOR CUT STYLE CANNED GREEN BEANS

Quality factor	Grade A		Grade B		Grade C	
	Tolerance	AQL	Tolerance	AQL	Tolerance	AQL
EVM	1.00	0.40	1.25	0.65	2.50	1.50
Stems	2.50	1.50	3.75	2.50	5.50	4.00
Blemished-Major	1.25	0.65	2.50	1.50	3.75	2.50
Blemished-Total	2.50	1.50	3.75	2.50	8.50	6.50
Mechanical Damage	3.75	2.50	5.50	4.00	10.75	8.50
Short Pieces	3.75	2.50	5.50	4.00	10.75	8.50
Tough Strings	1.75	1.00	3.75	2.50	8.50	6.50
Color Defectives	5.50	4.00	10.75	8.50	17.75	15.00
Character—"B"	10.75	8.50	N/A	N/A	N/A	N/A
Character—"C"	1.75	1.00	10.75	8.50	N/A	N/A
Character—Sstd	1.00	0.40	1.75	1.00	10.75	8.50
Edible Fiber	1.75	1.00	3.75	2.50	8.50	6.50
Inedible Fiber	0.125	0.04	1.25	0.65	3.75	2.50

TABLE V.—ACCEPTANCE NUMBERS FOR SHORT CUT STYLE CANNED GREEN BEANS

Units of Product	Grade A					Grade B					Grade C				
	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600
Extraneous Vegetable Material	4	7	12	18	24	8	15	28	43	57	12	22	43	67	89
Stems	12	22	43	67	89	18	32	64	99	134	25	46	92	144	195
Major Blemishes	12	22	43	67	89	25	46	92	144	195	39	73	149	234	318
Total Blemishes (Major + Minor)	25	46	92	144	195	39	73	149	234	318	92	176	368	584	799
Mechanical Damage	169	326	689	1100	1508	200	388	822	1314	1803	262	512	1087	1740	2391
Short Pieces	169	326	689	1100	1508	200	388	822	1314	1803	262	512	1087	1740	2391
Tough Strings	18	32	64	99	134	39	73	149	234	318	39	73	149	234	318
Edible Fiber	18	32	64	99	134	39	73	149	234	318	92	176	368	584	799
Inedible Fiber	1	2	4	6	8	12	22	43	67	89	39	73	149	234	318
Color Defectives	59	112	232	366	499	118	227	476	758	1037	200	388	822	1314	1803
"B" Character	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
"C" Character	18	32	64	99	134	118	227	476	758	1037	(1)	(1)	(1)	(1)	(1)
"Sstd" Character	8	15	28	43	57	18	32	64	99	134	118	227	476	758	1037

[1] No limit.

TABLE Va.—TOLERANCES AND ACCEPTABLE QUALITY LEVELS (AQL'S) FOR SHORT CUT STYLE CANNED GREEN BEANS

Quality factor	Grade A		Grade B		Grade C	
	Tolerance	AQL	Tolerance	AQL	Tolerance	AQL
EVM	0.50	0.15	1.00	0.40	1.25	0.65
Stems	1.25	0.65	1.75	1.00	2.50	1.50
Blemished-Major	1.25	0.65	2.50	1.50	3.75	2.50
Blemished-Total	2.50	1.50	3.75	2.50	8.50	6.50
Mechanical Damage	15.25	12.50	17.75	15.00	23.25	20.0
Short Pieces	15.25	12.50	17.75	15.00	23.25	20.00
Tough Strings	1.75	1.00	3.75	2.50	3.75	2.50
Color Defectives	5.50	4.00	10.75	8.50	17.75	15.00
Character—"B"	10.75	8.50	N/A	N/A	N/A	N/A
Character—"C"	1.75	1.00	10.75	8.50	N/A	N/A
Character—Sstd	1.00	0.40	1.75	1.00	10.75	8.50

TABLE VA.—TOLERANCES AND ACCEPTABLE QUALITY LEVELS (AQL'S) FOR SHORT CUT STYLE CANNED GREEN BEANS—Continued

Quality factor	Grade A		Grade B		Grade C	
	Tolerance	AQL	Tolerance	AQL	Tolerance	AQL
Edible Fiber	1.75	1.00	3.75	2.50	8.50	6.50
Inedible Fiber	0.10	0.04	1.25	0.65	3.75	2.50

TABLE VI.—ACCEPTANCE NUMBERS FOR MIXED CUT STYLE CANNED GREEN BEANS

Units of Product	Grade A					Grade B					Grade C				
	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600	1200	2400	5200	8400	11600
Extraneous Vegetable Material	8	15	28	43	57	12	22	43	67	89	18	32	64	99	134
Stems	25	46	92	144	195	39	73	149	234	318	39	73	149	234	318
Major Blemishes	12	22	43	67	89	25	46	92	144	195	39	73	149	234	318
Total Blemishes (Major + Minor)	25	46	92	144	195	39	73	149	234	318	92	176	368	584	799
Mechanical Damage	169	326	689	1100	1508	200	388	822	1314	1803	262	512	1087	1740	2391
Short Pieces	169	326	689	1100	1508	200	388	822	1314	1803	262	512	1087	1740	2391
Tough Strings	18	32	64	99	134	39	73	149	234	318	73	138	286	453	619
Edible Fiber	18	32	64	99	134	39	73	149	234	318	92	176	368	584	799
Inedible Fiber	1	2	4	6	8	12	22	43	67	89	39	73	149	234	318
Color Defectives	59	112	232	366	499	118	227	476	758	1037	200	388	822	1314	1803
"B" Character	118	227	476	758	1037	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]
"C" Character	18	32	64	99	134	118	227	476	758	1037	[1]	[1]	[1]	[1]	[1]
"Sstd"Character	8	15	28	43	57	18	32	64	99	134	118	227	476	758	1037

[1] No limit.

TABLE VIA.—TOLERANCES AND ACCEPTABLE QUALITY LEVELS (AQL'S) FOR MIXED CUT STYLE CANNED GREEN BEANS

Quality factor	Grade A		Grade B		Grade C	
	Tolerance	AQL	Tolerance	AQL	Tolerance	AQL
EVM	1.00	0.40	1.25	0.65	1.75	1.00
Stems	1.25	0.65	1.75	1.00	3.75	2.50
Blemished-Major	1.25	0.65	2.50	1.50	3.75	2.50
Blemished-Total	2.50	1.50	3.75	2.50	8.50	6.50
Mechanical Damage	15.00	12.50	17.75	15.00	23.25	20.00
Short Pieces	15.00	12.50	17.75	15.00	23.25	20.00
Tough Strings	1.75	1.00	3.75	2.50	6.75	5.00
Color Defectives	5.50	4.00	10.75	8.50	17.75	15.00
Character—"B"	10.75	8.50	N/A	N/A	N/A	N/A
Character—"C"	1.75	1.00	10.75	8.50	N/A	N/A
Character—Sstd	1.00	0.40	1.75	1.00	10.75	8.50
Edible Fiber	1.75	1.00	3.75	2.50	8.50	6.50
Inedible Fiber	0.10	0.04	1.25	0.65	3.75	2.50

TABLE VII—ACCEPTANCE NUMBERS FOR FRENCH STYLE CANNED GREEN BEANS

Grams of Product	Grade A					Grade B					Grade C				
	3600	7200	15600	25200	34800	3600	7200	15600	25200	34800	3600	7200	15600	25200	34800
Extraneous Vegetable Material (No. of pieces)	8	15	28	43	57	12	22	43	67	89	39	73	149	234	318
Stems (No. of stems)	25	46	92	144	195	39	73	149	234	318	59	112	232	366	499
Major Blemishes (Grams)	36	66	129	201	267	75	138	276	432	585	117	219	447	702	954
Total Blemishes (Major + Minor) (Grams)	75	138	276	432	585	177	219	447	702	954	354	681	1428	2274	3111
Tough Strings (No. of strings)	25	46	92	144	195	59	112	232	366	499	118	227	476	758	1037
Edible Fiber (No. of pieces)	18	32	64	99	134	59	112	232	366	499	118	227	476	758	1037
Inedible Fiber (No. of pieces)	1	2	4	6	8	18	32	64	99	134	59	112	232	366	499
Color Defectives (Grams)	177	336	696	1098	1497	354	681	1428	2274	3111	600	1164	2466	3942	5409
"B" Character (Grams)	1521	2997	6414	10299	14178	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]
"C" Character (Grams)	219	414	858	1359	1857	786	1537	3261	5220	7173	[1]	[1]	[1]	[1]	[1]
"Sstd" Character (Grams)	54	96	192	297	402	177	336	696	1098	1497	414	795	1671	2661	3648

[1] No limit.

TABLE VIIa.—TOLERANCES AND ACCEPTABLE QUALITY LEVELS (AQL'S) FOR FRENCH STYLE CANNED GREEN BEANS

Quality factor	Grade A		Grade B		Grade C	
	Tolerance	AQL	Tolerance	AQL	Tolerance	AQL
EVM	1.00	0.40	1.25	0.65	3.75	2.50
Stems	2.50	1.50	3.75	2.50	5.50	4.00
Blemished—Major	1.25	0.65	2.50	1.50	3.75	2.50
Blemished—Total	2.50	1.50	3.75	2.50	10.75	8.50
Tough Strings	2.50	1.50	5.50	4.00	10.75	8.50
Color Defectives	5.50	4.00	10.75	8.50	17.75	15.00
Character—"B"	44.40	40.00	N/A	N/A	N/A	N/A
Character—"C"	6.75	5.00	23.75	20.00	N/A	N/A
Character—Sstd	1.75	1.00	5.50	4.00	12.50	10.00
Edible Fiber	1.75	1.00	5.50	4.00	10.75	8.50
Inedible Fiber	0.10	0.04	1.75	1.00	5.50	4.00

§ 52.452 Sample size.

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83).

§ 52.453 Quality requirements criteria.

(a) *Lot Inspection.* A lot of canned beans is considered as meeting the requirements for quality if:

(1) The prerequisites specified in § 52.449 are met; and

(2) None of the allowance for the individual quality factors specified in table III, IV, V, VI, or VII in § 52.451 as applicable for the style, are exceeded.

(b) *Single sample unit.* Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:

(1) The prerequisites specified in § 52.449 are met; and

(2) The Acceptable Quality Levels in table IIIa, IVa, Va, VIa, or VIIa in § 52.551 as applicable for the style are not exceeded.

Dated: July 8, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–16547 Filed 7–21–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 945

[Docket No. FV–91–402]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 945 for the 1991–92 fiscal period. Authorization of this budget would enable the Idaho-Eastern Oregon Potato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by July 25, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 98 and Marketing Order No. 945 (7 CFR part 945) regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

Thus, both statutes have small entity orientation and compatibility.

There are approximately 66 handlers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 3,100 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal year was prepared by the Idaho-Eastern Oregon Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Idaho-Eastern Oregon potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on June 11, 1991, and unanimously recommended a 1991–92 budget of $104,738 and an assessment rate of $0.0026 per hundredweight. The proposed assessment rate is the same as that in effect each year over the past decade, and is the maximum allowed by the order. The proposed budget is $6,338 more than last year's due to increases in expenditures for salaries and contingencies; however, this is partially offset by a decrease of $3,000 in the reserve for auto purchase. The recommended assessment rate, when applied to anticipated fresh market potato shipments of 25,000,000 hundredweight, would yield $65,000 in assessment revenue which, when added to $6,000 in fees and interest income and $33,738 from reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1991–92 fiscal period begins on August 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 945 be amended as follows:

PART 945—IRISH POTATOES GROWN IN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

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

2. A new § 945.244 is added to read as follows:

§ 945.244 Expenses and assessment rate.

Expenses of $104,738 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of potatoes is established for the fiscal period ending July 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: July 10, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–16754 Filed 7–12–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 967

[FV–91–405PR]

Expenses and Assessment Rate for Celery Grown in Florida

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 967 for the 1991–92 fiscal year established under the celery marketing order. Funds to administer this program are derived from assessments on handlers. The celery marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable celery handled from the beginning of such year. An annual budget of expenses is prepared by the Florida Celery Committee (Committee) and submitted to the U.S. Department of Agriculture (Department) for approval.

DATES: Comments must be received by July 25, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue 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: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 handlers of celery grown in Florida who are subject to regulation under the celery marketing order and 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The minority of celery handlers and producers may be classified as small entities.

The celery marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable celery handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department of approval. The members of the Committee are handlers and producers of celery. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 11, 1991, and unanimously recommended 1991–92 fiscal year expenditures of $165,000 and an assessment rate of $0.03 per 60-pound crate of celery shipped. In comparison, estimated expenses for 1990–91 are expected to be $164,327.34. The 1990–91 assessment rate was $0.02 per 60-pound crate of celery.

Major expenditure categories in the 1991–92 budget include $75,000 for administration, $75,000 for promotion, merchandising, and public relations, $6,000 for travel, and $6,000 for research. Comparable 1990–91 estimated expenditures are $75,000, $73,000, $6,696.89, and $7,336.68, respectively.

Assessment income for 1991–92 is estimated at $150,000 based on projected fresh shipments of 5,000,000 60-pound crates of celery. The remaining $15,000 in the expenses would be covered by reserve funds ($12,500) and interest income ($2,500). Any unexpended funds may be carried to the next fiscal year as a reserve.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 967 be amended as follows:

1. The authority citation for 7 CFR part 967 continues to read as follows:

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

2. A new § 967.226 is added to read as follows:

PART 967—CELERY GROWN IN FLORIDA

§ 967.227 Expenses and assessment rate.

Expenses of $165,000 by the Florida Celery Committee are authorized and an assessment rate of $0.03 per crate of celery is established for the 1991–92 fiscal year ending on July 31, 1992. Unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: July 10, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–16755 Filed 7–12–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1124

[DA–91–006]

Milk in the Pacific Northwest Marketing Area; Notice of Proposed Temporary Revision of Supply Plant Delivery Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites public comments on a proposal to temporarily ease a supply plant shipping requirement as set forth in § 1124.7(b), that at least 30 percent of producer milk physically received be shipped to a distributing (bottling) plant in order to qualify the supply plant for pooling under the Pacific Northwest order during the months of September 1991 through February 1992. This action was requested in order to prevent the uneconomic movement of milk by a cooperative association that represents producers regularly associated with the market.

DATES: Comments are due no later than August 14, 1991.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby received the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuan to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1124.7(c) of the

order, the temporary revision of certain provisions of the order regulating the handling of milk in the Pacific Northwest marketing area is being considered for the months of September 1991 through February 1992.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 30th day after publication of this notice in the **Federal Register.**

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

In order for a supply plant to maintain its pool status, the Pacific Northwest order requires such plants to ship to pool distributing plants a minimum of 30 percent of the total quantity of milk physically received at the supply plant. The order also provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

The supply plant shipping standard has been reduced to 20 percent for all milk marketed during January through August 1991. This temporary revision was issued because it was determined that market conditions would have resulted in uneconomic shipments of milk for the purpose of maintaining pool supply plant status. This temporary revision will expire August 31, 1991.

The Tillamook County Creamery Association (TCCA), a cooperative association that represents a number of the market's producers, has requested that the temporary easing of the total minimum quantity of milk that a supply plant must ship to a distributing (bottling) plant in order for the supply plant to maintain pool plant status be continued. TCCA has asked in essence that the Director of the Dairy Division leave at the present level the total percentage of producer milk that is physically received at a supply plant and subsequently shipped to a distributing plant. This temporary revision would be effective from September 1991 through February 1992.

TCCA asserts that due to continuing supply/demand conditions, it continues to be uneconomic to move adequate quantities of milk to the market in order to maintain the delivery percentages under the order. They maintain that this reduction in shipping requirements will not affect TCCA's willingness to supply spot loads of milk to the Portland bottling market as has been traditionally done. Under current market conditions, TCCA contends that it would be impossible for them to qualify as a pool supply plant at the present shipping percentages without uneconomic and quality deteriorating movements of milk between plants solely for the purpose of meeting those requirements.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

The authority citation for 7 CFR part 1124 continues to read as follows:

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

Signed at Washington, DC, on: July 9, 1991.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 91–16757 Filed 7–12–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1126

[DA–91–007]

Milk in the Texas Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would continue the suspension of segments of the pool plant and producer milk definitions of the Texas order, for the months of August 1991 through July 1992. Associated Milk Producers, Inc. and Mid-America Dairymen, Inc., cooperative associations that represent a substantial proportion of the producers who supply milk to the market, have requested the continuation of the suspension. The cooperatives assert that continuation of this suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from pooling.

DATES: Comments are due no later than July 29, 1991.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

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

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for August 1991 through July 1992:

In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c) and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

In § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;"

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 14th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 14 days because a longer period would not provide the time needed to complete the required procedure and continue the suspension period for an additional twelve months beginning August 1991, should it be found necessary.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would continue the current suspension of segments of the pool plant and producer milk definitions for the Texas order. This proposed suspension would be in effect from August 1991 through July 1992. The current suspension will expire in July 1991. The proposed action would continue the suspension of: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be set by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant, if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. The proposed action would continue to inactivate the 60 percent delivery standard for plants operated by a cooperative association, allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested action would continue the current suspension of these performance standards for an additonal twelve months for August 1991 through July 1992 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. The proposed action would continue to keep these requirements suspended.

The continuation of the current suspension was requested by Associated Milk Producers, Inc. and Mid-America Dairymen, Inc., cooperative associations that represent a substantial share of the dairy farmers who supply the Texas market. The cooperatives assert that the continuation of the current suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. The cooperatives maintain that the suspension would also continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers supplying the market.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

The authority citation for 7 CFR part 1126 continues to read as follows:

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

Signed at Washington, DC, on: July 10, 1991.

L. P. Massaro,

Acting Administrator, Agriculture Marketing Service.

[FR Doc. 91–16756 Filed 7–12–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1413

1992 Feed Grain Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR part 1413 to set forth the acreage reduction percentage for the 1992 crop of feed grains. This action is required by Section 105B of the Agricultural Act of 1949, as amended (the 1949 Act).

DATES: Comments must be received on or before August 26, 1991 in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Bruce R. Weber, Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3741–S, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, room 3748–S, P.O. Box 2415, Washington, DC 20013 or call (202) 447–4418.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above named individual.

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation is required by section 105B(o) of the 1949 Act to request comments with respect to

the subject matter of this rule. It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed. The title and number of the Federal Assistance Program to which this rule applies are: Feed Grain Production Stabilization–10.055, as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The paperwork requirements imposed by this rule will not become effective until they have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 105B of the 1949 Act, an acreage reduction program (ARP) is required to be implemented for the 1992 crops of corn, grain sorghum, or barley if it is determined that the total supply of each respective feed grain would otherwise be excessive.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of feed grains to desirable goals. A paid land diversion program is not considered because, given the allowed ARP percentages, it is not needed. If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction to the respective feed grain acreage base for the farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce feed grains in excess of the respective permitted acreage for the farm plus any respective feed grain acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on the farm. If an ARP program for the 1992 crop is in effect, the program must be announced no later than September 30, 1991. Adjustments in the announced program may be made if it is determined that there has been a significant change in the total supply of feed grains since the program was first announced. These adjustments must be made no later than November 15, 1991.

In accordance with section 105B of the 1949 Act, not less than 60 days before the program is announced for a crop of feed grains, proposals for public comment on various program options for the crop of feed grains are required to be set forth. Each option must be accompanied by an analysis that includes the estimated planted acreage, production, domestic and export use, ending stocks, season average producer price, program participation rate, and cost to the Federal Government that would likely result from each option.

In determining the 1992 corn ARP, the Secretary will choose a specific ARP reduction percentage from within a range established by the estimated ending stocks-to-use ratio for the 1991 corn marketing year. If it is estimated that the 1991 ending stocks-to-use ratio in percentage terms (S/U) will be—

(i) More than 25 percent, the ARP shall not be less than 10 percent nor more than 20 percent; or

(ii) Equal to or less than 25 percent, the ARP may not be more than 0 to 12.5 percent.

The S/U for the 1991 marketing year is estimated to be below 25 percent. Based on this estimate, the 1992 ARP may be not more than 12.5 percent.

In the case of sorghum and barley, the Secretary may choose a 1992 ARP percentage in the range from 0 to 20 percent. For oats, the 1992 ARP is statutorily mandated not to exceed 0 percent.

In addition, section 1104 of the Agricultural Reconciliation Act of 1990 provides that the acreage reduction factor for the 1992 crops of corn, sorghum, and barley may not be less than 7.5 percent. This provision does not apply if the beginning stocks of soybeans for the 1991 marketing year are less than 325 million bushels or if the estimated corn S/U for the 1991 crop is less than 20 percent.

The May 1991 estimate of soybean stocks on September 1, 1991, is 355 million bushels. The estimated S/U for the 1991-corn crop is greater than 20 percent. Thus, under current supply and use estimates for soybeans and corn the minimum 7.5-percent-ARP provision is applicable and a 5-percent ARP for corn cannot be announced. However, lower ARP's for corn, sorghum, and barley will be included as options because a small change in supply and demand estimates would allow for consideration of an ARP below 7.5 percent.

Conversely, the final ARP decision process could consider higher ARPs than those included here. The law permits an ARP of between 10 and 20 percent if the S/U ratio exceeds 0.25, and such an outcome is possible. The ARP options included in this analysis are the candidates based on May 1991 data, crucial components of which are changing. A relatively small increase in ending stocks due to weaker demand or higher than expected yields on 1991-crop corn could raise the stocks-to-use ratio to 0.25.

For sorghum and barley, the ARP percentage may range from 0 to 20 percent. For oats, a 0-percent ARP is required. The 1992 ARP options considered are shown in Table 1.

TABLE 1.—PROPOSED 1992 FEED GRAIN PROGRAM OPTIONS TO ANALYZE

Item	Option				
	1 Pres. budget	2	3	4	5
	Percent				
ARP:					
Corn	7.5	5	7.5	10	12.5
Sorghum	7.5	5	0	5	7.5
Barley	7.5	5	0	5	7.5
Oats	0	0	0	0	0

Two options (1 and 3) will be considered at the same ARP level (7.5 percent) for corn to show the impacts of offering lower ARP percentages for grain sorghum and barley.

For sorghum and barley, ARP percentages higher than 7.5 percent are not considered because expected sorghum and barley S/U's are low compared with historical levels. The 1991 sorghum S/U is forecast at 0.194, with the exception of 1990, the lowest level since 1976 (0.173). The 1991 barley S/U is forecast at 0.292, with the exception of 1990, the lowest level since 1974 (0.247). ARP levels above 7.5 percent would limit supplies of barley and sorghum to the point of not allowing export and domestic needs to be met. However, ARP levels above 7.5 percent will be considered when making the final ARP decision if feed grain supply and demand changes are large enough to warrant their consideration. The estimated impacts of the ARP options are shown in Tables 2–4.

TABLE 2.—CORN SUPPLY AND DEMAND ESTIMATES

Item	1992 Program options				
	1	2	3	4	5
			Percent		
ARP	7.5	5	7.5	10	12.5
Participation	80	82	80	77	75
			Million acres		
Planted Acreage	75.5	76.5	75.5	74.5	73.5
			Million bushels		
Production	8,320	8,440	8,320	8,230	8,145
Domestic Use	6,485	6,515	6,480	6,460	6,430
Exports	1,800	1,815	1,795	1,790	1,775
Ending Stocks, 8/31	1,617	1,729	1,664	1,599	1,559
			Dollars per bushel		
Season Average Producer Price	2.20	2.15	2.19	2.24	2.28
			Million dollars		
Deficiency Payments	3,300	3,715	3,350	2,875	2,525

TABLE 3.—GRAIN SORGHUM SUPPLY AND DEMAND ESTIMATES

Item	1992 Program options				
	1	2	3	4	5
			Percent		
ARP	7.5	5	0	5	7.5
Participation	85	80	85	80	75
			Million acres		
Planted Acreage	11.0	11.2	11.6	11.2	11.0
			Million bushels		
Production	635	650	675	650	635
Domestic Use	430	440	445	435	430
Exports	215	220	225	220	215
Ending Stocks, 8/31	113	113	128	118	113
			Dollars per bushel		
Season Average Producer Price	2.05	2.00	1.97	2.04	2.08
			Million dollars		
Deficiency Payments	274	323	381	30[illegible]	262

TABLE 4.—BARLEY SUPPLY AND DEMAND ESTIMATES

Item	1992 Program options				
	1	2	3	4	5
			Percent		
ARP	7.5	5	0	5	7.5
Participation	77	80	82	78	75
			Million acres		
Planted Acreage	8.8	9.0	9.3	9.0	8.8
			Million bushels		
Production	430	445	460	445	430
Domestic use	335	360	367	363	358
Exports	85	87	90	87	85
Ending Stocks, 5/31	127	135	140	132	124
			Dollars per bushel		
Season Average Producer Price	2.05	2.00	2.00	2.06	2.09
			Million dollars		
Deficiency Payments	126	147	160	129	111

Accordingly, comments are requested as to whether the 1992 acreage reduction percentage for: (1) Corn should be 5, 7.5, 10 or 12.5 percent or a percentage within the range of 5 to 12.5 percent; and (2) sorghum and barley should be 0, 5 or 7.5 percent or a percentage within the range of 0 to 7.5 percent. The final determination of these percentages will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grains, Price support programs, Wheat, Rice.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(2)(i) 1991 corn, sorghum and barley, 7.5; and

(ii) 1992 corn shall be within the range of 5 to 12.5 percent, and 1992 sorghum and barley shall be within the range of 0 to 7.5 percent, as determined and announced by CCC;

* * * * *

(d) Paid land diversion program payments:

(1) Shall not be made available to producers of the 1991 crops of wheat, feed grains, upland and ELS cotton, and rice; and

(2) Shall not be made available to producers of the 1992 crops of wheat and feed grains, as determined and announced by CCC.

* * * * *

Signed this July 8, day of 1991 at Washington, DC.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–16742 Filed 7–12–91; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–129–AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–8–100 and DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM), reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to de Havilland Division Model DHC–8–100 and DHC–8–300 series airplanes, that would have required inspections of the flap primary-drive torque tube system to detect cracks, operational checks of the torque sensor to detect malfunctions, and replacement with serviceable parts, if necessary. This amended proposal would require the same repetitive inspections, but would include additional serial numbers of discrepant torque tubes, would add airplanes to the applicability statement, and would cite the latest revisions to the service bulletins as the appropriate sources of service information.

DATES: Comments must be received no later than August 16, 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–129–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, Systems and Equipment Branch, ANE–173; telephone (516) 791–6427. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581–1145.

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–129–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations, which would have required inspections of the flap primary-drive torque tube system to detect cracks, operational checks of the torque-sensor system to detect malfunctions, and replacement with serviceable parts, if necessary, on de Havilland Model DHC–8–100 and DHC–8–300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 19, 1990 (55 FR 29385). That NPRM was prompted by reports of flap torque-tube failure at the splined coupling due to improper heat treatment in early serial number parts, and a report of a malfunctioning torque sensor in the secondary-drive system. This condition, if not corrected, could result in the flaps failing to deploy symmetrically, causing a reduction in roll control effectiveness.

Since issuance of the Notice, de Havilland has identified additional serial numbers of discrepant torque tubes with improper heat treatment and has identified additional de Havilland Model DHC–8–100 and DHC–8–300 series airplanes that may be subject to the identified unsafe condition.

Additionally, since issuance of the Notice, Sundstrand Corporation, the manufacturer of the torque tube assembly, has issued Revisions 1, all dated September 15, 1990, to the following service bulletins: 734187–27–A2, 734378–27–A3, 734380–27–A2, 734382–27–A3, 734384–37–A2, 734386–27 A2, and 734388–27–A1. These seven service bulletins have been revised to include the additional serial numbers of discrepant torque tubes. These revisions also change the greasing procedure of the splined surfaces to assure that adequate grease covers all the surfaces.

In this Supplemental NPRM, the FAA has revised the original notice to include the additional serial numbers of affected torque tubes in table 1, and to reference the latest revision to the service bulletins in table 2 as the appropriate information source. Additionally, the applicability statement in this Supplemental NPRM has been revised to include additional serial numbers of Model DHC–8–100 and DHC–8–300 series airplanes.

One commenter to the original notice recommended that the latest revisions to the service bulletins should be cited in the proposed rule. The commenter

further stated that one of its airplanes suffered a splined coupling failure in a flap drive torque-tube whose serial number did not fall within the effectivity range listed in the original issue of the service bulletins and did not appear in table 1 of the proposed rule. Further investigation revealed that the particular coupling was found to have the same improper heat-treatment as the serial numbers referred to in the proposed rule. The FAA agrees and, as noted above, has included reference to the latest revisions to the service bulletins in this Supplemental NPRM, and additional serial numbers of flap drive torque tubes requiring inspection.

Another commenter expressed concern that an adequate number of parts may not be available for necessary replacement, and suggested that the FAA check on the availability of the replacement parts. The FAA has ascertained that ample parts are available and the current compliance time will afford the operator adequate time to accomplish the requirements of the proposed rule.

One commenter suggested that incorporation of Modifications 8/1473, 8/0740, and 8/0659 should justify terminating the repetitive visual inspections of the flap drive shafts proposed in paragraph C.1. Modification 8/1473 installs a tee piece between the flap torque tube and a cooling tube to prevent the two tubes from rubbing against each other. Modification 8/0740 reworks the flap drive shaft containment rings and brackets to prevent torque tube scoring. Modification 8/0659 removes the containment rings originally installed to protect the secondary flap drive, and suggests hanger bracket trimming. Both actions help prevent damage to the flap primary transmission tubes. The FAA does not agree that incorporation of Modifications 8/1473, 8/0740, and 8/0659 justifies terminating the repetitive visual inspections of the flap drive shafts. Field experience indicates that the repetitive inspections are necessary to reveal shaft fracture, wear, deformation, and/or heat damage.

One commenter suggested that the word "shaft" should be taken out of proposed paragraph C.4., which read, "Visually inspect the flap secondary-drive flex shaft for . . ." The commenter stated that deletion of the word "shaft" will prevent operators from misinterpreting the intent of this task as requiring the removal of the shaft from the sheath-casing. The commenter suggested that it should be made clear that disassembly of the drive system is not required. The FAA agrees and has reworded this requirement in the Supplemental NPRM by changing the word "shaft" to "outer sheath-casing," which clarifies that disassembly is not required.

One commenter suggested that the "loss of blue anodic film on the casing ferrules," as referenced in proposed paragraph C.4., is not evidence of excessive heat and, therefore, cause for rejection of the secondary-drive braided sheath. The FAA agrees; the above phrase has been changed to "discoloration of the blue anodizing" in the Supplemental NPRM, and proposed paragraph C.5. has been re-phrased to reflect that the outer sheath-casing must be replaced.

One commenter requested clarification of the dates of the Maintenance Program Task 2750/11 referenced in proposed paragraph D.1. Boeing of Canada, Ltd., de Havilland Division, has informed the FAA that the Maintenance Program Task 2750/11 has been recently updated. In light of this, the FAA has revised paragraph D.1. to reflect the latest versions of the appropriate service information related to Task 2750/11 for both the Model DHC–8–100 series and the Model DHC–8–300 series.

Since the changes described above would expand the scope of the proposed rule, the FAA has determined that it is necessary to revise the Notice accordingly and provide additional time for further public comment.

The proposed requirements are considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

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

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

Approximately 17 additional airplanes of U.S. registry would be affected by this AD, besides the original 60 specified in the original notice. It would take approximately 12 manhours per airplane to accomplish the required actions, and the average labor cost would be $55 per manhour. The modification parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $50,820 ($660 per airplane).

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 AD:

Boeing of Canada, Ltd., De Havilland Division: Docket No. 90–NM–129–AD.

Applicability: Model DHC–8–100 and DHC–8–300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent asymmetric flap deployment, accomplish the following:

(a) For airplanes Serial Numbers 3 through 231, and 233, 235, 237, and 243: Within 300 hours time-in-service after the effective date of this AD, accomplish the following:

(1) Locate and inspect the flap primary-drive torque tubes to determine if parts having part numbers (P/N) and serial

numbers (S/N) listed in TABLE 1, below, are installed.

TABLE 1

Torque tube P/N series	Torque tube S/N
734187	125 through 171.
734378	129 through 150.
734380	127 through 166.
734382	211 through 322.
734384	153 through 188 and 226 through 235.
734386	195 through 286.
734388	160 through 177.

(2) If any torque tube listed in TABLE 1 is installed, prior to further flight, remove the through-bolt from the splined coupling on each end of the torque tube and, using a 10× magnifying glass, visually inspect the area around the bolt holes for cracks.

(3) If a splined coupling is found to be cracked on a particular torque tube, prior to further flight, accomplish either subparagraph (3)(i) or (3)(ii), below:

(i) Replace the splined couplings on that torque tube in accordance with the accomplishment instructions in the appropriate Sundstrand Service Bulletin specified in TABLE 2, below, and re-identify the torque tube as indicated. Marking the service bulletin number on the rod with indelible ink will satisfy this requirement; or

(ii) Replace the particular torque tube with a serviceable unit.

Note: Some torque tubes have one splined coupling while others have two.

TABLE 2

Torque tube P/N series	Sundstrand service bulletin No.	Post-modification identification
734187	734187-27-A2, Rev. 1.	27-A2
734378	734378-27-A3, Rev. 1.	27-A3
734380	734380-27-A2, Rev. 1.	27-A2
734382	734382-27-A3, Rev. 1.	27-A3
734384	734384-27-A2, Rev. 1.	27-A2
734386	734386-27-A2, Rev. 1.	27-A2
734388	734388-27-A1, Rev. 1.	27-A1

(4) Upon reassembly, install the through-bolt, and torque to between 20 and 25 in-lb.

(b) For airplanes, Serial Numbers 3 through 231 and 233, 235, 237, and 243: Within 900 hours time-in-service after the effective date of this AD, replace all splined couplings [which have not been replaced in accordance with paragraph (a)(3)(i) and/or (a)(3)(ii) of this AD] on torque tubes identified in TABLE 1, above, in accordance with the accomplishment instructions in the appropriate Sundstrand Service Bulletin specified in TABLE 2, above. Re-identify the torque tubes as indicated. Marking the service bulletin number on the rod with indelible ink will satisfy this requirement.

(c) For airplanes, Serial Numbers 3 and subsequent: Within 300 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service, accomplish the following visual inspection procedure of the flap primary-drive torque tube system and the flap secondary-drive flex shaft system:

(1) Extend flaps fully.

(2) Visually inspect the flap primary-drive torque tubes over their entire length for fracture, rubbing, and wear.

(3) Damaged torque tubes, or torque tubes exhibiting wear greater than 0.010 inch in depth or 180 degrees around the circumference, must be replaced with serviceable torque tubes prior to further flight.

(4) Visually inspect the flap secondary-drive flex outer sheath casing for permanent deformation (kinks), or evidence of excessive heat of outer braided sheath, melting of outer plastic sheath, or any discoloration of anodic film on the casing ferrules.

(5) If any of the conditions described in paragraph (c)(4) of this AD exist, the secondary drive assemblies must be replaced with serviceable units prior to further flight.

(d) For airplanes, Serial Numbers 3 and subsequent: Within 600 hours time-in-service after the effective date of this AD, unless already accomplished within the last 600 hours time-in-service, and thereafter at intervals not to exceed 1,200 hours time-in-service, accomplish the following:

(1) Perform an operational check of the torque sensor in accordance with the following:

(i) For Model DHC-8-100 series: Maintenance Program Task 2750/11 (Refer to DASH 8 Maintenance Program Supplementary Information, PSM 1-8-7, Volume 2, Procedures 27, dated March 30, 1990).

(ii) For Model DHC-8-300 series: Maintenance Program Task 2750/11 (Refer to DASH 8 Maintenance Program Supplementary Information, PSM 1-83-7, Volume 2, Procedures 27, dated December 21, 1988).

(2) Any torque sensor found malfunctioning or jammed must be replaced with a serviceable unit prior to further flight.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

Issued in Renton, Washington, on July 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-16604 Filed 7-12-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AWA-16]

Proposed Establishment of the Manchester Airport/Grenier Industrial Airpark Airport Radar Service Area; NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish an Airport Radar Service Area (ARSA) at the Manchester Airport/Grenier Industrial Airpark, NH. Manchester Airport is a public airport with an operating control tower and Level III terminal radar approach control facility (TRACON). Establishment of this ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before September 9, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 90-AWA-16, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800

Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–AWA–16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that terminal radar service areas (TRSA) should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was recommended by a consensus.

The FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas With Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently estalbished at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which were included in the TRSA replacement program. The task group recommended that these criteria include among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are being published via the FAA directives system.

The FAA has established ARSA's at 121 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's which warrant implementation of an ARSA. This notice proposes an ARSA designation at a location which was not identified as a candidate for an ARSA in the preamble to Amendment No. 71-10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register**.

The Current Situation at the Proposed ARSA Locations

Manchester Airport/Grenier Industrial Airpark is a public airport with an operating control tower served by a Level III TRACON. The diversity in the operations at this airport is dependent on the type of aircraft. The speed range varies from the extremely slow to the maximum speed allowed under established regulations. Aircraft landing at Manchester Airport are sequenced with the aid of radar. The airspace and operating rules, however, are not established by regulation. Participation by pilots operating under visual flight rules (VFR) is voluntary, although pilots are urged to participate. This level of service is known as Stage II and is provided at some locations not identified as TRSA's. The NAR Task Group recommended and the FAA adopted the establishment of numerical criteria to allow airports such as Manchester Airport with safety, traffic, and other needs to become candidates for ARSA's regardless of the presence of a TRSA.

The Manchester Airport and adjacent airspace has experienced a substantial increase in traffic that demonstrates the need to improve on the utilization of the airspace. Manchester Airport is becoming a reliever airport for the General Edward Lawrence Logan International Airport, Boston, MA. The established benchmark of 250,000 annual enplaned passengers will determine if a location is eligible for an ARSA. The Mancheser Airport's enplanement activity was 328,474 for the calendar year 1989, which more than qualifies this location as an ARSA candidate.

The NAR Task Group stated that, because of the different levels of service offered in terminal areas such as Manchester Airport/Grenier Industrial Airpark, users are not always sure of what restrictions or privileges exist, or how to cope with them. Stage II services offered at Manchester Airport/Grenier Industrial Airpark, include traffic advisories and sequencing to the runway, but do not include conflict resolution in the terminal airspace. Participation in Stage II Services is strictly voluntary. The only service available outside the airport traffic areas (ATA) is separation for instrument flight rules (IFR) traffic and VFR traffic advisories as an additional service.

Some believe that the voluntary nature of Stage II at airports with moderate traffic levels does not adequately address the problems associated with nonparticipating aircraft oeprating in relative proximity to the airport and its associated approach and departure courses. The consensus among the user organizations is that, within a given standard airspace designation, a terminal radar facility should provide all pilots with the same level of service, and in the same manner, to the extent that this is feasible.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish an ARSA at Manchester Airport/Grenier Industrial Airpark. This location is a public airport with an operating control tower served by a Level III TRACON.

The FAA published a final rule (50 FR 9252; March 6, 1985) which defines an ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA. The final rule provides, in part, that all aircraft arriving at any airport in an ASA or flying through an ARSA, prior to entering the ARSA, must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area; and (2) while in the ARSA, maintain two-way radio communications with the ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be estalbished with the ATC facility having jurisdiction over the area as soon as practicable after takeoff and thereafter maintained while operating with in the ARSA (14 CFR 91.130).

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions. However, the rule permits ATC to authorize appropriate deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR Task Group recommendation that each ARSA be of the same airspace configuration insofar as is practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport, extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA's may be found in §§ 71.14 and 71.501 of part 71 and §§ 91.1 and 91.130 of part 91 of the Federal Aviation Regulations (14 CFR parts 71, 91).

Regulatory Evaluation Summary

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. Accordingly, the FAA has prepared a detailed preliminary economic evaluation of this proposal and placed it in the docket. The evaluation identifies and analyzes both the quantifiable and nonquantifiable economic effects of the proposal. Based upon the results of its investigation, the FAA believes that this proposal is cost beneficial.

This section contains a summary of the benefits and costs analyzed in the preliminary regulatory evaluation. In addition, it includes an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act, and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full preliminary regulatory evaluation contained in the docket.

Costs

The FAA has determined that the establishment of the proposed Manchester ARSA would impose a one-time FAA administrative cost of $500 in 1990 dollars. For the aviation community (namely, aircraft operators and fixed based operators), the NPRM would impose only negligible additional costs. The potential costs of the proposed ARSA are discussed below.

1. Potential FAA Administrative Costs (air traffic controller staffing, controller training, and facility equipment costs).

For the proposed ARSA (and the ARSA program in general), the FAA does not expect to incur any additional costs for air traffic controller staffing, training, or facility equipment. The FAA is confident that it can handle any additional traffic that would participate in radar services at the proposed ARSA through efficient use of personnel at current authorized staffing level.

The FAA expects to be able to train its controller force in ARSA procedures during regularly scheduled briefing sessions routinely held at Manchester. Thus, no additional training costs are expected. Minor modifications of the computer software used to operate radar equipment may be necessary. Previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no significant additional equipment requirements are anticipated.

2. Other Potential FAA Administrative Costs (revision of charts, notification of the public, and pilot education).

Establishment of ARSA's throughout the country have made it necessary to revise sectional charts to remove existing airspace depictions and incorporate the new ARSA airspace boundaries. The FAA currently revises these sectionals every 6 months. Changes of the type required to depict an ARSA are made routinely during charting cycles, and can be considered an ordinary operating cost. Therefore, the FAA does not expect to incur any additional charting costs as a result of the proposed Manchester ARSA. Pilots would not incur any additional costs obtaining current sectionals depicting ARSA's, because they are already required to use the latest charts.

The FAA holds an informal public meeting at each proposed ARSA location. These meetings provide pilots with the best opportunity to learn both how an ARSA works and how it would affect local operations. The expenses associated with these public meetings are incurred regardless of whether an ARSA is ultimately established. Thus, they are more appropriately considered routine FAA costs. If the proposed ARSA is designated through a final rule, any subsequent public information costs would be strictly attributed to the proposal. For instance, the FAA would distribute a Letter To Airmen to all pilots residing within 50 miles of the proposed Manchester ARSA and issue an Advisory Circular that would explain the operation and airspace configuration of the proposed ARSA. The combined Letter To Airmen and prorated Advisory Circular costs would be approximately $500. This one-time negligible cost would be incurred if the proposed APSA is established.

FAA district offices throughout the country conduct aviation safety

seminars on a regular basis. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, including ARSA's, and do not involve additional costs. Also, no significant costs are expected to be incurred as a result of the follow-up user meetings that are held at each site following implementation of the ARSA. The FAA organizes these meetings to get reactions from users on local ARSA operations. The meetings are held at public or other facilities and are provided free of charge or at a nominal cost. Because local FAA facility personnel conduct these meetings, no travel, per diem, or overtime costs are incurred by regional or headquarters personnel.

3. Potential Costs to the Aviation Community (circumnavigation, delays, and radio communications equipment).

The FAA anticipates that some pilots who currently transit the area without establishing radio communications or participating in Stage II services may choose to circumnavigate the proposed ARSA. However, the FAA contends that these operators could circumnavigate the ARSA without significantly deviating from their regular flight path. They could also remain clear of the proposed ARSA by flying above the ceiling (4,300 feet mean sea level (MSL)) or under the various floors (which range from 1,500 to 2,500 feet MSL). Because the Manchester very high frequency omnidirectional radio range (VOR) lies within the proposed ARSA, the FAA believes pilots overflying the VOR would either contact Manchester Approach Control for permission to transit the ARSA or fly over the ARSA above 4,300 feet MSL. The small deviations that would result from the establishment of the Manchester ARSA would have a negligible cost impact on nonparticipating general aviation (GA) aircraft operations.

The FAA recognizes that delays might develop at Manchester following the initial establishment of the proposed ARSA. The additional traffic that ATC would handle due to the mandatory pilot participation requirement could result in minor delays to aircraft operations. However, those potential delays are typically transitional in nature. The FAA contends that any potential delays would be more than offset by the increased flexibility afforded controllers in handling traffic as a result of ARSA separation standards. This has been the experience at ARSA's that have been established for a long period of time as well as at more recently established ARSA's. The FAA does not anticipate that establishing an ARSA at Manchester would result in any problems, and expects a smooth transition process.

The FAA assumes that aircraft operating in the vicinity of the proposed ARSA already have two-way radio communications capability and, therefore, are not expected to incur any additional costs as a result of the proposed ARSA. Both Manchester and Boire Field (in Nashua, NH), located within the lateral boundaries of the proposed ARSA, have control towers and already require two-way radio communications for aircraft taking off or landing at those airports when the tower is operating.

4. Mode C and Traffic Alert and Collision Avoidance System (TCAS) rules.

If the proposed Manchester ARSA becomes a final rule, it would be subject to Phase II of the Mode C rule which went into effect for ARSA's on December 30, 1990. The Mode C rule states that all aircraft must be equipped with an operable transponder with Mode C capability when operating in and above an ARSA. Specifically, the Mode C rule affects all aircraft operating in an ARSA and in all airspace above an ARSA beginning at the ceiling and extending upward to 10,000 feet MSL within the lateral confines of an ARSA.

Some aircraft operators may have to acquire (or upgrade to) a Mode C transponder as a result of the ARSA. However, the cost of acquring a Mode C transponder for all GA aircraft in the U.S. was completely accounted for by the Mode C rule. The Mode C rule assumed a worst-case scenario that all operators of GA aircraft without a Mode C transponder will acquire such equipment. The FAA contends that GA operators will acquire Mode C transponders to avoid having to circumnavigate the increasing amount of airspace that require Mode C transponders. Thus, any Mode C acquisition costs, as a result of the proposed Manchester ARSA or any other ARSA, have already been attributed entirely to the Mode C rule.

The FAA has also adopted regulations requiring certain aircraft operators to install a TCAS, which allows air carriers to determine the position of other aircraft from the signal emitted by Mode C transponders. TCAS issues conflict resolution advisories as to what evasive actions are most appropriate for avoiding potential midair collisions. The TCAS rule would not contribute to the potential costs of the proposed ARSA, but it would contribute to the potential safety benefits. The benefits of the proposed Manchester ARSA are discussed below.

Benefits

The potential benefits of the proposed Manchester ARSA would be enhanced aviation safety (in terms of a lowered risk of midair collisions) and improved operational efficiency (in terms of higher air traffic controller productivity with existing resources). These potential benefits are difficult to quantify in monetary terms. Therefore, such benefits have been analyzed in qualitative terms, as explained in the following sections.

The NAR Task Group found that airspace users, especially GA users, encountered significant problems with terminal radar services. Different levels of radar service offered within terminal areas caused confusion, and users were not always certain of what restrictions and privileges existed. The standardization and simplification of operating procedures provided by ARSA's are expected to alleviate many of these problems. As both pilots and controllers become more familiar with ARSA operating procedures, all IFR and VFR traffic is expected to move as efficiently and expeditiously as it did under Stage II service. These benefits of the ARSA program cannot be specifically attributed to individual airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. Establishment of the proposed Manchester ARSA would contribute to these overall improvements.

The proposed ARSA would generate potential safety benefits in the form of a lowered risk of midair collisions due to increased positive control of airspace around Manchester. Because of the proactive nature of the proposed ARSA, the potential safety benefits are difficult to quantify in monetary terms. Based on symptoms that indicate an increased risk of a midair collision at Manchester, the FAA is proposing to establish an ARSA there to prevent a safety problem from occurring. These symptoms are the increased volume of passenger enplanements and the increased complexity of aircraft operations at Manchester.

The volume of passenger enplanements at Manchester has risen dramatically. Enplanements at Manchester for 1990 were estimated to be 330,000, up from 58,000 in 1980, and are projected to be 660,000 by the year 2000. As a reliever airport for Logan International Airport in Boston, MA, the number of aircraft operations will also

increase. Operations at Manchester in 1990 were estimated to be 150,000 and are projected to be 185,000 by the year 2000. This high volume of passenger enplanements and aircraft operations have made Manchester eligible to be an ARSA site.

An ARSA has the potential for reducing the risk of midair collisions by reducing the number of near-midair collisions (NMAC's). In a study of NMAC data, the FAA's Office of Aviation Safety (ASF) found that approximately 15 percent of reported NMAC's occur in TRSA airspace. This study found that about half of all NMAC's occur in the 1,000 to 5,000 feet altitude range, which is similar to the airspace included in an ARSA. This study also found that over 85 percent of NMAC's occur in VFR conditions when visibility is 5 miles or greater. Finally, the study found that the largest number of NMAC reports are associated with IFR operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. The mandatory participation requirements of the ARSA and the radar services provided by ATC to VFR as well as IFR pilots would help alleviate such conflicts.

A NAR Task Group study conducted by Engineering & Economics Research, Inc., reviewed NMAC data for Austin and Columbus during the 1978 to 1984 period. This study found that the presence of an ARSA reduced the probability of NMAC occurrence by 38 percent at Austin and 33 percent at Columbus. Another study, conducted by the FAA's Office of Policy and Plans (APO) in 1984, estimated that the potential for NMAC's could be reduced by about 44 percent. Since near midair and actual midair collisions result from similar causal factors, a reduction in NMAC's as a result of the ARSA program suggests that the risk of midair collisions would also be reduced.

The FAA study of the ARSA confirmation sites included a detailed analysis to determine if a reduction in midair collision risk might result from replacing a TRSA with an ARSA. The collision risk analysis was based upon the experience at Columbus, because recorded radar data through Automated Radar Terminal System ARTS III–A extraction was available there. The study focused on conditions of fairly heavy VFR activity in the terminal radar area since the ARSA affects procedures used to handle VFR traffic. The analysis examined the intersections of flight paths before and after the ARSA was installed, because the replacement of a TRSA with an ARSA might alter the routes of travel, particularly for aircraft that did not previously participate in the TRSA. The flight path analysis focused on the areas immediately around, under, and over the ARSA, and determined that there was no compression of traffic in this airspace following installation of the ARSA. In the absence of compression, the study concluded that the mandatory participation requirement for all aircraft operating within the ARSA resulted in a 75 percent reduction in midair collision risk.

The FAA reviewed National Transportation Safety Board (NTSB) midair collision accident records for the period between January 1978 and October 1984. This review also indicated that the establishment of an ARSA, in place of a TRSA, could greatly reduce the risk of midair collisions. Because the circumstances observed at the Columbus test site may not be the same at other TRSA locations, the 75 percent reduction in midair collision risk measured there may not be achieved at other ARSA sites. Therefore, the FAA conservatively estimates that the implementation of the ARSA program would reduce the risk of midair collision by only 50 percent at TRSA locations. Establishing ARSA's at congested airports currently providing Stage II radar service will also contribute to a reduction in midair collision risk.

A 50 percent reduction of midair collision risks would result in one prevented midair collision nationally every one to two years. The quantifiable benefits of preventing a midair collision can range from less than $150,000 by preventing a minor non-fatal accident between GA aircraft, to $250 million or more by preventing a midair collision involving a passenger jet airplane. Establishment of the proposed Manchester ARSA would contribute to this improvement in aviation safety.

Ordinarily, the benefit of a reduction in the risk of midair collisions from establishing an ARSA would be attributed entirely to the ARSA program. However, an indeterminant amount of the benefits have to be credited to the interaction of the proposed ARSA (and the ARSA program in general) with the Mode C rule, which in turn interacts with the TCAS rule. This is because the proposed Manchester ARSA, as well as other designated airspace actions that require Mode C transponders, cannot be separated from the benefits of the Mode C and TCAS Rules. The TCA and ARSA programs (including the proposed Manchester ARSA), plus the Mode C and TCAS rules, share potential benefits totaling $2.1 billion.

Comparison of Costs and Benefits

The FAA has determined that the proposed rule to establish an ARSA at Manchester would impose a negligible cost of $500 on the agency. When this cost estimate of $500 is added to the total cost of the ARSA and terminal control area programs and the Mode C rule and TCAS rule, the costs would still be less than the total potential safety benefits. The proposal would also generate some benefits in the form of enhanced operational efficiency. In addition, the proposal would not impose any additional cost to the aviation community. Thus, the FAA believes that the proposed rule would be cost beneficial.

International Trade Impact Assessment

The proposal would only affect U.S. terminal airspace operating procedures at and in the vicinity of Manchester, NH. The proposal would not impose a competitive trade advantage or disadvantage on foreign firms in the sale of either foreign aviation products or services in the United States. In addition, domestic firms would not incur a competitive trade advantage or disadvantage in either the sale of U.S. aviation products or services in foreign countries.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Under FAA Order 2100.14A entitled Regulatory Flexibility Criteria and Guidance, a significant economic impact means annualized net compliance cost to an entity, which when adjusted for inflation, is greater than or equal to the threshold cost level for that entity. A substantial number of small entities means a number that is not fewer than eleven and is more than one-third the number of the small entities subject to a proposed or existing rule.

For the purposes of this evaluation, the small entities that would be potentially affected by the proposed rule are defined as fixed base operators, flight schools, and other small aviation businesses located at Manchester. The mandatory participation in the proposed ARSA along with unique conditions

around Manchester could potentially impose certain costs on users. Some of the users and activities that may be affected are local fixed-base operators and flight training operations at Manchester and Nashua. The proposed ARSA would affect only a small amount of additional airspace, i.e., that airspace above and around the two ATA's. The FAA believes that there will be no adverse impacts as a result of the proposed ARSA.

The FAA expects that any delay problems that may initially develop following implementation of an ARSA would be transitory. Thus, small entities of any type that use aircraft in the course of their business would not be adversely impacted over a long period of time.

The FAA has determined that the proposed rule would not result in a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required under the terms of the RFA.

Federalism Implications

This proposed regulation will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

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

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

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

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

§ 71.501 [Amended]

2. § 71.501 is amended as follows:

Manchester Airport/Grenier Industries Airpark, NH [New]

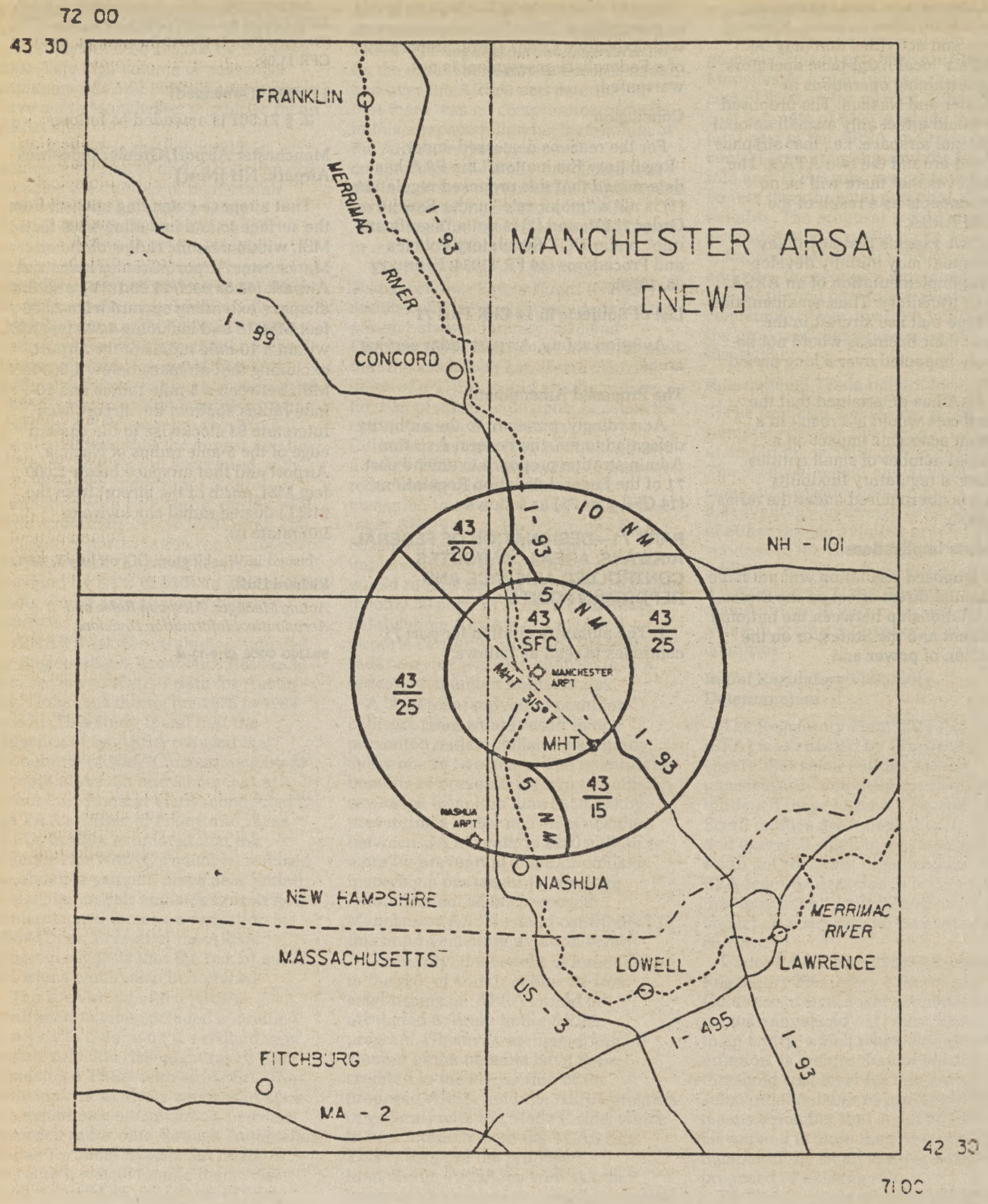
That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Manchester Airport/Grenier Industrial Airpark (42 56 00N/71 26 18W); and that airspace extending upward from 2,500 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport, excluding that airspace below 1,500 feet MSL between a 5-mile radius and 10-mile radius south of the airport from Interstate 93 clockwise to the eastern edge of the 5-mile radius of Nashua Airport and that airspace below 2,000 feet MSL north of the airport from the 315(T) degree radial clockwise to Interstate 93.

Issued in Washington, DC, on July 5, 1991.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910–13–M



[FR Doc. 16726 Filed 7-12-91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 89P-0387]

Orthopedic Devices; Hip Joint Metal/Polymer/Metal Semiconstrained Porous-Coated Uncemented Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of panel recommendation.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the Orthopedic and Rehabilitation Devices Panel (the Panel). The Panel recommended that FDA reclassify the hip joint metal/polymer/metal semiconstrained porous-coated uncemented prosthesis from class III into class II. This device is intended to be implanted to replace a hip joint damaged as a result of trauma or degenerative disease. The Panel made this recommendation after the review of a reclassification petition submitted by Richards Medical Co. (Richards) and Intermedics Orthopedics, Inc. (Intermedics) and other publicly available information. FDA is also issuing for public comment its tentative findings on the Panel's recommendation. After reviewing any public comments on the recommendation, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioners. FDA's decision on the petition will be anounced in the Federal Register.

DATES: Written comments by September 13, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1036.

SUPPLEMENTARY INFORMATION:

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I. Supplementary Information

On September 12, 1989, FDA filed a reclassification petition submitted by Richards and Intermedics on August 23, 1989. The petition requested the reclassification of the hip joint metal/polymer/metal semiconstrained porous-coated uncemented prosthesis for biological fixation from class III into class II. Richards and Intermedics submitted the petition (Ref. 53) under section 513(e) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 360c(e)) and 21 CFR 860.130, which generally govern the reclassification of preamendment devices based on new information. FDA, however, filed and reviewed the reclassification petition under section 513(f)(2) of the act (21 U.S.C. 306c(f)(2)) and 21 CFR 860.134. The generic type of device is automatically classified into class III under section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)). Reclassification of devices placed in class III by operation of section 513(f)(1) is governed by section 513(f)(2).

Section 513(f)(2) of the act provides that the manufacturer or importer of a device classified as class III under section 513(f)(1) of the act may file a petition for the reclassification of the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. A device may be reclassified under 513(f)(2) if FDA determines that the proposed new class has sufficient controls to provide reasonable assurance of the safety and effectiveness of the device.

Consistent with the act and the regulations, the agency referred the reclassification petition to the Panel. On September 22, 1989, during an open public meeting, the Panel recommended that FDA reclassify the generic type of device fom class III into class II. The Panel also recommended that FDA assign a low priority for the establishment of a performance standard for this generic type of device under section 514 of the act (21 U.S.C. 360d).

II. Background

The AML® Hip with Porocoat® (DePuy, Inc., Warsaw, IN) was found in 1977 to be substantially equivalent to the preamendment hip stem intended for uncemented use. In 1979, FDA rescinded this substantial equivalent finding and announced that the porous-coated device when labeled for biological, uncemented fixation, was not substantially equivalent to any preamendment device.

In April 1982, DePuy submitted a premarket approval (PMA) application seeking approval for a full porous-coated implant labeled for biological fixation (tissue and/or bone ingrowth). The data from the clinical studies submitted in support of the PMA application demonstrated that the uncemented use of the porous-coated device did, in early followup (i.e., the first 2 or more years after implantation), produce clinical results comparable to cemented prostheses. The studies demonstrated that, no matter what the nature of the tissue, biological fixation is achieved and the porous-coated device functions as well as the cemented prostheses. These studies, however, also showed the exact nature of the tissue or tissue combination (bone, fibrous tissue, mixed bone with fibrous tissue, etc.) that will develop in any given human patient cannot be predicted with certainty. FDA approved the PMA application on August 19, 1983.

In 1984, DePuy's application for the uncemented use of the ⅝ porous-coated device was approved. A PMA application for the uncemented use of the BIAS® Hip (Zimmer, Inc., Warsaw, IN) was approved by FDA on January 31, 1989.

The Panel recommended at its February 19, 1987, meeting that porous-coated total hip components be controlled in class II and urged applicants to submit reclassification petitions to FDA. The reclassification petition followed in 1989.

III. Device Description

The hip joint metal/polymer/metal semiconstrained porous-coated uncemented prosthesis is a device intended to be implanted to replace a hip joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across the joint. This generic type of device has:

1. A femoral component made of a cobalt-chromium-molybdenum (Co-Cr-Mo) alloy or a titanium-aluminum-vanadium (Ti-6Al-4V) alloy and an acetabular component composed of an ultra-high molecular weight polyethylene articulating bearing surface fixed in a metal shell made of Co-Cr-Mo or Ti-6Al-4V (Ref. 53);

2. On the femoral stem and acetabular shell, a porous coating made of, in the case of Co-Cr-Mo substrates, beads

made of the same alloy, and in the case of Ti–6Al–4V substrates, fibers of commercially pure titanium or Ti–6Al–4V alloy (Refs. 2, 3, 4, 21, 22, 43, 44, and 45);

3. The porous coating with a volume porosity between 30 and 70 percent (Refs. 8 and 9), an average pore size between 100 and 1,000 microns (Refs. 8 and 9), interconnecting porosity, and a porous coating thickness between 500 and 1,500 microns (Ref. 8); and

4. A design to achieve biological fixation to bone without the use of bone cement (Ref. 53).

IV. Recommendation of the Panel

The Panel met on September 22, 1989, in an open public meeting to discuss the subject device. The Panel recommended that the porous-coated hip prosthesis be reclassified from class III into class II. The Panel also recommended that FDA assign a low priority to the establishment of a performance standard for the generic type of device under section 514 of the act. The Panel believes that there exists sufficient information which demonstrates that the factors that determine the generic device's safety and effectiveness have been identified and can be controlled. The Panel believes therefore that there exists sufficient information to establish a performance standard for the generic device. This, the Panel concludes, is sufficient information to provide a reasonable assurance of the safety and effectiveness of the device.

V. Summary of Reason for the Recommendation

The Panel, after considering the persons for whom the generic device is intended, and the proposed conditions of use for the generic device, gave the following reasons in support of its recommendation to reclassify the hip joint metal/polymer/metal semiconstrained porous-coated uncemented prosthesis for class III into class II:

1. General controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

2. There is sufficient publicly available information to demonstrate that the risks to health have been characterized for the device, and that relationships between these risks and performance parameters have been established and are well understood by the orthopedic community.

3. The probable benefits to health outweigh any probable risks to health.

4. Sufficient voluntary standards and test methods exist to reasonably assure the standardized and controlled production of the device. FDA can ensure: (1) The safety and effectiveness of the device made by new manufacturers through the premarket notification procedures under section 510(k) of the act (21 U.S.C. 360(k)) and (2) that a regulatory level of class III is unnecessary.

5. As a critical device subject to the current good manufacturing practice (CGMP) regulations, the manufacturing, processing, labeling, testing, and quality assurance of the device are adequately controlled.

VI. Risks to Health

Risks and benefits to health presented by the hip joint metal/polymer/metal semiconstrained porous-coated uncemented prosthesis fall into two general categories: (1) Safety and (2) effectiveness.

The primary risks identified in the petition are similar to those of class II hip prostheses. These risks include mechanical failure, adverse tissue response, and loosening of the device. Effectiveness, which is measured in terms of relief of pain and improvement in function, is likewise comparable to other class II hip prostheses.

VII. Summary of Data Upon Which the Recommendation Is Based

The Panel identified the risks and benefits to health associated with the use of the device and concluded that data presented in the petition demonstrated that the risks may be adequately controlled (Ref. 53). With respect to risks and benefits, the Panel also considered the usage and personal experiences as evidenced by the discussion of Panel members and surgeons in the orthopedic community (Ref. 54). Focusing on the effectiveness of the porous coating, the Panel noted that, based upon data from animal studies available in the scientific literature, tissue may grow into a porous coating and achieve fixation with bone (Refs. 8, 11, and 15). However, data suggest that there is an optimal pore size range for maximumn fixation (Refs. 9 and 10) and that interconnecting porosity within the porous matrix is an essential performance parameter for the maintenance of tissue attachment to the prosthesis (Refs. 9, 10, and 17). The literature demonstrates that there are methods of production that can reliably produce porous coatings with the proper pore characteristics and sufficient interconnecting porosity (Refs. 8, 9, 10, 12, 15, 16, 17, 21 and 46). These studies demonstrate that adequate test methods exist to permit determination of which porous coatings have the appropriate characteristics considered to be safe and effective.

As previously stated, the primary risks to health associated with a porous-coated hip prosthesis for uncemented use are similar to those of other class II total hip implants. The parameters which need control to provide reasonable assurance of safety and effectiveness fall into two categories: Nonclinical and clinical. The primary effectiveness concerns of the device are: (1) Pain and (2) decreased or lost limb function; these concerns are also the same as the class II devices of similar design, including those devices intended for press-fit and cemented applications.

A. Safety and Effectiveness; Nonclinical

1. Biocompatibility of Materials.

The metals and metallic alloys used in this device have shown through in vitro testing to be compatible with human tissue (Refs. 19, 22, and 50). The corrosion resistance of porous-coated samples has been shown to be comparable to that of "as-cast" uncoated test samples (Refs. 13, 20, 28, and 30). Potentiokinetic measurements indicate that the electrochemical behavior of commercially pure titanium, Ti-6A1-4V, and Co-Cr-Mo is not changed by the sintering or bonding processes, and that the corrosion potential for porous-coated samples is the same per unit surface area as for uncoated samples (Refs. 13, 21, 30, and 36).

The metals and metallic alloys used to manufacture the hip joint metal/polymer/metal semiconstrained porous-coated uncemented prosthesis have been investigated and widely used by the medical and scientific community for a number of years. The biocompatibility of these metals and metallic alloys is widely recognized (Refs. 2, 3, 4, 43, 44, and 45).

The Panel believes that when the device is manufactured of metals and metallic alloys that meet the specifications of existing voluntary standards, a biocompatible implant can be produced, thereby providing reasonable assurance of safety and effectiveness with respect to biocompatibility.

2. Mechanical Properties of the Substrate

It has been demonstrated that the attachment of a porous coating to a metallic total hip prosthesis does not adversely affect the safety and effectiveness of the implant. Scientific evidence shows that with proper processing, porous-coated implants can be manufactured with mechanical

characteristics equal to those of uncoated prostheses of the same design (Refs. 20, 21, 33, 34, and 52).

Comparisons of tensile strength, yield strength, and percent elongation of porous-coated samples with American Society for Testing and Materials (ASTM) specifications for uncoated samples of the same alloy revealed that the values for porous-coated samples were usually, but not always, higher than the minimum value specified (Refs. 20, 21, 29, 30, 31, 32, 33 and 35). Although, the fatigue properties of the substrate metal may be reduced by the application of a porous coating, they are not reduced below the endurance limit of the substrate metal (Refs. 18, 21, 28, 29, 52, and 58).

Sufficient test methods exist to enable evaluation of the tensile strength of the coated substrate (Ref. 1) and the fatigue strength of the coated substrate (Ref. 60) to assure their safety and effectiveness.

3. Integrity of Porous Coating/Substrate Interface.

Two important performance characteristics of porous-coated devices are the tensile strength and the shear strength of the coating. The strength of the coating is characterized by measuring both the adhesive and cohesive bond strengths. The adhesive bond strength is a measure of the strength of the bond between the coating and the substrate. The cohesive bond strength is a measure of the strength of the bonds between individual particles of the coating itself. Concerns have been raised about the possibility of separations occurring within the porous coating or at the porous coating/substrate interface. The maximum load which can be carried by a porous-coated implant is a function of the adhesive and cohesive strengths of the coating. Advances in metallurgy have made it possible to obtain bond strengths at the porous coating/substrate interface which are greater than the potential bond strengths reported for the porous coating/bone interface (Ref. 51). Standard test methods have been developed to measure both the tensile strength of porous coatings (Ref. 6) and the shear strength of porous coatings (Ref. 5).

Another important performance characteristic of porous-coated devices is the fatigue strength of the porous coating. Co-Cr-Mo porous coatings have demonstrated shear fatigue strengths equal to approximately 0.33 of the static shear strength of the coating (Ref. 51). Titanium porous coatings have demonstrated tensile fatigue strengths equal to approximately 0.5 of the static tensile strength of the coating (Ref. 59).

The Panel believes that sufficient voluntary standards and test methods exist to evaluate the tensile, shear, and fatigue properties of the porous coating, so that separation of the porous coating from the device can be controlled to provide a reasonable assurance of safety and effectiveness of the generic device.

4. Pore morphology

The average pore size and the average percent porosity are two characteristics of a porous coating which greatly influence its effectiveness. A test method for determining average pore size and average percent porosity has been developed (Ref. 55). The pore size and porosity can be controlled to provide a reasonable assurance of safety and effectiveness of the generic device.

B. Safety and Effectiveness; Clinical

1. Loosening

Studies comparing the use of uncemented porous-coated prostheses with cemented prostheses have concluded that clinical results are comparable 2 to 4 years after surgery (Refs. 49 and 57). Survivorship analysis shows that at 4, 5, and 10 years the probabilities of loosening of uncemented porous-coated prostheses are comparable to those of cemented protheses. One study shows loossening rates after 2 to 4 years of 4.5 percent for uncemented porous-coated femoral components, and 0 percent for cemented femoral components (Ref. 57). Survivorship analysis also indicates that at 10 years the probability of loosening of an uncemented porous-coated femoral component is 9 prcent (Ref. 26). In another study, survivorship analysis indicates that at 10 years the probability of loosening of a cemented femoral component is 27 percent (Ref. 42).

Current prosthetic designs have been developed to maximize bone remodeling and press-fit stabilization in the intramedullary canal and to minimize the possibility of loosening or migration of the device (Refs. 38, 48, and 56). Technical causes for device loosening can be controlled by proper device labeling and physician training.

2. Revision

Studies of revision rates for uncemented porous-coated hips and cemented hips indicate that loosening is the primary reason for revision of any generic type of total hip prostheses. (Other, less common reasons include dislocation and infection.) A comparison of loosening and revision rates for uncemented porous-coated hips and cemented hips demonstrates that the method of fixation is not a significant factor in determining the ultimate success of the device. In one study, after 2 to 4 years of followup, uncemented porous-coated hips had a revision rate of 4.5 percent compared to 1.9 percent of cemented hips (Ref. 57). Survivorship analysis indicates that the probability of revision for uncemented porous-coated hips is 2.6 percent at 4 years (Ref. 47) and 6 percent at 10 years (Ref. 26). Survivorship analysis of cemented hips predicts a revision rate of 1.2 percent at 5 years and 9 percent at 10 years (Ref. 42). The rate of loosening, as determined radiographically, is higher than the revision rate. There is often a long interval between identification of aseptic loosening and revision, although not all radiographically loose prostheses require revision (Ref. 42).

Using data from 9 years of followup, survivorship tables were published by Dobbs (Ref. 23) for a cemented hip prosthesis and by Engh (Ref. 25) for an uncemented porous-coated prosthesis. The cumulative survivorship is the estimate of the cumulative proportion of a given population surviving to the beginning of each of the indicated time intervals. Their results are summarized in table 1.

TABLE 1.—SURVIVORSHIP FOR HIP PROSTHESES CUMULATIVE SURVIVORSHIP

Years of implantation	Cemented hip	Uncemented porous-coated hip
0–1	1.000	1.000
1–2	0.983	0.956
2–3	0.983	0.956
3–4	0.979	0.949
4–5	0.969	0.949
5–6	0.949	0.949
6–7	0.936	0.936
7–8	0.925	0.936
8–9	0.884	0.885

The cumulative survival rates calculated for cemented and uncemented hip prostheses are comparable from 0 to 9 years post-implantation.

3. Clinical evaluation

The Harris Hip Score (HHS) system is one of several standardized scoring systems used for evaluating the clinical outcome of total hip prostheses. The HHS evaluation system was developed in 1969 and incorporates assessment of pain, function, deformity, and range of motion (Ref. 39). The cumulative or total score, given on a 100-point scale, can be placed into one of four general categories: Excellent (90–100, good (80–

89), fair (70–79), and poor (less than 70). The outcome of various clinical studies of hip prostheses can be compared by contrasting the number or percentage of patients in each of the four general categories based on the total HHS, given the same postoperative followup period and demographic profiles. Data from 10 years or more of followup is necessary for determination of long-term outcomes for total hip prostheses. However, FDA has accepted clinical data on patients with 2 or more years of followup for the evaluation of the safety and effectiveness of a device leading to a premarket approval decision. Although limited, 2 or more years of followup provide sufficient time for serious problems to arise, yet maintain a reasonable evaluation period to allow beneficial devices on the market.

For cemented hip prostheses, Evarts et al. (Ref. 27) found that 94 percent of the 200 patients they followed for 2 or more years had an excellent or good HHS rating. Harris et al. (Ref. 40) followed 124 patients with cemented hip prostheses for 2 or more years with similar results. Ninety-six percent of the 124 patients had an excellent or good HHS rating (79 percent had an excellent rating). Wixson et al. (Ref. 57) reported that of 52 patients with an average of 3½ years followup, 82 percent had an excellent or good HHS rating.

For uncemented porous-coated hip prostheses, Krevolin et al. (ref. 47) found that 65 percent of the 237 patients they followed for 2 or more years had an excellent or good HHS rating (58 percent had an excellent rating). Using the same device, Engh et al. (Ref. 24) reported on a much smaller patient population. After 2 or more years of followup, 92 percent percent of the 26 patients had an excellent or good HHS rating (77 percent had an excellent rating). Callaghn (Ref. 14) reported 94 percent of his patients implanted with an uncemented porous-coated hip obtained excellent or good HHS ratings (73 percent had an excellent rating) at 2 years of followup. Herberts (Ref. 41) and Wixson (Ref. 57) reported clinical evaluations based on 2 to 3 year foillowup for another uncemented porous-coated hip prosthesis. Results showed that 86 percent and 96 percent of their respective patient populations had excellent or good HHS ratings.

Additional data from patients with a least 5 years of followup after implantation with either a cemented or a porous-coated uncemented total hip were compared. Beckenbaugh (Ref. 7) found with 5-year followup on 278 cemented hip prostheses that 93 percent were excellent or good (77 percent were excellent). As a component of the total HHS, data on pain showed that 97.4 percent had none or only slight pain (80.9 percent had none).

The 5-year followup data collected by Gustilo (Ref. 37) on 51 uncemented porous-coated prostheses compares favorably. In the pain category, 92.2 percent had none or slight pain (47 percent had none). In the limp category, 96.1 percent had none or a slight limp (57 percent had none). In evaluating need for support, 92.2 percent used none or a cane parttime.

The clinical outcomes for cemented hip prostheses and uncemented porus-coasted hip prostheses are comparable for the followup period between 1 and 3 years and at a minimum of 5 years when using the HHS system.

Based on the petition and other publicly available data, the risks to health presented by the hip joint metal/polymer/metal semiconstrained porous-coated uncemented prosthesis when stabilized by biological fixation are comparable to those presented by the cemented hip joint prosthesis. Moreover, with respect to probable benefits, the publicly available data demonstrate that the generic device performs as well as the other types of hip joint prostheses in commercial distribution. In summary, the Panel believes that, based on publicly available valid scientific evidence, the hip joint metal/polymer/metal porous-coated uncemented prosthesis can be regulated as a class II device to reasonably assure the device's safety and effectiveness, if it is manufactured with the proper materials and mechanical characteristics, functional specifications, and proper labeling.

VIII. References

1. ASTM E 8: Standard Specification for Tension Testing of Metallic Materials.

2. ASTM F 67: Standard Specifications for unalloyed Titanium for Surgical Implant Applications.

3. ASTM F 75: Standard Specification for Cast Cobalt-Chromium-Molybdenum Alloy for Surgical Implant Applications.

4. ASTM F 136: Standard Specification for Wrought Titanium–6A1–4V ELI Alloy for Surgical Implant Applications.

5. ASTM F–1044: Standard Test Method for Shear Testing of Porous Metal Coatings, 1987.

6. ASTM F–1147: Standard Test Method for Tension Testing of Porous Metal Coatings, 1988.

7. Beckenbaugh, R. D., and D. M. Ilstrup, "Total Hip Arthroplasty," Journal of Bone and Joint Surgery, vol. 60–A, No. 3, pp. 306–313, April 1978.

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IX. FDA's Tentative Findings

FDA believes that the data provided by the petitioner and other persons constitute valid scientific evidence demonstrating that the regulatory controls of class II are sufficient to provide reasonable assurance of the safety and effectiveness of the generic type of device as identified in the device description section. Accordingly, the agency believes that premarket approval is unnecessary for this device. FDA tentatively agrees with the recommendation of the Panel that the generic device, hip joint metal/polymer/metal semiconstrained porous-coated uncemented prosthesis should be reclassified from class III into class II and that the promulgation of a performance standard for the device to be of low priority.

X. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Economic Considerations

After considering the economic consequences of approving this reclassification, FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as specified in the Regulatory Flexibility Act (Pub. L. 96–354). Approval of this petition would not have a significant economic impact on a substantial number of small entities. The

petitioners and all future manufacturers of the hip joint metal/polymer/metal semiconstrained porous-coated uncemented prosthesis would be relieved of the costs of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). There are no offsetting costs that the petitioners would incur from reclassification into class II other than those associated with meeting a standard once established. The actual cost of complying with a standard cannot be determined until the standard is developed. The magnitude of the economic savings from approval of this petition depends on the extent of studies the petitioners would have conducted in support of new premarket approval applications or supplements to existing premarket approval applications, and the number of future competitors satisfying the requirements of premarket approval. None of these parameters can be reliably calculated to permit quantification of the economic savings.

XII. Comments

Interested persons may on or before September 13, 1991, submit to the Dockets Management Branch (address above) written comments on the Panel's recommendation and FDA's tentative findings. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in the brackets in the heading of this document. Received comments may be examined in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 26, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-16729 Filed 7-12-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 91-28]

Regatta: 1991 Bell South Mobility International Outboard Grand Prix Race

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is considering a proposal to issue Special Local Regulations for the 1991 Bell South Mobility International Outboard Grand Prix. The event will be held on October 2, 1991, from 11 a.m. e.d.t. until 4 p.m. e.d.t.; on October 5 and 6, 1991, from 9 a.m. e.d.t. to 6 p.m. e.d.t. with October 7, 1991, as a rain date. The regulations are needed to promote the safety of life on navigable waters during the event.

DATES: Comments must be received on or before August 14, 1991.

ADDRESSES: Comments should be mailed to Commander, Seventh Coast Guard District (dl), Brickell Plaza Federal Building, 909 SE. First Avenue, Miami, Florida 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, room 918. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Contact ENS Teresa M. Perez, USCG at (305) 535-4304.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice as CGD7 91-28 and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

DRAFTING INFORMATION: The drafters of this regulation are LT Genelle G. Tanos, Project Attorney, Seventh Coast Guard District Legal Office, and ENS Teresa Perez, Project Officer, Coast Guard Group Miami.

DISCUSSION OF PROPOSED REGULATIONS: The 1991 Bell South Mobility International Outboard Grand Prix is a race involving sixty (60) participants in outboard performance crafts, ranging in size from 15 to 22 feet with capabilities of reaching 100 mph. The course will be an enclosed one mile oval in the Intracoastal Waterway (ICW) from the south end of Bahia Mar Yachting Center to the north end of Bahia Mar Yachting Center. The number of spectator vessels is unknown. The waterway will be closed for approximately one hour intervals between the hours of 10:30 a.m. e.d.t. and 4:30 p.m. e.d.t. on October 2, 1991, and from 8:30 a.m. e.d.t. until 6:30 p.m. e.d.t. on October 5 and 6, 1991, with October 7, 1991, as a rain date.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This same event has been held for a number of years with minimal impact on the boating public since the regulated area only closes periodically for one hour intervals. Since the 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.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (Water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 USC 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35-0728 is added to read as follows:

§ 100.35-0728 Bell South Mobility International Outboard Grand Prix Race.

(a) Regulated Area: The northern boundary of the regulated area will be a line drawn perpendicular to the center line of the Intra Coastal Waterway 100 yards south of the Las Olas Bascule bridge. The southern boundary will be a line drawn from the western most point on Burnham Point on a 290 degree true radial to the western shore of the Intra Coastal Waterway.

(b) Special Local Regulations:

(1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander.

(2) All vessels in the regulated area will follow the directions of the Patrol Commander and will proceed at no more than 5 mph when passing the regulated area.

(3) A succession of not fewer than 5 short whistles or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of orange distress smoke signal from a patrol

vessel will be the signal for any and all vessels to stop immediately.

(c) Effective Date: These regulations become effective on October 2, 1991, at 11 a.m. e.d.t. and will terminate at 4 p.m. e.d.t.; on October 5 and 6, 1991, from 9 a.m. e.d.t. and will terminate at 6 p.m. e.d.t.

Dated: 27 June 1991.

Norman T. Saunders,

Captain, U.S. Coast Guard Commander, Seventh Coast Guard District Act.

[FR Doc. 91-16498 Filed 7-12-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD13 91-03]

Drawbridge Operation Regulations; Youngs Bay and Lewis and Clark River, OR

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Oregon Department of Transportation (ORDOT), the Coast Guard is considering a change to the regulations for the New Youngs Bay Bridge across Youngs Bay, mile 0.7, the Old Youngs Bay Bridge across Youngs Bay, mile 2.4, and the Lewis and Clark River Bridge across the Lewis and Clark River, mile 1.0, at Astoria, Oregon. This change would require that at least one half hour's advance notice be given for opening these bridges at all times. Notice would be given to the bridge operator at the Lewis and Clark River Bridge for opening any of the three structures. The operator would be in attendance continuously at the Lewis and Clark River Bridge except when called upon to open either of the other two drawspans. This proposal is being made because of a steady decrease in requests to open the draws. This action should relieve the owner of the bridges from having persons constantly available at each drawbridge in the Youngs Bay area to operate the draws and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 29, 1991.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and any other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch (Telephone: (206) 553-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed 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 changes in, the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information:

The drafters of this notice are: Austin Pratt, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of the Proposed Regulations:

The Oregon Department of Transportation has asked the Coast Guard to approve a change to the operating regulations which would require that vessel operators request openings at least one half hour in advance of the time that they desire an opening of the drawspans of the two bridges across Youngs Bay or the one across the Lewis and Clark River. The operator at the Lewis and Clark River Bridge would receive the requests for opening any of the bridges via telephone, marine radio, or other suitable means. This procedure is similar to the presently approved procedure for operation except that the half-hour notice would be in effect at all times for the three bridges and requests for openings would be made to the tender of the Lewis and Clark River Bridge. This change in the location of the operator should promote efficiency since the Lewis and Clark drawbridge provides the greatest number of openings for vessel passage in the area. This change would also simplify the regulations by applying the same operational procedure to all three drawbridges. The Oregon Department of Transportation has maintained records that show a significant and consistent decline in the number of openings at all three bridges.

If approved, this change would allow two of the three bridges to be maintained without operators continuously present. The change should still enable all three drawbridges to open promptly enough to accommodate the reasonable needs of vessel traffic in the Youngs Bay area. The sound signals presently in effect would remain so under the proposed change.

Existing regulations provide that the draw of the New Young Bay Bridge (US 101) shall open on signal from 5 a.m. to 9 p.m. The Old Youngs Bay Bridge under the current regulations requires one half hour notice directed to the bridge tender at the Lewis and Clark River Bridge between 5 a.m. and 9 p.m. At all other hours requests for opening any of the three bridges must be presented to the drawtender of the New Youngs Bay Bridge by marine radio, telephone, or other suitable means at least one half hour in advance of passage.

Federalism

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

Economic Assessment and Certification

The 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 CFR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Navigation and marine-related businesses will not be affected by this proposed rule because they so infrequently require the bridges to open. The reasonable needs of marine interests would be met by the proposed operating regulations. 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 impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.899 is revised to read as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7, across Youngs Bay at Smith Point, shall open on signal for the passage of vessels if at least one half hour's notice is given to the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means. The opening signal is two prolonged blasts followed by one short blast.

(b) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay at the foot of Fifth Street, shall open on signal for the passage of vessels if at least one half hour's notice is given the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means. The opening signal is two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State highway bridge, mile 1.0, across the Lewis and Clark River, shall open on signal for the passage of vessels if at least one half hour's notice is given by marine radio, telephone, or other suitable means. The opening signal is one prolonged blast followed by four short blasts.

Dated: July 1, 1991.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard Commander, Thirteenth Coast Guard Commander, Thirteenth Coast Guard District.

[FR Doc. 91–16499 Filed 7–12–91; 8:45 am]

BILLING CODE 491–014–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

RIN 0970–AA70

Aid to Families With Dependent Children; Adult Assistance Programs; Income and Resources Disregards

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Proposed rules.

SUMMARY: These proposed rules would update the statutory disregards (income or resources not considered for purposes of determining eligibility under Federal or federally assisted programs) in regulations for the Aid to Families with Dependent Children (AFDC) program, and the adult assistance programs in Guam, Puerto Rico and the Virgin Islands by adding the income and resources disregards provided under several public laws. These are: (1) Section 14(27) of Public Law 100–50, the Higher Education Technical Amendments Act of 1987, which provides that student financial assistance made available for attendance costs under title IV of the Higher Education Act or Bureau of Indian Affairs student assistance programs will not be counted as income or resources; (2) section 105 of title I of Public Law 100–383, the Civil Liberties Act of 1988, which provides that restitution made to individuals of Japanese ancestry who were interned during World War II will not be counted as income or resources, and section 206 of title II of Public Law 100–383, the Aleutian and Pribilof Islands Restitution Act, which provides that restitution made to Aleuts who were relocated by the United States government during World War II will not be counted as income or resources; (3) section 105 of Public Law 100–707, the Disaster Relief and Emergency Assistance Amendments of 1988, which provides that major disaster and emergency assistance will not be counted as income or resources; and (4) section 1(a) of Public Law 101–201 and section 10405 of Public Law 101–239, the Omnibus Budget Reconciliation Act of 1989, which both provide that Agent Orange payments will not be counted as income or resources.

These proposed rules would also amend the existing regulations to provide that bona fide loans will not be counted as income or resources.

DATES: Interested persons and agencies are invited to submit written comments concerning these proposed rules on or before September 13, 1991.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Family Support, attention: Mr. Mack A. Storrs, Director, Division of Policy, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Office of Family Assistance, Family Support Administration, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447 between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Director, Division of Policy, Office of Family Assistance, Family Support Administration, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 252–5116.

SUPPLEMENTARY INFORMATION:

Discussion of Proposed Rule Provisions

The proposed rules would implement the disregard provisions of several public laws and revise existing regulations to require the disregard of bona fide loans as discussed below.

Disregard of Certain Student Financial Assistance

Public Law 100–50, the Higher Education Technical Amendments Act of 1987, enacted June 3, 1987, amended the Higher Education Act of 1965 by providing additional income and resources exclusions. Section 14(27) of Public Law 100–50 amended the Higher Education Act of 1965 by replacing the then-current section 479B with a new section 479B. Section 479B(a) provides that the portion of student financial assistance received under title IV of the Higher Education Act, or under Bureau of Indian Affairs student assistance programs, that is made available for the attendance costs identified in section 479B(b) shall not be considered as income or resources for purposes of determining eligibility under any Federal or federally assisted programs.

Under section 479B(b), attendance costs are defined as:

(1) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and

(2) An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

Living expenses and child care expenses are not designated as attendance costs under section 479B. Therefore, such expenses would be disregarded, under the proposed rules, only when the educational institution provides for them as part of miscellaneous personal expenses.

Some examples of student financial assistance authorized by title IV of the Higher Education Act are: The Pell Grant Program, the Supplemental Educational Opportunity Grant (SEOG)

Program the National Direct Student Loan (NDSL) Program, the PLUS Program, the Byrd Honor Scholarship Programs and the College Work Study Program.

Further, section 507 of Public Law 90–575, the Higher Education Amendments of 1968, and implementing regulations at § 233.20(a)(4)(ii)(*d*) require that any grant or loan to an undergraduate student for educational purposes made or insured under any program administered by the Department of Education will be disregarded as income and resources in programs under titles I, IV, X, XIV, XVI (AABD), or XIX of the Social Security Act.

The combined effect of these two provisions is:

(1) Educational loans and grants provided to undergraduate students under any programs administered by the Department of Education, except those in title IV of the Higher Education Act, may not be counted as income or resources for purposes of the AFDC and adult assistance programs; and

(2) educational assistance provided for attendance costs to undergraduate and graduate students under programs in title IV of the Higher Education Act and for attendance costs under Bureau of Indian Affairs student assistance programs is disregarded from income and resources.

We propose to revise the regulations at § 233.20(a)(4)(ii)(*d*) and add a new § 233.20(a)(4)(ii)(*p*) to implement section 507 of Public Law 90–575 and section 479B of the Higher Education Act as amended by section 14(27) of Public Law 100–50. In this connection, it should be noted that these regulations would not preclude the disregard of educational assistance under any other applicable disregard. For example, bona fide loans for educational expenses would be totally disregarded as income and resources.

Disregard of Payments Provided Under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act

Civil Liberties Act of 1988

Title I of Public Law 100–383, The Civil Liberties Act of 1988, provides that restitution shall be made to United States citizens and permanent resident aliens of Japanese ancestry who were interned during World War II.

Section 105 of Public Law 100–383 provides that the Attorney General shall pay to each eligible individual the sum of $20,000. If the eligible individual is deceased, the payment will be made to the eligible individual's spouse, children or parents. Section 105(f)(2) provides that the amount of such payments shall not be counted as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

Aleutian and Pribilof Islands Restitution Act

Title II of Public Law 100–383, the Aleutian and Pribilof Islands Restitution, Act, provides that restitution shall be made to any Aleut living on the date of enactment of Public Law 100–383 (August 10, 1988) who, as a civilian, was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands west of Unimak Island to an internment camp, or other temporary facility or location during World War II, or who was born while his or her natural mother was subject to such relocation.

Section 206 of Public Law 100–383 provides that the Secretary of the Interior shall pay to each eligible Aleut the sum of $12,000. Section 206(d)(2) of Public Law 100–383 provides that the amount of such payments shall not be counted as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

Section 3803(c)(2)(C) of title 31, United States Code contains a list of various Federal and federally-assisted programs, including, among others, the AFDC program. However, the list does not inlcude the adult assistance programs under titles I, X, XIV, and XVI (AABD) of the Social Security Act. Therefore, the disregards required by sections 105(f)(2) and 206(d)(2) of Pub. L. 100–383 do not apply to the adult assistance programs administered in Guam, Puerto Rico and the Virgin Islands.

We propose to add a new section 233.20(a)(4)(ii)(*q*) to implement these provisions in the AFDC programs.

Disregard of Major Disaster and Emergency Assistance

Title I of Public Law 100–707, the Disaster Relief and Emergency Assistance Amendments of 1988, enacted November 23, 1988, amended the Disaster Relief Act of 1974 (42 U.S.C. 5121–5202) to provide for more effective assistance in response to major disasters and emergencies.

Section 105 of Public Law 100–707 provides that Federal major disaster and emergency assistance provided to individuals and families under this Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or resources when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

Section 103 of Public Law 100–707 defines an emergency to mean any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Section 103 defines a major disaster to mean any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship or suffering caused thereby.

We propose to add a new § 233.20(a)(4)(ii)(*r*) to implement this provision.

Disregard of Agent Orange Payments

In the In Re Agent Orange product liability case, M.D.L. No. 381 (E.D.N.Y.), several corporations which manufactured the chemical Agent Orange agreed to pay $180 million into a settlement fund. Under the settlement, military personnel who were exposed to the chemical Agent Orange while in Vietnam and who now suffer from total disabilities caused by any disease, and survivors of deceased veterans who were exposed to Agent Orange, are eligible for settlement payments.

Section 1 of Public Law 101–201, enacted December 6, 1989, specifies that, effective January 1, 1989, the payments made from the Agent Orange Settlement Fund or any other fund pursuant to the settlement in connection with the case In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.), shall not be considered income or resources in determining eligibility for or the amount of benefits under any Federal or federally assisted programs.

Section 10405 of Public Law 101–239, enacted December 19, 1989, also specifies that, effective January 1, 1989, payments from the Agent Orange

settlement fund or any other fund established pursuant to the settlement shall not be considered income or resources in determining eligibility for or the amount of benefits under certain specified Federal or federally assisted programs including, among others, AFDC (title IV–A of the Social Security Act) and the adult assistance programs (titles I, X, XIV, and XVI (AABD) of the Act).

We propose to add a new § 233.20(a)(4)(ii)(*s*) to implement these provisions.

Disregard of Bona Fide Loans

Background

Section 233.20(a)(3)(iv)(B) of the existing regulations states that, in determining the availability of income and resources, loans which are obtained and used under conditions that preclude their use to meet current living costs will not be counted as income. Under this regulation, loans that are available to meet current living expenses are considered countable income. However, because of an adverse court decision in the case of *Mangrum* v. *Griepentrog* v. *Bowen*, 702 F. Supp. 813 (D. Nev. 1988), the Department of Health and Human Services issued Information Memorandum FSA–IM–89–1, dated January 3, 1989. The Information Memorandum permits States the option to disregard bona fide loans as income and resources.

Scope and Basis of the Proposed Change

These proposed regulations would amend the policy on treatment of loans to require States to disregard bona fide loans from any source and for any purpose as income and resources in the determination of eligibility and the amount of benefits under the AFDC and adult assistance programs.

Specifically, funds would be considered a bona fide loan when an applicant or recipient submits to the State agency one of the following types of documents to verify that funds were provided with the exception of repayment so that a legal debt exists.

- A signed written agreement which states that a loan was obtained from an individual or establishment engaged in the business of making loans; or
- A signed written agreement between a lender not normally engaged in the business of making loans and a borrower, which expresses the borrower's intent to repay funds within a specified time; or
- A signed written agreement between a lender not normally engaged in the business of making loans and a borrower, which expresses the borrower's express intent to repay either by specifying real or personal property as collateral or by promising repayment from anticipated income at the time that such income is received.

We have reconsidered the current regulation on the treatment of loans in light of the principles discussed in the *Mangrum* court decision. The court stated, with respect to counting loans as income, that the essential characteristic of a loan is that it must be repaid. This duty to repay distinguishes loans from wages, personal injury awards, gifts, child support payments and all other forms of income. Since the borrower must repay the loan principal in its entirety (and possibly with interest), the loan principal may not be income for AFDC purposes.

Although the issue in *Mangrum* was counting loans as income, the court also addressed treatment of loans as resources. The court cited *National Welfare Rights Organization* v. *Mathews*, 533 F. 2d. 637 (D.C. Cir. 1976), and interpreted that court decision to mean that the actual value of an item, whether it is a financial instrument or personal property, is its fair market value, less its encumbrances, that is, its equity value. The Court stated that since loans must be repaid, they are totally encumbered and have no equity value. Accordingly, it would also not be appropriate to treat the loan principal as a resource under the AFDC program.

To clarify that only the principal of the loan would be disregarded, the proposed rules specify that interest earned on the proceeds of a loan while held in a savings account, checking account or other financial instrument will be counted as unearned income in the month received and as a resource thereafter, consistent with the general AFDC policy for the treatment of interest earned on bank accounts.

We believe most States would favor the proposed change since, between January and June 1989, 45 States implemented the optional income and resources disregards as authorized by Information Memorandum FSA–IM–89–1.

Finally, disregarding bona fide loans as income and resources would further the purposes of the Job Opportunities and Basic Skills Training (JOBS) program created by the Family Support Act of 1988 (Pub. L. 100–485). The JOBS program is designed to help AFDC families lift themselves out of dependency and poverty through education, training and work. The proposed regulatory change would encourage JOBS participants to take advantage of public and private educational and small business loans that are available to low-income individuals and would guarantee that such loans can be used for the intended purpose of promoting self-sufficiency without affecting AFDC eligibility and amount of assistance.

We propose to amend § 233.20(a)(3)(iv)(B) and add a new § 233.20(a)(3)(xxi) to implement this policy.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not:

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

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

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

The incremental cost of each of the five provisions included in the proposed rules is estimated at $100,000 or less. The total incremental cost of the proposed rules is under $1,000,000. The specific estimated additional cost of each provision is listed below.

Provision	Additional costs
1. Disregard of Certain Student Financial Assistance, enacted under section 14(27) of Pub. L. 100–50.	Under $100,000.
2. Disregard of Payments Under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act, enacted under section 105 of title I and section 206 of title II of Pub. L. 100–383.	Under $100,000.
3. Disregard of Major Disaster and Emergency Assistance, enacted under section 105 of Pub. L. 100–707.	Under $100,000.
4. Disregard of Agent Orange Payments, enacted under section 1(a) of Pub. L. 101–201 and section 10405 of Pub. L. 101–239.	Under $100,000.
5. Disregard of Bona Fide Loans.	Under $100,000.

Regulatory Flexibility Act

We certify that these regulations will not have a significant impact on a substantial number of small entities because they primarily affect State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, The Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This rule does not require any information collection activities and, therefore, no approvals are necessary under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments-Maintenance Assistance)

List of Subjects in 45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

Editorial Note: This document was received by the Office of the Federal Register on July 9, 1991.

Dated: March 5, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 233 of chapter II, title 45, Code of Federal Regulations is proposed to be amended as set forth below:

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation in part 233 is revised to read as follows:

Authority: Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352 and 1382 note); and Sec. 6 of Pub. L. 94–114, 89 Stat. 579; part XXIII of Pub. L. 97–35, 95 Stat. 843; Pub. L. 97–248, 96 Stat. 324; Pub. L. 99–603, 100 Stat. 3359; sec. 221 of Pub. L. 98–181, as amended by sec. 102 of Pub. L. 98–479 (42 U.S.C. 602 note); sec. 202 of Pub. L. 100–485, 102 Stat. 2377; sec. 14(27) of Pub. L. 100–50, 101 Stat. 353; sec. 105(f) of Pub. L. 100–383, 102 Stat. 908; sec. 206(d) of Pub. L. 100–383, 102 Stat. 914; sec. 105(i) of Pub. L. 100–707, 102 Stat. 4693; sec. 1(a) of Pub. L. 101–201, 103 Stat. 1795; and sec. 10405 of Pub. L. 101–239, 103 Stat. 2489.

2. Section 233.20 is amended by revising paragraph (a)(3)(iv)(B), adding paragraph (a)(3)(xxi), revising paragraph (a)(4)(ii)(*d*) and adding paragraphs (a)(4)(ii)(*p*), (a)(4)(ii)(*g*), (a)(4)(ii)(*r*) and (a)(4)(ii)(*s*) to read as follows:

§ 233.20 Need and amount of assistance.

(a) Requirements for state plans. * * *

(3) Income and Resources. * * *

(iv) * * *

(B) Grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs; * * *

(xxi) Provide that:

(A) Bona fide loans will not be counted as income or resources in the determination of eligibility and the amount of assistance. For purposes of this paragraph, a loan is considered bona fide when one of the following types of documents is submitted to the State agency as proof of the borrower's legal obligation to repay the loan:

(*1*) A signed written repayment agreement which indicates that the loan was obtained from an individual or establishment engaged in the business of making loans;

(*2*) A signed written repayment agreement between a lender not normally engaged in the business of making loans and a borrower, which expresses the borrower's express intent to repay either by specifying real or personal property as collateral or by promising repayment from anticipated income at the time that such income is received; or

(*3*) A signed written repayment agreement between a lender not normally engaged in the business of making loans and a borrower, which expresses the borrower's intent to repay the loan within a specified time.

(B) Interest earned on a bona fide loan while it is held by the borrower in a savings account, checking account or other financial instrument will be counted as unearned income in the month received and as a resource thereafter.

* * * * *

(4) Disregard of income in OAA, AFDC, AB, APTD, or AABD. * * *

(ii) * * *

(*d*) Grants or loans to any undergraduate student for educational purposes made or insured under any programs administered by the Secretary of Education except the programs under title IV of the Higher Education Act of 1965, as amended by Pub. L. 100–50, the Higher Education Technical Amendments Act of 1987. Student assistance provided under title IV of the Higher Education Act will be disregarded in accordance with paragraph (a)(4)(ii)(*p*) of this section.

* * * * *

(*p*) Student financial assistance made available for the attendance costs defined in this paragraph under programs in title IV of the Higher Education Act of 1965, as amended by Pub. L. 100–50 (the Higher Education Technical Amendments Act of 1987) and under Bureau of Indian Affairs educational assistance programs. Attendance costs are: tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

(*g*) For AFDC, any payments made as restitution to an individual under title I of Public Law 100–383 (the Civil Liberties Act of 1988) or under title II of Public Law 100–383 (the Aleutian and Pribilof Islands Restitution Act).

(*r*) Any Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, as amended by Public Law 100–707 (the Disaster Relief and Emergency Assistance Amendments of 1988) and comparable disaster assistance provided by States, local governments and disaster assistance organizations.

(*s*) Effective January 1, 1989, any payments made pursuant to the settlement in the In Re Agent Orange Product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

* * * * *

[FR Doc. 91–16652 Filed 7–12–91; 8:45 am]

BILLING CODE 4150–04–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1160

Indemnities Under the Arts and Artifacts Indemnity Act

AGENCY: National Endowment for the Arts.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule describes the procedures of the Arts and Artifacts Indemnity Program.

DATES: Comments must be received on or before September 13, 1991.

ADDRESSES: Send comments to Alice M. Whelihan, Indemnity Administrator, Museum Program, National Endowment for the Arts, room 624, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Alice M. Whelihan, 202/682–5442, from whom copies of the program guidelines are available.

SUPPLEMENTARY INFORMATION: The proposed rules govern the Arts and Artifacts Indemnity Act as amended (20 U.S.C. 971–977). The existing rules had not been updated since 1976. The legal counsel of the Federal Council on the Arts and the Humanities reviewed suggestions made by staff and made further adjustments to revise and update the rules. The revisions reflect changes in the statute and Program guidelines over the last fifteen years. The members of the Indemnity Advisory Panel and Federal Council on the Arts and the Humanities approved the revisions. The revised rules will be included in guideline packages for prospective applicants and in Certificates of Indemnity. The Catalogue of Federal Domestic Assistance number for the Arts and Artifacts Indemnity Program is 45–201

Paperwork Reduction Act of 1980

Section 1160.4 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the National Endowment for the Arts will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Public reporting burden for this collection of information is estimated to be forty responses per year at an average of forty hours per response. Organizations and individuals desiring to submit comments on the information collection requirements, or estimated reporting burden, should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

List of Subjects in 45 CFR Part 1160

Indemnity payments.

Alice M. Whelihan,

Indemnity Administrator, National Endowment for the Arts.

For reasons set out in the preamble, title 45, chapter XI, part 1160 of the Code of Federal Regulations is revised as set forth below.

PART 1160—INDEMNITIES UNDER THE ARTS AND ARTIFACTS INDEMNITY ACT

Sec.

1160.1 Purpose and scope.
1160.2 Federal Council on the Arts and the Humanities.
1160.3 Definitions.
1160.4 Application for indemnification.
1160.5 Certificate of national interest.
1160.6 Indemnity agreement.
1160.7 Letter of intent.
1160.8 Loss adjustment.
1160.9 Certification of claim and amount of loss to the Congress.
1160.10 Appraisal procedures.
1160.11 Indemnification limits.

Authority: 20 U.S.C. 971–977

§ 1160.1 Purpose and scope.

This part sets forth the exhibition indemnity procedures of the Federal Council on the Arts and the Humanities under the Arts and Artifacts Indemnity Act (Pub. L. 94–158) as required by Section 2(a)(2) of the Act. An indemnity agreement made under these regulations shall cover either: (a) eligible items from outside the United States while on exhibition in the United States or (b) eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions. Program guidelines and further information are available from the Indemnity Administrator, c/o Museum Program, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506.

§ 1160.2 Federal Council on the Arts and the Humanities.

For the purposes of this part (45 CFR part 1160) the Federal Council on the Arts and the Humanities shall be composed of the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the Secretary of Education, the Director of the National Science Foundation, the Librarian of Congress, the Chairman of the Commission of Fine Arts, the Archivist of the United States, the Commissioner, Public Buildings Service, General Services Administration, the Administrator of the General Services Administration, the Director of the United States Information Agency, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Transportation, the Chairman of the National Museum Services Board, the Director of the Institute of Museum Services, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Veterans Affairs, and the Commissioner of the Administration on Aging.

§ 1160.3 Definitions.

For the purposes of this part:

(a) *Council* means the Federal Council on the Arts and the Humanities as defined in § 1160.2.

(b) *Letter of Intent* means an agreement by the council to provide an indemnity covering a future exhibition subject to compliance with all requirements at the date the indemnity is to be effective.

(c) *Lender* means the owner of an object.

(d) *Eligible item* means an object which qualifies for coverage under the Arts and Artifacts Indemnity Act.

(e) *Exhibition* means a public display of an indemnified item(s) at one or more locations, as approved by the Council, presented by any person, nonprofit agency or institution, or Government, in the United States or elsewhere.

(f) *On Exhibition* means the period of time beginning on the date an indemnified item leaves the place designated by the lender and ending on the termination date.

(g) *Indemnity Agreement* means the contract between the Council and the indemnitee covering loss or damage to indemnified items under the authority of the Arts and Artifacts Indemnity Act.

(h) *Indemnitee* means the party or parties to an indemnity agreement issued by the Council, to whom the promise of indemnification is made.

(i) *Participating institution(s)* means the location(s) where an exhibition indemnified under this part will be displayed.

(j) *Termination date* means the date thirty (30) calendar days after the date specified in the indemnity Certificate by which an indemnified item is to be returned to the place designated by the lender or the date on which the item is actually so returned, whichever date is earlier. (In museum terms this means wall-to-wall coverage.) After 11:59 p.m. on the termination date, the item is no longer covered by the indemnity agreement unless an extension has theretofore been requested by the indemnitee and granted in writing by the Council.

§ 1160.4 Application for Indemnification.

An applicant for an indemnity shall submit an Application for Indemnification, addressed to the Indemnity Administrator, National Endowment for the Arts, Washington, DC 20506, which shall describe as fully as possible:

(a) The time, place, nature and Project Director/Curator of the exhibition for which the indemnity is sought:

(b) Evidence that the owner and present possessor are willing to lend the eligible items, and both are prepared to be bound by the terms of the indemnity agreement;

(c) The total value of all items to be indemnified, incuding a description of each item to be covered by the agreement and each item's value;

(d) The source of valuations of each item, plus an opinion by a disinterested third party of the valuations established by lenders;

(e) The significance, and the educationsl, cultural, historical, or scientific value of the items as proposed to be exhibited and to be the subject of indemnification;

(f) Statements describing policies, procedures, techniques, and methods to be employed with respect to:

(1) Packing of items at the premises of, or the place designated by the lender;

(2) Shipping arrangements;

(3) Condition reports at lender's location;

(4) Condition reports at borrower's location;

(5) Condition reports upon return of items to lender's location;

(6) Security during the exhibition and security during transportation, including couriers where applicable;

(7) Maximum values to be transported n a single vehicle of transport.

(g) Insurance arrangements, if any, which are proposed to cover the deductible amount provided by law or the excess over the amount indemnified;

(h) Any loss incurred by the indemnitee or participating institutions during the three years prior to the Application for Indemnification which involved a borrowed or loaned (item(s) or item(s) in their permanent collections where the amount of loss or damage exceeded $5,000. Details should include the date of loss, nature and cause of damage, and appraised value of the damaged item(s) both before and after loss;

(i) If the application is for an exhibition of loans from the United States, which are being shown outside the United States, the applicant should describe in detail the nature of the exchange of exhibitions of which it is a part if any, including all circumstances surrounding the exhibition being shown in the United States, with particular emphasis on facts concerning insurance or indemnity arrangements.

(j) Upon proper submission of the above required information an application will be selected or rejected for indemnifcation by the Council. The review criteria include: (1) Review of educational, cultural, historical, or scientific value as required under the provisions of the Arts and Artifiacts Indemnity Act; (2) certification by the Director of the United States Information Agency that the exhibition is in the national interest; and (3) review of the availability of indemnity obligational authority under section 5(b) of the Arts and Artifacts Indemnity Act (20 U.S.C. 974).

§ 1160.5 Certificate of national interest.

After preliminary review the application will be submitted to the Director fothe United States Information Agency for determination of national interest and issuance of a Certificate of National Interest.

§ 1160.6 Indemnity agreement.

In cases where the requirements of §§ 1160.4 and 1160.5 have been met to the satisfaction of the Council, an Indemnity Agreement pledging the full faith and credit of the United States for the agreed value of the exhibition in question may be issued to the indemnitee by the Council, subject to the provisions of §1160.7.

§ 1160.7 Letter of intent.

In cases where an exhibition proposed for indemnification is planned to begin on a date more than twelve (12) months after the submission of the application, the Council, upon approval of such a preliminary application, may provide a Letter of Intent stating that it will, subject to the conditions set forth therein, issue an Indemnity Agreement prior to commencement of the exhibition. In such cases, the Council will examine a final application during the twelve (12) month period prior to the date the exhibition is to commence, and shall, upon being satisfied that such conditions have been fulfilled, issue an Indemnity Agreement.

§ 1160.8 Loss adjusment.

(a) In the event of loss or damage covered by an Indemnity Agreement, the indemnitee without delay shall file a Notice of Loss or Damage with the Council and shall exercise reasonable care in order to minimize the amount of loss. Within a reasonable time after a loss has been sustained, the claimant shall file a Proof of Loss or Damage on forms provided by the Council. Failure to report such loss or damage and to file such Proof of Loss within sixty (60) days after the termiantion date as defined in § 1160.3(k) shall invalidate any claim under the Indemnity Agreement.

(b) In the event of total loss of destruction of an indemnified item, indemnification will be made on the basis of the amount specified in the Indemnity Agreement.

(c) In the event of partial loss, or damage, and reduction in the fair market value, as a result thereof, to an indemnified item, indemnification will be made on the basis provided for in the Indemnity Agreement.

(d) No loss or damage claim will be paid in excess of the Indemnification Limits specified in § 1160.11.

§ 1160.9 Certification of claim and amount of loss to the Congress.

Upon receipt of a claim of total loss or a claim in which the Council is in agreement with respect to the amount of partial loss, or damage and reduction in fair market value as a result therof, the Council shall certify the validity of the claim and the amount of such loss or damage and reduction in fair market value as a result thereof, to the Speaker of the House of Representatives and the President pro tempore of the Senate.

§ 1160.10 Appraisal procedures.

(a) In the event the Council and the indemnitee fail to agree on the amount of partial loss, or damage to, or any reduction in the fair market value as a result thereof, to the indemnified item(s), each shall select a competent appraiser(s) with evidence to be provided to show that the indemnitee's selection is satisfactory to the owner. The appraiser(s) selected by the Council and the indemnitee shall then select a competent and disinterested arbitrator.

(b) After selection of an arbitrator, the appraisers shall assess the partial loss, or damage to, or where appropriate, any reduction in the fair market value of, the indemnified item(s). The appraisers' agreement with respect to these issues shall determine the dollar value of such loss or damage or repair costs, and where appropriate, such reduction in the fair market value. Disputes between the appraisers with respect to partial loss, damage repair costs, and fair market value reduction of any item shall be submitted to the arbitrator for determination. the appraisers' agreement or the arbitrator's determination shall be final and binding on the parties, and agreement on amount or such determination on amount shall be certified to the Speaker of the House and the President pro tempore of the Senate by the Council.

(c) Each appraiser shall be paid by the party selecting him or her. The arbitrator and all other expenses of the appraisal shall be paid by the parties in equal shares.

§ 1160.11 Indemnification Limits.

The dollar amounts of the limits described below are found in the guidelines referred to in § 1160.1 and are based upon the statutory limits in the Arts and Artifacts Indemnity Act (20 U.S.C. 974).

(a) There is a maximum amount of loss or damage covered in a single exhibition or an Indemnity Agreement.

(b) A sliding scale deductible amount is applicable to loss or damage arising

out of a single exhibition for which an indemnity is issued.

(c) There is an aggregate amount of loss or damage covered by indemnity agreements at any one time.

(d) The maximum value of eligible items carried in or upon any single instrumentality of transportation at any one time, is established by the Council.

[FR Doc. 91–16733 Filed 7–12–91; 8:45 am]

BILLING CODE 7537–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[NM Docket No. 91–148, RM–7711]

Radio Broadcasting Services; Edisto Beach, SC

AGENCY: Federal Communications Commission

ACTION: Proposed rule; withdrawal.

SUMMARY: The Commission, on its own motion, withdraws the notice of proposed rule making, 56 FR 26368, June 7, 1991, seeking comments on the allotment of Channel 229A to Edisto Beach, South Carolina, as requested by Toni T. Rinehart. In issuing the notice of proposed rule making in NM Docket No. 91–127, 56 FR 19968, May 1, 1991, proposing, *inter alia*, the substitution of Channel 249A for Channel 287A at Walterboro, South Carolina, to accommodate channel changes at Moncks Corner, South Carolina, and Richmond Hill, Georgia, the staff inadvertently overlooked the alternate proposal of substituting Channel 229A for Channel 287A at Walterboro. The allotment of Channel 229A to Edisto Beach conflicts with the proposed allotment of Channel 229A to Walterboro because the communities are located closer than the 115 kilometer separation required for co-channel Class A allotments. The Edisto Beach proposal should have been considered as a counterproposal to the Walterboro proceeding. Therefore, a Public Notice will be issued announcing the acceptance of the Edisto Beach proposal as a counterproposal in MM Docket No. 91–127. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order Withdrawing Notice of Proposed Rule Making, KIM Docket No. 91–148, adopted June 19, 1991, and released June 20, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–16678 Filed 7–12–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–191 RM–7070]

Radio Broadcasting Services; Liberty Hill, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Jeffrey C. Sigmon seeking the allotment of Channel 252A to Liberty Hill, South Carolina, as its first local FM service. Channel 252A can be allotted to Liberty Hill in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.5 kilometers (2.8 miles) south to avoid short-spacings to Station WPEG, Channel 250C, Concord, North Carolina, and pending applications for Channel 253A at Lexington and Hartsville, South Carolina, at coordinates 34–28–12 and 80–46–18. Petitioner is requested to furnish additional information demonstrating that Liberty Hill is a community for allotment purposes.

DATES: Comments must be filed on or before August 30, 1991, and reply comments on or before September 16, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey C. Sigmon, P.O. Box 258, York, South Carolina 29745 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–191, adopted June 24, 1991, and released July 9, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–16679 Filed 7–12–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No .91–192, RM–7679]

Radio Broadcasting Services; Royal City, WA

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Jon Bruce Thoen seeking the allotment of Channel 242C3 at Royal City, Washington, as the community's first local FM transmission service. Channel 242C3 can be allotted to Royal City in compliance with the Commission's minimum distance separation requirements without a site restriction at coordinates North Latitude 46–54–04 and West Longitude 119–37–46. Since Royal City is within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested.

DATES: Comments must be filed on or before August 30, 1991 and reply comments on or before September 16, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jon Bruce Thoen, 747 South Riverside Drive, #16, Palm Springs, California 92262 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–192, adopted June 24, 1991, and released July 9, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–16680 Filed 7–12–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 242

Department of Defense Federal Acquisition Regulation Supplement; Contractor Accounting Controls

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Defense Acquisition Regulations (DAR) Council published a proposed rule on June 10, 1991 (56 FR 26645). The original date for receipt of comments expired on July 10, 1991. This document extends the comment period because of numerous requests from the public.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 1, 1991 to be considered in the formulation of the final rule. Please cite DAR Case 91–004 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Ms. Barbara J. Young, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), Room 3D139, The Pentagon, Washington, DC 20301–3000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Young, Procurement Analyst, DAR Council, (703) 697–7266, FAX No. (703) 697–9845.

Nancy L. Ladd,

Colonel, USAF Director, Defense Acquisition Regulations Council.

[FR Doc. 91–16783 Filed 7–12–91; 8:45 am]

BILLING CODE 3810–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 26)]

Association of American Railroads; Petition to Exempt Industrial Development Activities

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking and request for comments on a proposed exemption.

SUMMARY: By decision served June 13, 1990, and notice published at 55 FR 24132, June 14, 1990, the Commission issued an advance notice of proposed rulemaking (ANPR) instituting this proceeding and seeking comments on a petition by the Association of American Railroads. Based on the comments submitted, the Commission now proposes to exempt under 49 U.S.C. 10505 certain market development activities from the anti-rebating provisions of the Interstate Commerce Act, commonly referred to as the Elkins Act. The Commission preliminarily concludes that regulation of these activities is not necessary to carry out the national rail transportation policy of 49 U.S.C. 10101a; that these transactions are of limited scope; and that regulation is not necessary to protect shippers from abuse of market power. The proposal would permit railroads to engage in these activities without fear of prosecution. The exemption would apply only to pre-movement, non-transportation activities; subsequent traffic movements would continue to be regulated to the extent they are today. To implement this proposal, the Commission proposes to revise the regulations at 49 CFR part 1039 by adding a new § 1039.22, as set forth below. Comments are invited on the proposed exemption from those participating in the ANPR stage of this proceeding and from any other interested persons.

DATES: Any person interested in participating in this proceeding as a party of record, to file and receive written comments, that is not already a party of record, should file a notice of intent to do so by July 25, 1991. We will issue an updated service list of the parties of record shortly thereafter. An original and 10 copies of initial comments will be due 30 days after issuance of the service list. An original and 10 copies of reply comments will be due 50 days after issuance of the service list. Initial and reply comments should be served on all parties of record.

ADDRESSES: Notices of intent to participate and initial and reply comments referring to Ex Parte No. 346 (Sub-No. 26) should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245. (TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

We preliminarily conclude that this action would not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission preliminarily concludes that the proposed exemption would not have a significant impact on a substantial number of small entities. The proposal would merely make it easier

for rail carriers, both large and small, to attract new and vital business through market development activities, by eliminating the fear of prosecution. To the extent that the proposed exemption may have any effect on small carriers and small shippers, it would be a positive one, through increased rail traffic for the carriers and increased rail service options for the shippers.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

Decided: July 5, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner McDonald commented with a separate expression. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, 11105, 11902, 11903, and 11904; and 5 U.S.C. 553.

2. A new § 1039.22 is proposed to be added to read as follows:

§ 1039.22 Exemption of certain payments, services, and commitments from the Elkins Act and related provisions.

(a) Whenever a rail carrier:

(1) Provides payments or services for industrial development activities; or,

(2) Makes commitments regarding future transportation; and reasonably determines that such payments, services or commitments would not be eligible for inclusion in rail contracts under 49 U.S.C. 10713, such transaction(s) shall be exempt from 49 U.S.C. 10761(a), 10762(a)(1), 11902, 11903, and 11904(a), subject to the conditions set forth in paragraphs (b) through (e) of this section.

(b) If any interested person(s) believes a transaction is eligible for inclusion in one or more contracts under 49 U.S.C. 10713, that person's exclusive remedy shall be to request the Commission to so determine, and if the Commission does so, the transaction shall no longer be exempted by this section commencing 60 days after the date of the Commission's determination.

(c) Transactions that are exempt under paragraph (a) of this section shall be subject to all other applicable provisions of 49 U.S.C. subtitle IV and to the antitrust laws to the extent that the activity does not fall within the Commission's exclusive jurisdiction.

(d) For any actual movement of traffic, a carrier must file any required tariff or section 10713 contract, and conform to all other applicable provisions of the Interstate Commerce Act, but this paragraph shall not be interpreted to limit, revoke, or remove the effect of the exemption granted under paragraph (a) of this section with respect to any payments, services, or commitments made prior to the filing of the rate or contract.

(e) When any person files with the Commission a petition to revoke the exemption granted by this section as to any specific transaction, the rail carrier shall have the burden of showing that, with respect to such transaction, all requirements of paragraph (a) of this section were met, and the carrier reasonably expected, before undertaking such payments, services or commitments, that such payments, services or commitments would result, within a reasonable time, in a contribution to the carrier's going concern value.

(f) This exemption shall remain in effect unless modified or revoked by a subsequent order of this Commission.

[FR Doc. 91–16743 Filed 7–12–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 298

[Docket No. 910660–1160]

RIN 0648–AD78

United States-Canada Fisheries Enforcement Agreement

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

ACTION: Proposed rule.

SUMMARY: NOAA publishes this proposed rule to implement an agreement between the United States and Canada in which each nation agrees to take appropriate measures to ensure that its nationals do not violate the other nation's fisheries laws that apply within that nation's waters. U.S. nationals and vessels are prohibited from fishing within waters subject to the fisheries jurisdiction of Canada unless permitted by Canada to do so, and from interfering with enforcement by Canadian fisheries officers.

DATES: Comments must be received no later than August 14, 1991.

ADDRESSES: Send comments on the proposed rule to the Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Copies of the environmental assessment are also available from this address.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik (301) 427–2337.

SUPPLEMENTARY INFORMATION: The United States and Canada executed the "Agreement Between the Government of the United States of America and the Government of Canada on Fisheries Enforcement" (Agreement) at Ottawa, Canada, on September 26, 1990. In the Agreement, each party agrees to take appropriate measures, consistent with international law, to ensure that its nationals and vessels do not violate the fisheries laws of the other nation applicable to the waters that are subject to that nation's fisheries jurisdiction (i.e., internal waters, territorial sea and 200-mile conservation zone). In particular, such measures are to include those applicable to fishing, stowage of gear while passing through fisheries waters, and obstruction or interference with enforcement officers in the performance of their duties.

Under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), the Secretary of State is authorized to negotiate international fishery agreements (16 U.S.C. 1822(a)). The Secretary of Commerce may issue implementing regulations (16 U.S.C. 1855(d)). The Magnuson Act was amended by Public Law 101–627, signed November 28, 1990, specifically to prohibit any vessel of the United States, and its owner and operator, from fishing in waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States or any regulation implementing such an agreement (16 U.S.C. 1857(5)).

Before it can become effective, the Magnuson Act requires that such an international agreement be submitted to Congress for review (16 U.S.C. 1823). In this case, the Agreement was submitted to Congress for the required period of time, which period expired in March 1991. The Congress held an informal hearing on the Agreement in New Bedford, Massachusetts, in February. Since the Congress voiced no objections to it during that period, the Agreement may now enter into force and implementing regulations may be issued.

This proposed rule is issued under the Magnuson Act (16 U.S.C. 1855(d)) in order to fulfill the United States' obligations under the Agreement. Canada has already published similar regulations that make it a violation of Canadian law for its nationals and vessels to violate the United States' fisheries laws that apply in the waters and exclusive economic zone (EEZ) of the United States. It is anticipated that each nation's regulations will become effective simultaneously.

As a general matter, neither Canada nor the United States currently permit the nationals of the other to fish commercially in its 200 mile resource conservation zone (although each allows some recreational fishing). Nonetheless, there has continued to be a certain amount of illegal fishing in each country's waters and zones by nationals of the other country. The Agreement is in furtherance of an effort to deter such illegal activity. Of particular concern has been increased illegal fishing by some U.S. fishermen in Canadian waters in the Gulf of Maine, and illegal fishing by Canadian nationals in U.S. waters near the border between Washington State and British Columbia.

The Agreement is an outgrowth of talks over the past year and a half between the United States and Canada over such fishing violations. Not only do these violations pose a threat to resource conservation, but they have frequently involved dangerous flights by the fishing vessels involved to avoid apprehension, with "hot pursuit" by the authorities of the coastal nation whose waters have been breached. Frequently the offending vessel escapes into its own territorial waters, beyond the reach of the authorities of the coastal nation.

In particular, in the Gulf of Maine several U.S. fishing vessels (primarily sea scallop vessels) that have been detected fishing in Canadian waters have fled from Canadian authorities, thereby precipitating hot pursuit by Canadian enforcement vessels. Not only are such at-sea chases inherently highly dangerous to the crews of all vessels involved, but there have been a few incidents involving the firing of warning shots and/or collisions. The increase in such illegal takings of Canada's valuable resources, coupled with the number of dangerous pursuit incidents, both heightened concern for safety and became an increasing source of embarrassment for the United States in the conduct of its foreign relations. Moreover, such illegal fishing is unfair to the large majority of honest fishermen who are placed at a competitive disadvantage by it.

Similar considerations apply for Canada, on the Pacific coast. There, Canadian fishermen have often fled Washington State waters directly into Canada's territorial sea, thereby thwarting enforcement by the United States.

The Agreement is intended to supplement, rather than supplant, enforcement by the coastal state, particularly in those instances where the offending vessel has escaped beyond the coastal state's jurisdiction. The United States has brought civil penalty actions under the Lacey Act against several fishing vessels that have been charged with fishing in Canadian waters. However, it became increasingly clear that the $10,000 maximum civil penalty under the Lacey Act was totally inadequate as a deterrent to either the illegal fishing itself or to flight from Canadian enforcement officers. This is particularly apparent when taking into consideration that sea scallop catches average between $15,000 and $60,000, and that Canadian fines are significantly greater that the maximum available under the Lacey Act. The higher penalties and additional remedies such as forfeiture and permit sanctions available under the Magnuson Act should help significantly in deterring violations. Further, the fact that charges can be brought under the Magnuson Act for acts of interference, such as flight to avoid apprehension by officers of the coastal state, should allow for assessment of penalties that are sufficient to deter such dangerous acts.

This proposed rule would prohibit nationals and residents of the United States, as well as U.S. vessels (including the vessels' owners and operators), from fishing for, taking or retaining fish in waters subject to the fisheries jurisdiction of Canada without Canadian authorization (50 CFR 293.3(a) and (b)). Such waters are defined to include Canada's internal waters, 12-mile territorial sea, and the 200-mile zone in which it exercises fisheries jurisdiction (§ 293.2). Also, the rule would prohibit such persons from being in Canadian waters unless all fishing gear on board the vessel is stowed in accordance with its provisions (§ 293.3(c)). The latter provision is similar to the U.S. law prohibiting foreign vessels from transiting its EEZ unless the fishing gear on board is properly stowed (16 U.S.C. 1857(4)).

The proposed rule also contains a series of prohibitions aimed at actions that constitute interference or obstruction of the enforcement efforts of Canadian enforcement officers. These prohibitions would be applicable both within waters subject to Canadian fisheries jurisdiction and during "hot pursuit" from such waters by Canadian officers. Among other things, it would be unlawful to fail to respond to routine inquires, or to fail to comply with specified enforcement and boarding instructions from Canadian enforcement officers. The specified enforcement and boarding instructions are set forth in § 298.6. Paragraphs § 298.6(a) through (d) contain "facilitation of enforcement" procedures that parallel those applicable to enforcement of domestic fisheries regulations in the U.S. EEZ that are found at 50 CFR 620.8. In addition, § 298.6(e) sets forth specific signals used by Canadian enforcement officers with which U.S. vessels would be required to comply under the proposed rule. These signals, which parallel those in Canadian fisheries statutes, and which are all found in the International Code of Signals, include the signal to stop or heave to, and the signal to prepare to be boarded, signified by either the hoisting of the appropriate International Code flags or the flashing of a light or sounding of a horn or whistle utilizing International Morse Code letters.

The proposed rule would also prohibit such acts of "interference" as: Throwing fish or other matter overboard after communication or approach by a Canadian enforcement officer so that no inspection of it can take place; refusing to allow an officer to board; assaulting, obstructing, or interfering in any manner with the enforcement efforts of Canadian officers; or falsifying or covering a vessel's name or official numbers so that it cannot be identified (§ 298.3 (d) through (k)). These prohibitions are similar to those found in the domestic fishing regulations that apply in the U.S. EEZ (see 50 CFR parts 620 through 685).

Section 298.4 of the proposed rule addresses interference with enforcement of the regulations by authorized officers of the United States (which include both Coast Guard and NMFS). The prohibitions in this section are similar to those in 50 CFR parts 620 through 685 that apply to enforcement of domestic fisheries regulations in the U.S. EEZ. These prohibitions, although similar to those in § 298.3 that apply to interference with enforcement by Canadian officers, apply more broadly. For instance, authorized officers of the United States may enforce these regulations in the territorial sea of the United States while Canadian officers may not (the "hot pursuit" doctrine does not apply in the territorial waters of another nation). Both sections prohibit failure to comply with the enforcement

and boarding instructions specified in §§ 298.5 (a) through (d). However, § 298.5(e) (Canadian signals) does not apply to boardings by U.S. enforcement officers.

Classification

This rule is authorized under the Magnuson Act, 16 U.S.C. 1822(a), which authorizes the Secretary of State to negotiate international fisheries agreements, and by 16 U.S.C. 1855(d), which authorizes the Secretary of Commerce to promulgate regulations necessary to carry out the provisions of the Magnuson Act.

NMFS prepared an environmental assessment (EA) for this proposed rule and concluded that the rule will not have a significant impact on the human environment. The EA is available upon request (see **ADDRESSES**).

This action is exempt from the provisions of Executive Order 12291 under section 1(a)(2) because these regulations are issued with respect to a foreign affairs function of the United States.

This action is not subject to section 553 of the Administrative Procedure Act (APA) because it involves a foreign affairs function. Although not required by law to do so, the Assistant Administrator is soliciting public comments on this rule, and will consider them to the extent discretion exists to make modifications consistent with national law and the Agreement.

Because neither the APA nor any other statute requires public notice and opportunity to comment upon this rule, the Regulatory Flexibility Act does not apply and no regulatory flexibility analysis has been prepared.

This rule does not contain any collection-of-information requirements for the purposes of the Paperwork Reduction Act.

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

This rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

List of Subjects in 50 CFR Part 298

Fisheries, Foreign fishing, Foreign relations, Canada, United States-Canada Agreement.

Dated: July 8, 1991.

Richard H. Schaefer,

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

For the reasons set out in the preamble, part 298 is proposed to be added to subchapter K, chapter II of title 50 of the Code of Federal Regulations as set forth below:

PART 298—UNITED STATES-CANADA FISHERIES ENFORCEMENT AGREEMENT

298.1 Purpose and scope.
298.2 Definitions.
298.3 Prohibitions.
298.4 Interference with authorized officers of the U.S.
298.5 Facilitation of enforcement.
298.6 Penalties and sanctions.

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

§ 298.1 Purpose and scope.

This part implements the "Agreement Between the Government of the United States of America and the Government of Canada on Fisheries Enforcement" executed at Ottawa, Canada, on September 26, 1990. The purpose of the Agreement is for each party to the Agreement to take appropriate measures, consistent with international law, to prevent its nationals, residents and vessels from violating those national fisheries laws and regulations of the other party that apply to waters and zones subject to the fisheries jurisdiction of that other party (i.e., internal waters, territorial seas and 200-mile resource conservation zones) to the extent such waters and zones are recognized by the enforcing party. This part is implemented under the Magnuson Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.* (the Act), and applies, except where otherwise specified in this part, to all persons and all places (on water and on land) subject to the jurisdiction of the United States under the Act. This includes, but is not limited to, activities of nationals, residents and vessels of the United States (including the owners and operators of such vessels) within waters subject to the fisheries jurisdiction of Canada as defined in this part, as well as on the high seas and in waters subject to the fisheries jurisdiction of the United States.

§ 298.2 Definitions.

In addition to the definitions in section 3 of the Act, the terms used in this part have the following meanings (certain definitions in the Act are repeated here for convenience):

Agreement means the Agreement Between the Government of the United States of America and the Government of Canada on Fisheries Enforcement executed at Ottawa, Canada, on September 26, 1990.

Applicable Canadian fisheries law means any Canadian law, regulation or similar provision relating in any manner to fishing by any fishing vessel other than a Canadian fishing vessel in waters subject to the fisheries jurisdiction of Canada, including, but not limited to, any provision relating to stowage of fishing gear by vessels passing through such waters, and to obstruction or interference with enforcement of any such law or regulation.

Area of custody means any vessel, building, vehicle, live car, pound, pier or dock facility where fish might be found.

Authorized officer of Canada means any fishery officer, protection officer, officer of the Royal Canadian Mounted Police, or other employee authorized by the appropriate authority of any national or provincial agency of Canada to enforce any applicable Canadian fisheries law.

Authorized officer of the United States means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any Special Agent or fishery enforcement officer of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and/or the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(4) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Canadian fishing vessel means a fishing vessel:

(1) That is registered or licensed in Canada under the Canada Shipping Act and is owned by one or more persons each of whom is a Canadian citizen, a person resident and domiciled in Canada, or a corporation incorporated under the laws of Canada or of a province, having its principle place of business in Canada; or

(2) That is not required by the Canada Shipping Act to be registered or licensed in Canada and is not registered or licensed elsewhere but is owned as described in paragraph (1) of this definition.

Fish means any finfish, mollusk, crustacean, or any part or product thereof, and all other forms of marine animal and plant life other than marine mammals and birds.

Fishing, or to fish, means any activity, other than scientific research conducted by a scientific research vessel, that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2) or (3) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a state or the U.S. Coast Guard for an undocumented vessel, or any equivalent number if the vessel is registered in a foreign nation.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part (whether or not the vessel is leased or chartered);

(2) Any charterer of the vessel, whether bareboat, time or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to, parties to a management agreement, operating agreement, or other similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by any person described in paragraphs (1), (2) or (3) of this definition.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such government.

Vessel of the United States means:

(1) Any vessel documented under chapter 121 of title 46, United States Code;

(2) Any vessel numbered under chapter 123 of title 46, United States Code and measuring less than 5 net tons;

(3) Any vessel numbered under chapter 123 of title 46, United States Code, and used exclusively for pleasure; and

(4) Any vessel whose owner is a national or resident of the United States that is not equipped with propulsion machinery of any kind and is used exclusively for pleasure.

Waters subject to the fisheries jurisdiction of Canada means the internal waters, territorial sea, and the zone that Canada has established, extending 200 nautical miles from its coasts, in which it exercises sovereign rights for the purpose of exploration, exploitation, conservation and management of living marine resources, to the extent recognized by the United States.

§ 298.3 Prohibitions.

The prohibitions in this section apply within waters subject to the fisheries jurisdiction of Canada and during hot pursuit therefrom by an authorized officer of Canada. It is unlawful for any national or resident of the United States, or any person on board a vessel of the United States, or the owner or operator of any such vessel, to do any of the following:

(a) Engage in fishing in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada;

(b) Take or retain fish in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada;

(c) Be on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada without stowing all fishing gear on board either:

(1) Below deck, or in an area where it is not normally used, such that the gear is not readily available for fishing; or

(2) If the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing;

unless the vessel has been authorized by the Government of Canada to fish in the particular location within waters subject to the fisheries jurisdiction of Canada in which it is operating;

(d) While on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, fail to respond to any inquiry from an authorized officer of Canada regarding the vessel's name, flag state, location, route or destination, and/or the circumstances under which the vessel entered such waters;

(e) Violate the Agreement, any applicable Canadian fisheries law, or the terms or conditions of any permit, license or any other authorization granted by Canada under any such law;

(f) Fail to comply immediately with any of the enforcement and boarding procedures specified in § 298.5 of this part;

(g) Destroy, stave, or dispose of in any manner, any fish, gear, cargo or other matter, upon any communication or signal from an authorized officer of Canada, or upon the approach of such an officer, enforcement vessel or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer;

(h) Refuse to allow an authorized officer of Canada to board a vessel for the purpose of conducting any inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law;

(i) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer of Canada in the conduct of any boarding, inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law;

(j) Make any false statement, oral or written, to an authorized officer of Canada in response to any inquiry by that officer in connection with enforcement of any applicable Canadian fisheries law;

(k) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this part such that the vessel cannot be readily identified from an enforcement vessel or aircraft; or

(l) Attempt to do any of the foregoing.

§ 298.4 Interference with authorized officers of the U.S.

The prohibitions in this section concern enforcement of the Agreement and this part by authorized officers of the United States, and, unless the context otherwise requires, apply to all persons and places subject to the jurisdiction of the United States under the Act. It is unlawful for any person to do any of the following:

(a) Fail to comply immediately with any of the enforcement and boarding procedures specified in paragraphs 298.5(a) through (d) of this part;

(b) Destroy, stave, or dispose of in any manner, any fish, gear, cargo or other matter, upon any communication or signal from an authorized officer of the United States, or upon the approach of such an officer, enforcement vessel or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer;

(c) Refuse to allow an authorized officer of the United States to board a vessel, or enter any other area of

custody, for the purpose of conducting any inspection, search, seizure, investigation or arrest in connection with the enforcement of the Agreement or this part;

(d) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer of the United States in the conduct of any boarding, inspection, search, seizure, investigation or arrest in connection with the enforcement of the Agreement or this part;

(e) Make any false statement, oral or written, to an authorized officer of the United States concerning the catching, taking, harvesting, landing, purchase, sale or transfer of fish, or concerning any other matter subject to investigation by that officer under this part;

(f) Interfere with, obstruct, delay, or prevent by any means, any inspection, search, investigation, seizure or arrest in connection with the enforcement of the Agreement or this part;

(g) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this part such that the vessel cannot be readily identified from an enforcement vessel or aircraft; or

(h) Attempt to do any of the foregoing.

§ 298.5 Facilitation of enforcement.

(a) *General.* Persons aboard fishing vessels subject to this part must immediately comply with instructions and/or signals issued by an authorized officer of the United States or Canada, or by an enforcement vessel or aircraft, to stop, and with instructions to facilitate safe boarding and inspection for the purpose of enforcing any applicable Canadian fisheries law, the Agreement, or this part.

(b) *Communications.* (1) Upon being approached by an authorized officer of the United States or Canada, or by an enforcement vessel or aircraft, persons aboard fishing vessels must be alert for communications conveying enforcement instructions. (See paragraph (e) of this section for specific requirements for complying with signals and instructions issued by an authorized officer of Canada.)

(2) VHF–FM radiotelephone is the preferred method for communicating between vessels. If the size of the vessel, and the wind, sea and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, voice, flags, whistle or horn may be employed by an authorized officer of th United States or Canada, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. U.S. Coast Guard units will normally use the flashing light signal "L" as the signal to stop. In the International Code of Signals "L" (.–..) means "you should stop your vessel instantly."

(4) Failure of a vessel promptly to stop when directed to do so by an authorized officer of the United States or Canada, or by an enforcement vessel or aircraft, using loudhailer, radiotelephone, flashing light, flags, whistle, horn, or other means, constitutes prima facie evidence of the offence of refusal to allow an authorized officer to board.

(5) A person aboard a vessel who does not understand a signal from an enforcement unit and who cannot obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* A person aboard a vessel directed to stop must:

(1) Guard Channel 16, VHF–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the enforcement boarding party to come aboard;

(3) Except for those vessels with a distance of 7 feet (2.1 meters) or less from the waterline to the gunwale, provide a safe ladder, if needed, for the enforcement party to come aboard;

(4) When necessary to facilitate the boarding, or when requested by the boarding party, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the members of the enforcement boarding party.

(d) *Signals.* The following signals extracted from the International Code of Signals may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Except as provided in paragraph (e) of this section, while the vessel operator is not required to know these signals, such knowledge, coupled with appropriate action in response, may preclude the need to send the "L" signal and for the vessel to stop instantly.

(1) "AA" repeated (.– .–) is the call to an unknown station. The signaled vessel should respond by identifying itself by radiotelephone or by illuminating its identification.

(2) "RY–CY" (.–. –.— –.–. –.—) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the need for the vessel being boarded to come to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... —.– ...—) means "you should stop or heave to, I am going to board you."

(e) *Canadian signals.* In addition to signals set forth in paragraphs (a) through (d) of this section, persons on board fishing vessels subject to this part must immediately comply with the following signals by an authorized officer of Canada.

(1) Authorized officers of Canada use the following signals to require fishing vessels to stop or heave to:

(i) The hoisting of a rectangular flag, known as the International Code Flag "L", which is divided vertically and horizontally into quarters and colored so that:

(A) The upper quarter next to the staff and the lower quarter next to the fly are yellow, and

(B) The lower quarter next to the staff and the upper quarter next to the fly are black;

(ii) The flashing of a light to indicate the International Morse Code letter "L", consisting of one short flash, followed by one long flash, followed by two short flashes (.–..); or

(iii) The sounding of a horn or whistle to indicated the International Morse Code letter "L", consisting of one short blast, followed by one long blast, followed by two short blasts (.–..).

(2) Authorized officers of Canada use the following signals to require a fishing vessel to prepare to be boarded:

(i) The hoisting of flags representing the International Code Flag "SQ3"; or

(ii) The flashing of a light, or the sounding of a horn or whistle, to indicate the International Morse Code Signal "SQ3" (... —.– ...—).

§ 298.6 Penalties and sanctions.

Any person, any fishing vessel, or the owner or operator of any such vessel, who violates any provision of the Agreement or this part, is subject to the civil and criminal fines, penalties, forfeitures, permit sanctions, or other sanctions provided in the Act, 50 CFR part 621, 15 CFR part 904 (Civil Procedures), and any other applicable law or regulation.

[FR Doc. 91–16664 Filed 7–12–91; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 663

[Docket No. 910763-1163]

Pacific Coast Groundfish Fishery

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

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) proposes a rule that initially would limit the amount of the 1991 Pacific whiting quota of 228,000 metric tons (mt) that can be harvested in the Exclusive Economic Zone (EEZ) by fishing vessels that also process fish to 104,000 mt, would limit the harvest of whiting by fishing vessels that do not process to 88,000 mt, and would reserve the remaining 36,000 mt to be made available to either or both group(s), except that some or all of the 36,000 mt reserve would be released if needed to supply shoreside processing plants for the remainder of the year. Any part of either the 104,000 mt limit for fishing vessels that process fish, or the 88,000 mt limit for fishing vessels that do not process, that is determined not to be needed by one group may be made available to the other group. The NMFS, Northwest Regional Director (Regional Director), will review the progress of the Pacific whiting fishery on September 1, and at whatever other times he determines is necessary, and the Secretary will announce the availability of any reapportionments, releases of the reserve, or limits on at-sea processing in the **Federal Register**. This action is necessary to promote the goals and objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by preservinig a diversity of harvesting and processing opportunities for Pacific whiting over the broadest geographic area during the traditional whiting harvesting period.

DATES: Comments are invited until July 31, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the EEZ in the Pacific Ocean off the coasts of Washington, Oregon, and California are managed by the Secretary according to the FMP prepared by the Pacific Fisheries Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for U.S. fishermen at 50 CFR part 663. General regulations that also pertain to U.S. fishermen are at 50 CFR part 620. The FMP has been amended five times. Amendment 4 contains a framework process (the socioeconomic framework) that provides the authority, guidelines, and criteria for recommending management measures to the Secretary that address social and economic conditions within the fishery. These measures can be implemented by regulation, without further amending the FMP, through the procedures contained in Amendment 4.

In September of 1990, a survey of domestic annual processing (DAP) needs for Pacific whiting off Washington, Oregon, and California was conducted by the Northwest Region, NMFS. The survey indicated that, for the first time, the entire annual quota could be taken by U.S. processors. This was attributed to interest by at-sea processors from Alaska in utilizing Pacific whiting both between Alaska pollock seasons and after the Alaska pollock quota has been taken. In 1990, joint ventures between foreign processing vessels and U.S. harvesters took 87 percent of the pacific whiting quota.

Domestic at-sea processors are large vessels, generally longer than 125 feet. Most harvest as well as process fish (catcher/processors or factory trawlers). Some only process fish delivered to them by other vessels (motherships). They are capable of harvesting and/or processing large quantities of fish in a relatively short time. Individually, they can process as much as 200 to 600 mt per day. As a group, the approximately 25 processing vessels that expressed an interest in the Pacific whiting fishery could take the entire Pacific whiting quota in as little as two months. These vessels may stay at sea for weeks, even months at a time, and may land, transfer, or offload finished product at sea or in Alaska or other areas outside the Pacific coast groundfish management area.

Pacific whiting is the largest groundfish resource managed by the Council, and makes up over 50 percent of the potential annual groundfish harvest. Prior to 1980, this species was harvested primarily by foreign fishing vessels. Foreign directed fishing for whiting ended in 1989 when all the available whiting were allocated to U.S. fishermen, mostly for delivery of raw fish to foreign processing vessels under joint venture arrangements. The local groundfish industry and coastal communities viewed this growth in the American fishery as a major boon that generated millions of dollars. However the Council expected that this "Americanization" would occur more slowly, with shoreside groundfish processors gradually replacing joint ventures while relying on the same fishing vessels that delivered to foreign processors to begin delivering to shoreside plants. Instead, the joint ventures have been eliminated in just 1 year, and most of the increase in domestic production is expected to result from participation in this fishery by at-sea catcher/processors, rather than from traditional fishing vessels that deliver their catch to processors.

Motherships will continue to employ U.S. fishing vessels that are displaced from the joint venture fishery to deliver whiting for processing. However, only about 3 motherships are expected to participate in the whiting fishery, and they are not expected to employ all of the domestic fishing vessels that will be displaced from the joint venture fishery. While the shoreside processing industry has expressed its intention to substantially increase whiting production from its 1990 level of about 8,000 mt to 36,000 mt in 1991, at-sea processors have expressed interest in taking the entire 228,000 mt quota. A large-scale domestic at-sea processing fleet has never participated in the Pacific coast groundfish fishery, although this type of operation is common in Alaskan waters. The Council is concerned that this new high-capacity fleet, with no previous significant history in the Pacific whiting fishery off Washington, Oregon, and California, will both displace many of those vessels that have historically harvested the U.S. catch, as well as hamper the development of the shoreside whiting processing industry.

U.S. at-sea processors are experiencing similar pressures. More than 60 new U.S. at-sea processing vessels have been built to harvest the much larger Alaska groundfish resources. This level of effort in the Alaska fishery has resulted in restricted harvesting opportunities. The 1991 Alaska pollock fishery, the mainstay of the at-sea processing fleet, closed in the

Bering Sea on February 22, 1991, the reopened June 1, 1991. The Bering Sea pollock fishery is expected to close again by early October and not reopen before January 1, 1992. At-sea processors are being forced to look for other opportunities to harvest and process fish when the pollock fishery in the Bering Sea and other areas off Alaska are closed. Opportunities to continue fishing in Alaska waters during pollock closures are limited due to bycatch restrictions. Some vessels may fish in the Bering Sea "donut hole" outside the EEZ, but many have indicated they would pursue Pacific whiting in the EEZ off Washington, Oregon, and California.

Seventeen at-sea processors, including both catcher/processors and motherships, have fished for Pacific whiting off the Pacific coast since March. Through May 14, 1991, approximately 128,000 mt of Pacific whiting have been processed at sea. Of this amount, catcher/processors have taken approximately two-thirds and fishing vessels that do not process have taken about one-third. All but one catcher/processor and one mothership have returned to Alaska to participate in the pollock fishery. The remaining catcher/processor is continuing to fish for whiting. Many of the vessels that went to Alaska will return to the Pacific coast in the fall to resume fishing for Pacific whiting if fish remain to be caught.

The shoreside Pacific whiting industry, which produces primarily headed and gutted product, has grown slowly over the past several years. Domestic processing of whiting in 1989 was more than nine times greater than in 1980, but accounted for less than 4 percent of total 1989 landings of whiting. Shoreside processing has been constrained by prices, markets, seasonal availability, and texture of Pacific whiting flesh. The diurnal and seasonal movements of Pacific whiting limit the availability of the fish to daytime fishing from about April through October. In 1990 the total amount of whiting processed shoreside was less than 10,000 mt (22,000,000 pounds). According to the Environmental Assessment/ Regulatory Impact Review (EA/R1R) prepared by the Council for this action, each pound (round weight) harvested and processed contributes about $0.22 to coastal community economies and, in aggregate, about $0.30 at the state level. The maximum of 22,000,000 pounds estimated to be processed shoreside in 1990 is estimated to have contributed about $4,840,000 into local economies and, in aggregate, $6,600,000 into state economies. For 1991, shoreside processors have requested 36,000 mt (79,200,000 pounds), which could contribute about $17,500,000 into local economies and, in aggregate, about $23,800,000 into state economies.

The Council's goal for shoreside processing of whiting is to maintain harvesting and processing opportunities over a traditional 7 to 8 month season, if possible. Such a season is considered necessary to protect earlier investments and to provide a stable supply of product conducive to obtaining financing for upgrading and expanding facilities and equipment. The Council views maintenance and growth of the shore-based Pacific whiting industry as critical because other major domestic fisheries that provide product to shore-based processors are being curtailed.

In 1990, 48 U.S. fishing vessels delivered about 170,000 mt of Pacific whiting to foreign processors in joint venture operations with an ex-vessel value of over $22 million. This generated about $24 million in personal income to the State of Oregon and about $11 million to the State of Washington. With the elimination of joint ventures in 1991, much of this income could be lost to these State and local economies unless alternative sources are developed. The expected increase in shoreside landings will utilize some, but not all, vessels that previously fished for joint ventures. At least three mothership processors are expected to operate in the fishery and will provide employment for about 40 percent of the previous year's joint venture fleet. The remainder of the ex-joint venture fleet may increase effort in traditional groundfish fisheries for rockfish, sablefish, and flatfish, which are already fully utilized. The increased effort from former joint venture vessels in the non-whiting groundfish fishery will result in shortened seasons and more restrictive trip landing and frequency limits, will economically disadvantage many fishermen, and will exacerbate the current problem of excessive discards and wastage attributed to restrictive regulations. To the extent that the Council can maintain employment for the joint venture fishing vessels in the Pacific whiting fishery, adverse impacts on the other groundfish fisheries will be lessened.

Besides the direct revenue loss to shoreside processors and joint venture operators from the potential redistribution of Pacific whiting landings to large catcher/processor vessels, and the potentially nagative economic and biological impacts from effort shifts into the non-whiting groundfish fishery, the Council is concerned about other potential nagative impacts. First, more stringent seafood quality standards will require shoreside processing plants to upgrade facilities in order to improve quality control. Whiting, according to the EA/RIR, appears to be the only species available in sufficient quantities to generate the revenues needed to cover these expenses. Second, local and state government officials have indicated that several coastal communities lack alternative economic opportunities. A stable and healthy fishing industry in local coastal communities throughout the region is a priority of the States of Washington, Oregon, and California.

The Council's overall goal for the whiting fishery is to maintain a balance of harvesting and processing opportunities that will provide economic benefits to all segments of the whiting industry rather than allowing all of the benefits to concentrate into a single segment of the industry. The Council believes that now is the best time to establish this balance because the industry is just beginning to develop and no individual segment has developed a dominant position.

The Council considered a variety of alternatives to achieve its goals for the Pacific whiting fishery for the 1991 fishing year. Among these were seven different alternatives that involved allocating either directly between at-sea and shoreside processors or between vessels that process and those that do not process. Several alternatives contained reserved amounts to be held back to provide a supply of whiting to shoreside plants for the entire year. Other non-allocative alternatives considered included monthly quotas, trip limits, area closures, and trawl codend restrictions. All of the alternatives are described in detail in the EA/RIR (see **ADDRESSES**).

The Council adopted Alternative 7, which it determined best meets its goals of preserving opportunities for existing harvesters and processors while providing access to the Pacific whiting fishery to new entrants. The Council recommended establishment of an initial limit for 1991 of 104,000 mt on the amount of whiting that can be harvested by catcher/processors in the EEZ, an initial limit of 88,000 mt on the amount that can be harvested by fishing vessels that do not process fish, and a reserve of 36,000 mt to be made available to either or both group(s). Some or all of the 36,000 mt reserve is expected to be made available to supply whiting for shoreside processing for the remainder of the year. The Regional Director may limit the amount of Pacific whiting that may be

processed in the EEZ, if necessary to ensure supplies to shoreside processors. Any part of either the 104,000 mt limit for fishing vessels that process fish, or the 88,000 mt limit for fishing vessels that do not process fish, that is determined not to be needed may be made available to the other group.

If by the time this rule is promulgated the harvest by the catcher/processors exceeds 104,000 mt and/or the harvest by the fishing vessels that do not process exceeds 88,000 mt, the overage will be counted against the reserve of 36,000 mt. The Regional Director will review the progress of the fishery on September 1, and at whatever other times he determines is necessary, and the Secretary will announce any reapportionments, releases from the reserve, or limits on processing in the EEZ, in the **Federal Register**. These announcements may be made concurrently with publication of the final rule, or the Secretary may publish a notice in the **Federal Register** making the adjustments effective on filing and seeking public comment for a reasonable period. As under the current regulations, any Pacific whiting harvested in state ocean waters (0–3 nautical miles offshore) will be counted toward the EEZ limits.

The Council proposed the specific limitations described above for the following reasons: (1) The 36,000 mt reserve with priority to meeting the goal of supplying whiting for shoreside processing over the entire year is based on the NMFS 1990 industry survey of the amounts of Pacific whiting that shoreside plants expect to process for the 1991 Pacific whiting season; (2) the 88,000 mt limit for vessels that do not process their own catch reflects the NMFS survey requests by motherships of 65,000 mt for the April-May time period plus an additional 23,000 mt for a fall fishery after the Alaskan pollock fisheries close; and (3) the remaining 104,000 mt limit for vessels that process their own catch represents 46 percent of the 1991 Pacific whiting quota, which the Council believes is an equitable share of the harvest given that this class of vessel has participated only briefly (taking less than 5,000 mt in 1990) in the Pacific whiting fishery. The Council believes that these limits are necessary to preserve the opportunity for shoreside processing plants and U.S. fishing vessels that previously delivered to foreign processors in joint ventures to continue to be fully involved in the fishery and to preserve the flow of income from the fishery into the local communities and States that have historically depended on the Pacific whiting fishery.

The Council realizes that the many variables involved in the fishery make it impossible to predict accurately the performance of the various segments of the fishery. Therefore, the Council has provided for reapportionment of the quota in the event it appears that a portion might go unused. This will allow for full utilization of Pacific whiting while achieving the other goals of the Council.

Potential impacts of this proposal are difficult to quantify without knowing how many at-sea processing vessels will actually participate in the fishery and how long they will participate. If fewer than expected vessels participate, if they start too late to make a significant catch before returning to Alaska, or if whiting are scattered and catch rates are low, it is possible that each segment of the industry will fall short of its limit, and the proposed action will have no effect on any segment of the industry. In this case, joint venture operations may again be authorized. Of the harvest limits proposed here are reached, catcher/processors and even motherships may have to cease harvesting and processing whiting earlier than planned and either wait until the Alaska pollock fishery reopens or pursue pollock in the Bering Sea "donut hole." This action is not expected to change significantly the total gross revenues derived from the 1991 whiting harvest (in excess of $100 million). It could limit the amount of state and community income redistributed from Washington, Oregon, and California local communities and state economies to the State of Washington and the Seattle area, which supports the majority of the at-sea processing fleet.

The Secretary herein proposes the Council's recommendation. The Regional Director will assess the utilization rate of each segment of the fishery continuously as part of his responsibility to monitor the overall Pacific whiting quota. In the fall, the Regional Director will have completed an assessment of needs and, upon issuance of a final rule will be able to make the needed reapportionments described above and make available to at-sea processing vessels any unharvested surplus amount from the 36,000 mt reserve. This proposal to distribute the catch of Pacific whiting is for 1991 only while the Council considers a long-term whiting management plan.

Classification

This proposed rule is published under authority of the Magnuson Act, 16 U.S.C 1801 *et seq.*, and was prepared at the request of the Pacific Fishery Management Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for management of the Pacific coast grounfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an Environmental Assessment/Regulatory Impact Review (EA/RIR) for this rule. You may obtain a copy of the EA/RIR (See **ADDRESSES**).

The Assistant Administrator has determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises. The EA/RIR prepared for this rule indicates that the gross revenues generated from the Pacific whiting fishery are about the same (approximately $100 million) regardless of the proportion processed shoreside or at sea. The net effect of this rule will be to distribute the total revenues generated from the 228,000 mt quota between communities supported by the at-sea processors and those supported by shoreside processing plants and by U.S. fishing vessels that deliver to at-sea processors.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action preserves historical harvesting and processing opportunities for vessels and processing plants that traditionally harvested whiting off the Pacific coast while providing harvesting opportunities for new entrants into the whiting fishery. Large at-sea processors are not considered small businesses based on NMFS survey information indicating average annual gross revenues in the range of $8,000,000.

This proposed rule contains no collection of information requirement

subject to the Paperwork Reduction Act. The Council has determined that this rule is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. Letters have been sent to the three states requesting their review and comment.

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 Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: July 10, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is proposed to be amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

2. In § 663.7, new paragraphs (n), (o), and (p) are added as follows:

§ 663.7 Prohibitions.

* * * * *

(n) Harvest Pacific whiting in the Fishery Management Area with a vessel that processes fish after the date, announced by the Secretary in a notice filed with the Office of the Federal Register, on which the catcher/processor portion of the whiting quota, established under § 663.23(b)(3), has been or will be taken, and before the date, announced by the Secretary, on which additional whiting for catcher/processor vessels is available.

(o) Harvest Pacific whiting in the Fishery Management Area with a vessel that does not also process fish after the date, announced by the Secretary in a notice filed with the Office of the Federal Register, on which the portion of the whiting quota for catcher vessels that do not process fish, establish under § 663.23(b)(3), has been or will be taken, and before the date, announced by the Secretary, on which additional whiting for catcher vessels that do not process is available.

(p) Process in the Fishery Management Area any Pacific whiting during the period of time that the Secretary has prohibited further processing of Pacific whiting in the Fishery Management Area in a notice filed with the Office of the Federal Register.

3. In § 663.23, a new paragraph (b)(3) is added as follows:

§ 663.23 Catch Restrictions.

* * * * *

(b) * * *

(3) *1991 Pacific Whiting.* Initially, no more than 104,000 metric tons (mt) of the 1991 Pacific whiting quota of 228,000 mt may be harvested in the Fishery Management Area by fishing vessels that process fish, and no more than 88,000 mt of Pacific whiting may be harvested in the Fishery Management Area by fishing vessels that do not process fish. The remaining 36,000 mt will be held in reserve for later release to either or both categories of these vessels, at the discretion of the Regional Director. If the Regional Director determines that any part of the reserve is needed to allow the shoreside processing to continue through the end of the fishing year, the Regional Director may limit the amount of whiting from the reserve that may be processed in the Fishery Management Area. Any part of either the 104,000 mt limit for fishing vessels that process fish, or the 88,000 mt limit for fishing vessels that do not process fish, that the Regional Director determines not to be needed by that category of vessel may be made available to the other group. The Regional Director will review the progress of the fishery on September 1, and at whatever other times he determines necessary, and the Secretary will announce the availability and amounts of any reapportionments, the amounts and timing of releases from the reserve, and any limits on processing amounts from the reserve in the Fishery Management Area, in the **Federal Register**. The Secretary will announce in the **Federal Register** when the limit on processing of the reserve in the Fishery Management Area has been reached, at which time further processing in the Fishery Management Area will be prohibited. In order to prevent underutilization of the resource, adjustments by the Secretary may be effective immediately, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken within 2 weeks of the effective date.

* * * * *

[FR Doc. 91–16805 Filed 7–10–91; 4:23 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 56, No. 135
Monday, July 15, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form 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: Bureau of the Census.

Title: Current Industrial Reports Program – Wave I (Voluntary).

Form Number(s): Various.

Agency Approval Number: 0607–0393.

Type of Request: Revision of a currently approved collection.

Burden: 5,943 hours.

Number of Respondents: 2,865.

Avg Hours Per Response: 34 minutes.

Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provides key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Requests for OMB clearance of the various surveys within the CIR program are divided into 3 waves, each submitted for 3 year clearances (one wave per year). Each wave has two separate packages—one for mandatory reports and one for voluntary. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions.

Affected Public: Businesses or other for–profit organizations.

Frequency: Monthly, quarterly, and annually.

Respondent's Obligation: Voluntary (monthly and quarterly forms), Mandatory (annual counterpart forms).

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 10, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–16774 Filed 7–12–91; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held August 8, 1991, 9:30 a.m., in the Herbert C. Hoover Building, room 1617F, 14th & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Approval of minutes.
3. Presentation of papers or comments by the public.
4. Report on status of Core List.
5. Report on status of U.S. implementation of Core List.
6. Discussion to determine whether changes are required to the Core List, such as for fascimile equipment and exports to distributors.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, room 1621, U.S. Department of Commerce, 14th & Independence Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: July 9, 1991.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 91–16741 Filed 7–12–91; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 8, 1991, the Department of Commerce published the preliminary results and termination in part of its administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. The reviews of 18 producers and/or exporters were terminated following withdrawal of requests for their review. The review covers 38 producers and/or exporters of this merchandise to the United States and the period March 19, 1987 through February 29, 1988 for miniature carnations and November 3, 1986 through February 29, 1988 for all other merchandise covered by the order. We have now completed that review and determine the weighted average dumping margins to range between zero and 15.91 percent for the reviewed firms.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro, Gayle Longest, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1991, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results and termination in part of its administrative review of the antidumping duty order on certain fresh cut flowers from Colombia (56 FR 9937). The reviews of eighteen producers and/or exporters, for which the requests were withdrawn, were terminated at that time. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). Through 1988, such merchandise was classifiable under item numbers 192.1700, 192.2110, 192.2120, and 192.2130 of the Tariff Schedules of the United States Annotated (TSUSA). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 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 38 Colombian producers and/or exporters to the United States of the subject merchandise and the period March 19, 1987 through February 29, 1988 for miniature carnations and November 3, 1986 through February 29, 1988 for the remaining subject merchandise. We have terminated the reviews of Flores Altamira, Flores de Exportacion, Agricola Arenales, Cultivos Buenavista, Flores de Los Andes, Flores Horizonte, Inversiones Penas Blancas, Flores de La Pradera, Inversiones Targa, Cultivos Medellin, Flores La Esmeralda, Floralex, Jardines del Muna, Velez de Monchaus e Hijos, Agromonte, Claveles Colombianos, Sun Flowers, and Fantasia Flowers, because these companies withdrew their requests for review on a timely basis and the petitioner did not request reviews of them.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Asocolflores, the Colombian association of flower growers, on behalf of its members, from other respondents, and from the petitioner, the Floral Trade Council.

Comment 1: Asocolflores argues that the Department's methodology of calculating an average peso constructed value for the review period and then converting it to U.S. dollars using monthly exchange rates creates a downward sloping dollar-based constructed value that is incorrect as a matter of economic principle and commercial reality. Specifically, the cost data of respondent Flores Colombianas indicate that peso production costs in Colombia were continuously increasing during the period of review due to high inflation. Because the inflation and the depreciation rates for the period were roughly the same, converting rising monthly costs to dollars using monthly exchange rates would produce relatively constant costs in dollar terms. However, contrary to this fact, the constructed value calculated by the Department declines during the period of review. Respondent claims that the Department's methodology, in effect, deflates for inflation twice; first, holding costs constant over the review period by using a period-average peso constructed value, and, second, converting this average peso figure to dollars using monthly exchange rates, which again offset the effects of inflation. This methodology creates counterfactual high constructed values for the early months of the review period (and counterfactual low constructed values for the later months), and, for this reason, produces artificial dumping margins during the earlier months.

To correct the distortions resulting from this methodology, while still using a period average to remove the monthly cost fluctuations associated with flower production, the Department should use a constant constructed value, whether that value be in pesos or in dollars. The respondent suggests two ways to appropriately convert the period average constructed value to dollars. The first, and more accurate, proposed methodology requires that each month's peso costs be converted into dollars using that month's exchange rate. Once monthly dollar costs are obtained, they should then be summed to arrive at the total dollar costs for the period. The total dollar costs can then be divided by the total sales of export quality flowers to obtain an average per-unit constructed value in dollars for the review period. Alternatively, the Department can convert its period-average peso constructed value to dollars using the period-average exchange rate. Respondent claims that this methodology produces similar results, but many generate minor distortions in some cases.

The petitioner comments that the methodology employed by the Department in its preliminary results was correct and should not be changed for purposes of the final results. The Department's regulation, 19 CFR 353.60(a), requires currency conversions prior to or contemporaneous with the date of sale in the U.S. market. In this case, since a monthly-average U.S. price is used, a monthly-average exchange rate is appropriate. Petitioner further argues that the Department's use of an average constructed value must be representative of the underlying actual costs. If the actual costs in dollar terms, therefore, declined over the period of review, then the use of the monthly U.S. exchange rate is reasonably representative of this trend.

Department's Position: We have examined the respondent's argument and have reassessed the Department's methodology in light of the combination of facts affecting this case, such as high inflation, consequent devaluation that lags inflation, and the nature of calculating constructed value for agricultural products. Flower production, like other agricultural products, requires the use of a period average constructed value in order to capture the complete costs, which vary month to month, associated with production of the product. While we agree with the respondent that the monthly conversion to dollars of peso costs is the preferable methodology, in this review we have converted our

period-average peso constructed value to dollars using the corresponding period-average exchange rate. We made this selection due to the respondents' failure to raise this issue earlier in the review process, the time contraints imposed on the Department to complete these final results, and the Department's determination that the two methodologies produce nearly identical results.

Comment 2: Petitioner argues that the Department's conclusion that third-country sales are an inappropriate basis for determining foreign market value (FMV) is contrary to law and agency practice. Both the statute and the legislative history favor the use of actual prices rather than constructed value (CV) where the Department has adequate third country price information. The Department's long standing practice has supported this preference.

Department's Position: We agree with the petitioner that the Department's regulations (19 CFR 353.48(b)) state a preference for third country prices over CV to compute foreign market value. However, the Department believes that the use of the words "normally" and "prefer" allow the Department the discretion to disregard third country sales in favor of CV in extraordinary circumstances. In this case, the Department is rejecting third country sales in favor of constructed value because the evidence in the record indicates that third country prices are an inappropriate basis for comparison. This conclusion is based on an economic study, originally submitted in the second administrative review but also relevant to this period of review, which analyzes production characteristics of the fresh cut flower industry and compares pricing practices in the U.S. and major third country markets. The economic study, which has been incorporated in the record of this proceeding, demonstrates, among other things, that U.S. and third country price and volume movements in the cut flower industry are not positively correlated and can, therefore, either mask dumping in some instances or exaggerate dumping in other instances. The Department believes that the study provides compelling support for the use of constructed value rather than reliance on third country pricing information in this case. The conclusion that third country prices should not be used as the basis of FMV was likewise reached in the administrative review of this order for the March 1, 1988 through February 28, 1989 period (see Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Colombia (55 FR 20491; May 17, 1990)).

Comment 3: Respondents Floramerica Group and Flores Colombianas argue that foreign exchange earnings should be allowed as an offset to foreign exchange costs in the calculation of their financing expense component of constructed value. The difference between the receivable recorded in pesos at the time of sale and the later reconciliation with the dollar amount subsequently paid normally results in a gain in peso terms. In this review, because the dollar appreciated against the peso, the farms consistently enjoyed foreign exchange earnings due to the time lag between sale and payment. Similarly, the Department takes into account foreign exchange losses which occur when farms purchase materials payable in dollars. Floramerica believes that an inconsistency exists between the Department's practice of recognizing exchange rate gains and losses related to production and its treatment of the same gains and losses related to sales. In addition, Floramerica contrasts the treatment of sales-related currency gains with its treatment of other post-sale adjustments including, for example, warranty and technical services.

Department's Position: We disagree. In calculating constructed value, the Department only recognizes foreign exchange gains or losses specifically related to the costs of manufacturing. The inclusion of such gains or losses, usually associated with the acquisition of material inputs, allows the Department to accurately reflect all actual production costs. The Department does not take into account exchange rate gains or losses otherwise incurred, since they do not affect the actual cost of producing the merchandise. The Floramerica Group and Flores Colombianas happened to realize exchange gains in connection with some sales of subject flowers. However, although such experience resulted in a financial gain, their cost of growing the subject flowers has not been reduced. Similarly, if these respondents were to experience exchange losses associated with their sales, the Department would not penalize them for these losses by increasing their constructed value or adjusting the U.S. price downward to reflect the reduced amount of revenue received in their domestic currency. This well established Department practice (see e.g., Final Results of Antidumping Duty Administrative Review; Frozen Concentrated Orange Juice from Brazil (55 FR 26721; June 27, 1990) and Final Determination of Sales at Less than Fair Value; Sweaters of Man Made Fiber from Korea (55 FR 32659; August 10, 1990)) holds the company responsible for the exchange rate in effect at the time when it fixes its sales price in U.S. dollars. This treatment ensures that subsequent gains and losses, which can work to the company's disadvantage as well as to its advantage (as in the case of these respondents), are treated consistently, based on the information available at the time of the sale.

Comment 4: Respondent Exportaciones Bochica/Floral claims that the Department made a clerical error in calculating its CV for pompon chrysanthemums by adding cull revenue to its cost of manufacturing rather than subtracting it. The petitioner noted the same error.

Department's Position: We agree and have corrected the CV calculation accordingly.

Comment 5: Respondents Exportaciones Bochica/Floral and Flores del Cauca argue that their street vendor sales made in Miami should be excluded from the sales analysis. The companies argue that these flowers were not of export quality and, as such, they are not flowers subject to the antidumping duty order.

Department's Position: The Department included in its analysis all U.S. sales of flowers which were of export quality when originally exported, including the street vendor sales of these respondents. The Department used a monthly weighted-average U.S. price of all export quality flowers to account for the fact that, due to perishability of the product, sellers are often faced with the choice of accepting whatever return they can obtain on the sale of the product or, alternatively, destroying the product. Street vendor sales are, therefore, appropriately included as part of the monthly weighted-average U.S. sales price.

Comment 6: Respondents Las Amalias/Pompones note that a portion of the costs incurred for packing standard carnations were incorrectly attributed solely to U.S. sales rather than to sales to all markets. They also question the addition of imputed credit calculated on U.S. sales to their constructed value prior to the comparison of CV with U.S. price. Lastly, respondents disagree with the Department's methodology of calculating the annual average constructed value per stem rather than the monthly CV they calculated by dividing monthly total costs by monthly sales volume.

Department's Position: The Department agrees that a portion of these respondents' packing costs are

properly attributed to total sales of standard carnations rather than exclusively to U.S. sales and has made this adjustment in these final results of review. The addition of imputed credit to CV questioned by the respondent is an adjustment required in purchase price transactions for credit incurred on those U.S. sales (see 19 CFR 353.56a(2)). The use of an annual average constructed value is necessary in this case because the monthly costs of flower production fluctuate considerably throughout the production cycle and thus, taken individually, are not representative of the growers' total costs for flower production.

Comment 7: The Floramerica Group of respondents notes several clerical errors made in the preliminary results: (1) The failure to consolidate sales of related farms for pompon and standard chrysanthemums, (2) the inclusion in constructed value of inland freight expenses, and (3) the failure to exclude intracompany loans from the calculation of costs for the Cultivos del Caribe farm.

Department's Position: We agree and have made all the noted corrections.

Comment 8: The Floramerica Group of respondents argue that a partial revocation of the antidumping duty order for the group is appropriate. The Group contends that they have demonstrated that sales of the subject merchandise have not been made at less than fair value for a period of 40 months. Specifically, the group claims it had no margin in the preliminary results of this review, had no margin in the final results of the subsequent review, and would have had no margin in the original investigation if the Department had corrected for an error which it did not timely realize. Since 19 CFR 353.25(a)(2) provides that the Secretary may revoke an order in part if the Secretary concludes that a producer has not sold the subject merchandise at less than foreign market value for a period of at least three consecutive years, the Floramerica Group contends that they have fullfilled this requirement and that a partial revocation should be granted at the conclusion of this review.

Department's Position: Although the final results of this review and those of the second administrative review indicate sales of not less than fair value for a period of 28 months, the final determination of the original fair value investigation indicate a *de minimis* margin for the group. Therefore, the Floramerica Group does not meet the minimum eligibility requirement of three years of sales at not less than fair value stated in the Department's regulations. Moreover, the Floramerica Group has not met additional regulatory requirements for revocation for this review period, including verification of their response by the Department prior to revocation from the order.

Comment 9: Respondent Flores Columbianas notes certain clerical errors affecting inland freight, credit, packing, and indirect selling expenses that were made by the Department when consolidating information provided for fuji mums with other standard mums. The petitioner noted that the Department failed to round up one of this respondent's constructed values.

Department's Position: We agree with the petitioner and have corrected our failure to properly round. We do not agree with the respondent. The Department properly consolidated amounts for standard and fuji mums for the expenses of inland freight and credit. No consolidation was necessary for indirect selling expenses and packing since these were not used in the margin analysis.

Preliminary Results of the Review

As a result of our review, we determine the weighted-averaged dumping margins to be:

Producer/Exporter	Margin (Percent)
Agricola el Redil	3.09
Agrodex Group:	0.82
Agrodex	
Flores de Los Amigos	
Flores de Los Arrayanes	
Flores Colon	
La Cymuna	
Flores de La Conejera	
Flores Dos Hectareas	
Florlinda	
Flores El Gallinero	
Los Gaques	
Inverflores	
Flores Juanambu	
Inverpalmas	
Flores El Lobo	
Flores La Maria	
Flores de Las Mercedes	
Potrero	
Flores El Puente	
Inversiones Santa Rosa	
Tibati	
El Trentino	
El Zorro	
Agrosuba Group:	0.06
Agrosuba	
Flores Colombianos	
Jardine de Los Andes	
Exportaciones Bochica/Floral Ltd.	0.28
Floramerica	0
Jardines de Colombia	
Cultivos del Caribe	
Flores Las Palmas	
Flores de Serrezuela	0.16
Flores del Cauca	1.73
Flores del Rio	0
Flores Generales	15.91
Flores La Pampa*	33.89
Las Amalias/Pompones	0.79

* No shipments during the period of review. Rate noted is the company's rate from the fair value investigation.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, for future entries of subject merchandise by all firms in this review, except for Agricola el Redil, as well as for any future shipments of this merchandise by the remaining producers and/or exporters not covered in this review, the cash deposit will continue to be at the rates applicable to each of these firms as published in the final results of review for the March 1, 1988 through February 29, 1989 period (55 FR 20491; May 17, 1990). For Agricola El Redil, the only firm in this review that was not covered in the subsequent review, the cash deposit of estimated antidumping duties shall be based on their margin established in this review, or 3.09 percent. These deposit requirements will be effective for all shipments of Colombian fresh cut flowers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

The administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22.

Dated: July 3, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-16775 Filed 7-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-806]

Final Determination of Sales at Less Than Fair Value: Gene Amplification Thermal Cyclers and Subassemblies Thereof, From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Joel Fischl, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1778

Final Determination

We determine that imports of gene amplification thermal cyclers and

subassemblies thereof (GATCs) from the United Kingdom are being, or are likely to be, sold in the United States at less then fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since publication of the preliminary determination on April 29, 1991 (56 FR 19638), the following events have occurred.

Verification of the questionnaire response submitted by the respondent was conducted at Wessex Instrumentation Limited, the manufacturing plant of LEP Scientific Limited (LEP), in Andover, United Kingdom, and LEP's sales office in Milton Keynes, United Kingdom, from May 13 through 17, 1991.

Respondent submitted comments for the record in its case brief on June 13, 1991. Petitioner did not submit comments. No hearing was requested.

Scope of Investigation

The products covered by this investigation are certain gene amplification thermal cyclers, consisting of Peltier-effect in-vitro GATCs, whether assembled or unassembled, and the subassemblies thereof specified below. GATCs are microprocessor-based reaction controllers that regulate temperatures of biologic reagents through a programmed and highly controlled thermal regime. GATCs incorporate a metal sample block, one or more thermoelectric modules, one or more electronic thermal sensors, a heat exchanger, power supply circuitry, microprocessor-based logic circuitry, software, and a housing or enclosure. GATCs are used in a variety of biotechnology applications, such as in vitro gene amplification, and sequencing and radionucleotide labeling reactions. Peltier-effect machines use one or more thermoelectric modules for cooling the biologic samples, and thermoelectric modules and/or electric resistive heaters for heating the biologic samples. Excluded from this investigation are vapor compression thermal cyclers, which use a reversed Rankine cycle apparatus, and heat-only thermal cyclers.

The following subassemblies are included in the scope of the investigation when they are manufactured according to specifications and operational requirements for use only in a GATC as defined in the preceding paragraph: (a) The sample block/thermoelectric sensory/heat exchanger subassembly, which consists of the sample block, one or more thermoelectric modules, one or more electronic thermal sensors, and a heat exchanger, and which can include an electric resistive heater; (b) the housing or enclosure, whether finished or unfinished, for the GATC; (c) the membrane keypad used to program and control a GATC; and (d) the software to operate the GATC. GATCs are currently classifiable under the subheading 8419.89.5075 of the Harmonized Tariff Schedule (HTS). GATC subassemblies are currently classifiable under HTS subheading 8419.90.9060. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

Normally, the Department selects as its POI the six-month period ending in the month in which the petition is filed. However, in this investigation, LEP reported that all of its U.S. sales were made prior to this six-month period (June 1, 1990 through November 30, 1990). Consequently, we extended the POI to cover the period March 1, 1990 through November 30, 1990, as permitted by 19 CFR 353.42(b).

Such or Similar Comparisons

We have determined for purposes of the final determination that all of the products investigated comprise a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of GATCs from the United Kingdom to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of GATCs to the most similar home market sales of GATCs. We also compared sales of GATCs at the same commercial level of trade, in accordance with 19 CFR 353.58. As noted in the Department's verification report, LEP considers an original equipment manufacturer (OEM) to be a distributor that sells the merchandise under its own label. Affixing such a label is the only "alteration" made to the merchandise by the OEM. Therefore, for purposes of this final determination, as in the preliminary determination, we consider OEMs and distributors to be at the same level of trade.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, both because the GATCs were sold to unrelated purchasers in the United States prior to importation into the United States, and because ESP methodology was not indicated by other circumstances. We calculated purchase price based on f.o.b. factory or delivery prices. We made deductions, where appropriate, for foreign inland freight, U.S. duty, U.S. brokerage, inland freight, and airline entry fees, in accordance with section 772(d)(2) of the Act. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the United Kingdom value-added tax (VAT) that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of GATCs in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of GATCs to the volume of third country sales of GATCs, in accordance with section 773(a)(1) of the Act. LEP had a viable home market with respect to sales of GATCs made during the POI.

We calculated FMV based on f.o.b. factory prices to unrelated customers in the home market. We made deductions, where appropriate, for discounts. We deducted home market packing costs and added U.S. packing costs.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing, advertising expenses, warranty/technical service expenses, and royalty payments. We also made a circumstance of sale adjustment on sales of GATC instruments for promotional expenses incurred on demonstration instruments provided to the U.S. customer. We made adjustments for physical differences in merchandise, in accordance with 19 CFR 353.57. Finally, we made a circumstance of sale adjustment for the VAT.

We recalculated LEP's imputed credit expense on U.S. sales because LEP calculated its credit expense on certain U.S. sales based on warehouse withdrawal date, rather than shipment date. For those sales of GATCs for which payment was outstanding as of verification, we used the date of this final determination as the date of payment as best information available (BIA). (See Comment 3.)

In its February 28, 1991, questionnaire response, LEP claimed access to U.S. financing and used the U.S. short-term interest rate to impute U.S. credit, citing *LMI—La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455 (Fed. Cir. 1990). However, respondent could not support this claim at verification, did not raise this issue in its brief, and, in fact, has revised its data in its post-verification submission to follow the Department's approach. Accordingly, the U.S. credit expense for the final determination, as in the preliminary determination, is imputed using the home market interest rate and the appropriate credit period.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Interested Party Comments

Comment 1: Respondent contends in its January 11, 1991, letter to the Department that the Department should dismiss the petition because the petitioner did not file this case "on behalf of" the U.S. industry. Specifically, the respondent contends that the petitioner lacks standing because (1) the International Trade Commission (ITC) has defined the "like product" in this investigation to include three products—Peltier-effect thermal cyclers, vapor-compression thermal cyclers, and heat-only thermal cyclers, and (2) petitioner's production of Peltier-effect thermal cyclers represents only a "minority" of U.S. domestic production of the "like product". Absent affirmative support for the petition by the U.S. domestic producers of vapor-compression thermal cyclers and heat-only thermal cyclers, the Department is required, according to the respondent, to reject the petition for lack of standing.

DOC Position To determine whether a petitioner has standing to bring a petition, the Department must determine (1) whether the petitioner is an "interested party" within the meaning of the statute, and (2) whether the petitioner has filed the petition "on behalf of" the relevant U.S. domestic industry. *See* section 732 of the Act. MJ Research, the petitioner in this investigation, satisfied both of these requirements. MJ Research is necessarily an "interested party" because, as a producer of the Peltier-effect thermal cycler, it is a U.S. producer of the "like product." See section 771 of the Act.

MJ Research also satisfies the second statutory requirement of filing the petition "on behalf of" the relevant U.S. domestic industry. Absent evidence of opposition to the petition by other members of the U.S. domestic industry, the Department presumes that a sole U.S. domestic petitioner is representative of the entire industry, even if the production of the petitioner represents less than a majority of the U.S. industry in terms of volume and value. The U.S. Court of International Trade (CIT) recently affirmed this presumption in *NTN Bearings Corp. of America* v. *United States*, Slip Op. 91–73 (February 28, 1991), (*NTN Bearings*).

Because there was no opposition to the petition filed by MJ Research in this investigation, the Department reasonably presumed that MJ Research was representative of the U.S. industry. Accordingly, the Department concludes that the petitioner filed the petition "on behalf of" the GATC industry. MJ Research both is an "interested party" and filed the petition "on behalf of" the U.S. industry, and, therefore, has standing to file and maintain the petition in this investigation.

Comment 2: Respondent contends that U.S. credit expenses for GATC sales should be calculated based on the date of withdrawal from the unrelated U.S. warehouse rather than on the date of shipment from LEP. Respondent contends that, pursuant to the sales agreement, there is no obligation of payment until the merchandise is withdrawn from warehouse, and that LEP still holds title to the instruments while they remain in the U.S. warehouse. Accordingly, LEP considers the date of withdrawal from the U.S. warehouse to be the time the Department should begin to impute credit expenses.

DOC Positions: We disagree. In accordance with our standard practice, we recalculated U.S. credit expenses for the GATC instruments sales based on date of shipment rather than date of withdrawal from the U.S. warehouse. See e.g., Final Results of Antidumping Administrative Review; Large Power Transformers from Japan (56 FR 29215, June 26, 1991); Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil (56 FR 26977, June 12, 1991); and Color Television Receivers from Republic of Korea: Final Results of Antidumping Administrative Review (56 FR 12701, March 27, 1991). At verification the Department confirmed that, although there were several shipments of GATC instruments during the POI which were all warehoused at one point in the United States, these shipments were all part of a single sale. The price and quantity of the instruments were fixed at the date of sale and prior to entry into the United States. Regardless of when LEP and USA/Scientific contractually arranged for payment to be made, LEP bears an opportunity cost while the merchandise is being shipped and warehoused. Therefore, measurement of respondent's credit costs appropriately begins as of date of shipment of the merchandise.

Comment 3: Respondent contends that U.S. credit expenses should reflect the correct payment dates as verified by the Department.

DOC Position: We agree. At verification we discovered that LEP reported the date of payment as the date that the credit amount is entered into LEP's accounting system, which is not necessarily the same day payment is actually credited to its bank account. The correct payment dates (i.e., the dates on which the company's bank account is credited) were used in the final determination.

However, at verification LEP failed to demonstrate payment for two U.S. transactions which had been withdrawn from warehouse, and for a third which remains in storage. As BIA, we used the date of the final determination as the date of payment for these transactions.

Comment 4: Respondent argues that no deduction should be made from U.S. price for movement expenses with respect to the first, second, and third shipments of instruments from LEP. LEP contends it inadvertently reported foreign inland freight and air freight expenses for the third shipment although those expenses were not actually incurred. Respondent also argues that, although it was agreed that LEP "would assume the movement expenses associated with the first two shipments," no deduction should be made to U.S. price for movement expenses with respect to these shipments since LEP has not yet paid these expenses.

DOC Position: We agree with respondent that no deduction should be made for movement expenses regarding the third shipment. At verification we noted on LEP's shipping invoice instructions that these movement expenses were borne by the U.S. customer. Therefore, because LEP did not incur the expense, we made no deduction for these expenses in the final determination.

We disagree with respondent's claim regarding the first two shipments. At verification we noted that, although LEP had not paid the movement charges associated with the first two shipments, LEP's shipping instructions on the shipping invoices specified that LEP was obligated to pay the movement expenses. The fact that LEP had not yet

paid its movement expenses for these first two shipments during the POI is no basis for determining that these expenses ultimately will not be borne by LEP. Therefore, we have deducted movement expenses incurred on the first two shipments in the final determination.

Comment 5: Respondent contends that demonstration instrument (*i.e.*, promotional sales) provided to USA/Scientific are a promotional expense incurred by LEP which are directly related to the sales under investigation. Therefore, respondent urges the Department to make a circumstance of sale adjustment to reflect the costs associated with providing these demonstration instruments to its U.S. customer. LEP argues that since these instruments were being newly introduced into the United States, the demonstration instruments were necessary as a promotional tool in order to stimulate future sales in the U.S. market. LEP points out that the agreement to provide these demonstration instruments was integral to finalizing the sale of the GATCs to USA/Scientific.

DOC Position: We agree. At verification we confirmed that these demonstration instruments were not intended to be resold in the United States. Instead they were intended for USA/Scientific's use in promoting sales of LEP's GATC instruments in the United States. Therefore, for purposes of the final determination, we have made a circumstance of sale adjustment for sales of GATC instruments to reflect the costs of these promotional instruments. Moreover, since the promotional instruments are complete instruments, intended for demonstrating the performance of complete instruments, this circumstance of sale adjustment has been made only with respect to sales of complete GATC instruments, and not subassemblies.

Comment 6: Respondent argues that no deduction should be made for U.S. warehousing expenses, although LEP originally reported a U.S. warehousing charge in its questionnaire response. The charge reported, LEP contends, was based on a quote from the warehousing company of the costs associated with holding instruments in an unrelated warehouse. LEP argues that because the Department confirmed at verification that it has not yet been billed nor has it paid U.S. warehousing costs, no deduction should be made.

DOC Position: We disagree. Although LEP had not yet been billed or paid for the storage of the GATC instruments in the unrelated U.S. warehouse, LEP had been quoted a price and is obligated to pay for the warehousing of the merchandise. While LEP did not pay this warehousing expense during the POI, it nonetheless remains an expense that will be borne by LEP on the sales in question. Therefore, the Department has calculated and allocated a post-sale warehousing expense on the warehoused merchandise based on the price quoted to LEP.

Comment 7: Respondent argues that "should the Department determine that the total home market technical service/warranty amount invoiced during the nine-month period of investigation is the proper methodology for calculating this expense, then the correct total amount, as described in * * * LEP's June 6, 1991 submission, should be used for purposes of the Department's final determination."

DOC Position: The Department is basing the technical service/warranty expense on the actual expenses incurred on sales subject to this investigation. Therefore, for purposes of the final determination, the Department is using the revised technical service/warranty expense submitted by LEP in its June 6, 1991, post-verification submission, in order to account for three additional warranty expenses.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of GATCs as defined in the "Scope of Investigation" section of this notice that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the GATCs from the United Kingdom exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/ Exporter	*Margin percentage*
LEP Scientific Limited	13.82
All Others	13.82

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we will make available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to GATCs, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all GATCs from the United Kingdom, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20(a)(4).

Dated: July 8, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-16776 Filed 7-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain From Japan; Final Results of the Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On March 7, 1991, the Department of Commerce ("the Department") published the preliminary results of its administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The reviews cover five manufacturers/exporters of the subject merchandise and the 1981/1982 and 1982/1983 review periods.

We gave interested parties an opportunity to comment on our preliminary results, and following our analysis of the comments received, we have determined to use best information available ("BIA") for purposes of the final determination in this case. The

final margin for all of the companies for both review periods is 15.92 percent.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Robin Gray, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1991, the Department published the preliminary results of its administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226). We have now completed these reviews 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 roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain, other than bicycle, was classified under various provisions of the Tariff Schedules of the United States Annotated (TSUSA) from item numbers 652.1400 through 652.3800, and is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7315.11.10 through 7616.90.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

These reviews cover 5 manufacturers/exporters to the United States of roller chain from Japan, Pulton Chain Company, Incorporated ("Pulton"), Pulton/HIC, Pulton/I&OC, Kaga Kogyo/APC, and Kaga Koken and the period April 1, 1982 through November 30, 1983 for Kaga Koken, and the periods, April 1, 1981 through March 31, 1982 and April 1, 1982 through March 31, 1983 for the other firms.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from counsel for Pulton, on behalf of Pulton, I&OC, and Chain Engineering Company, an importer of the subject merchandise. We received rebuttal comments from the petitioner, the American Chain Association ("ACA").

Comment 1: Pulton asserts that the Department's use of BIA was arbitrary, an abuse of discretion, and unjustified under the circumstances.

Department's Position: We disagree with Pulton. Pulton declined to provide us with supplemental information for the periods of review, despite repeated, specific written requests for such information. Because we cannot compel a respondent to provide information, our only recourse with an uncooperative respondent is to use BIA in accordance with section 776(c) of the Tariff Act. *See Pistachio Group* v. *United States et al.*, 671 F. Supp. 31 (CIT 1987). The statute provides that the administering authority "* * * shall, whenever a party or any other person refuses * * * to produce information requested in a timely manner and in the form required * * * use the best information otherwise available." 19 U.S.C. 1677e(c). The statute authorizes the Department to select BIA in a given case based upon the particular circumstances of that case. *See Ansaldo Componenti, S.p.A.* v. *United States*, 628 F. Supp. 198, 205 (CIT 1986); Final Results of Antidumping Duty Administrative Review; Steel Jacks from Canada, 52 FR 32957, September 1, 1987; Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Final Results of Antidumping Duty Administrative Review, 55 FR 20175, May 15, 1990; Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Reviews, 55 FR 35916, September 4, 1990, and Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Reviews, 56 FR 5392, February 11, 1991. Section 353.37 of the Department's regulations also states that "[i]f an interested party refuses to provide factual information requested by the Secretary, the Secretary may take that into account in determining what is best information available." 19 CFR 353.37(b). In this respect, the implementing regulations may be viewed as "an investigative tool, which the agency may wield as an informal club over recalcitrant parties or persons whose failure to cooperate may work against their best interest." See *Atlantic Sugar* v. *United States*, 744 F. 2d 1556 (Fed. Cir. 1984). As the CAFC stated in *Rhone Poulenc*, the rule "effectively induces importers to comply with agency questionnaires, an important practical consideration as the ITA has no subpoena power" 899 F. 2d 1185, 1190.

Therefore, in determining the appropriate BIA rate in a particular case, we evaluate the adequacy of the information in the administrative record and the degree of a respondent's cooperation during the proceeding. In this case, Pulton unequivocally declined on several occasions, to respond to our requests for additional information. In such cases, it is our policy to use the higher of (a) the highest rate for a responding firm with shipments during the period or (b) that firm's own last rate. As BIA, we used the 15.92 percent rate which was the rate for Takasago Chain/Royal Industries in the 1981–1982 review period (52 FR 18004, May 13, 1987). For the 1982–1983 review period, we used each firm's own last rate.

Comment 2: The respondent asserts that the Department had already analyzed Pulton's questionnnaire responses, and computed dumping margins as evidenced by draft analysis sheets. In its rebuttal, the ACA states that the worksheets prepared in 1984 should be given no weight.

Department's Position: We disagree with Pulton. The Department did not finalize its analysis; therefore, these draft analysis sheets cannot be characterized as the position of the Department. These worksheets were preliminary, hand-calculated "drafts" from the analyst's working file. They are not part of the official record in this case. Further, even under the standards at that time, Pulton's responses would have been considered seriously deficient and the Department should not have proceeded to base even draft calculations on them.

Comment 3: Pulton states that most of the information sought by the Department's supplemental questionnaire was already in ITA's files, could be extrapolated from information in the files, or was not necessary for proceeding with the reviews. The ACA counters that Pulton refused to provide essential data to the Department. Further, administrative review responses are not judged by bulk alone.

Although Pulton may have believed most of the information requested was "irrelevant" or only marginally relevant to analysis, Pulton's proper recourse was to discuss the matter with the Department rather than refuse to respond to the Department's supplemental questionnaire.

Department's Position: We disagree with Pulton. Even under the standards in place contemporaneous with the periods of review, the original questionnaire responses were seriously deficient. The primary deficiencies include no information on the value of sales which is critical in determining home market viability, inconsistent units of sale (feet in some cases, links in others), dates of sale missing on approximately 20 percent of both U.S. and home market sales, charges reported in various units with no explanation of how they relate to units of sale, inconsistent/insufficient information throughout the sales listings, no computer tapes, and numerous other deficiencies.

Furthermore, Pulton cannot rely on its compilation of data submitted in other subsequent reviews as those submissions and responses are not part of the administrative record in these proceedings.

Comment 4: Pulton states that the Department used the wrong figure for BIA, alleging that the margin used was a BIA rate itself. The ACA states that the Department used the correct rate.

Department's Position: We disagree. The margin selected was not a BIA rate. (See Comment 1.)

Comment 5: Pulton alleges that the Department's delay in completing these reviews prejudiced it. The ACA asserts that the Department's delay in publishing preliminary margins was adverse to the ACA as well as to the respondent, but this situation does not provide a basis for modifying Pulton's BIA margin.

Department's Position: While Pulton's failure to respond to the supplemental questionnaire may have been based in part on lack of available data, this does not provide the Department with the authority or ability to utilize questionnaire responses as seriously deficient as Pulton's were. Accordingly, we feel that our resort to use of BIA was reasonable. (See Comment 1.)

Final Results of the Review

Having considered the comments received, we have determined to use the BIA margin of 15.92 percent for all of the companies for both periods of review. For the 1981–1982 review period, we used the 15.92 percent rate, which was the rate calculated for Takasago Chain/Royal Industries in the 1981–1982 review period (52 FR 18004, May 13, 1987), as BIA for that period. For the 1982–1983 review period, we used each firm's own last rate. When a firm did not have a rate for the 1981–1982 period upon which to base the 1982–1983 BIA rate (Kaga Koken), we used the highest non-BIA rate from the 1981–1982 period as BIA.

As a result of our reviews, we determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (%)
Pulton Chain	04/01/81–03/31/82.	15.92
	04/01/82–03/31/83.	15.92
Pulton Chain/HIC	04/01/81–03/31/82.	15.92
	04/01/82–03/31/83.	15.92
Pulton Chain/I&OC	04/01/81–03/31/82.	15.92
	04/01/82–03/31/83.	15.92
Kaga Kogyo/APC	04/01/81–03/31/82.	15.92
	04/01/82–03/31/83.	15.92
Kaga Koken	04/01/82–11/30/83.	15.92

The Department shall determine, and the U.S. Customs Service shall, assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Given the interval between the periods of review covered by this notice and the actual conduct of these reviews, the dumping margins determined in this preliminary notice will have no impact on the current cash deposit rates. As provided by section 751(a)(1) of the Tariff Act, the Customs Service shall continue to require a cash deposit for all merchandise produced or exported by Pulton Chain, Pulton Chain/HIC, Pulton Chain/I&OC, Kaga Kogyo/APC, or Kaga Koken of estimated antidumping duties based on the final rates published for each firm's most recent administrative review period. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, and who is unrelated to any previously reviewed firms, a cash deposit of estimated antidumping duties, equal to the highest non-BIA rate for any firm with shipments during the most recent period for which a review has been completed, shall be required.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 9, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–16777 Filed 7–12–91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Steel Rail; Correction

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: .Notice of correction of short-supply determination on certain steel rail.

SHORT-SUPPLY REVIEW NUMBER: 51.

Correction: On June 26, 1991, the Secretary of Commerce ("Secretary") published a notice of short-supply determination on certain steel rail (56 FR 29231). Page 29230 of that determination defines a part of the specifications as follows:

Surface Upsweep: Maximum 0.10 inch per foot with maximum of 0.08 inch or rail in excess of 80 feet. Maximum 0.10 inch in 5 feet from the rail ends provided it shall not occur at a point closer than 30 inches from the rail ends.

Surface Downsweep: Rail with surface downsweep and droop shall be accepted.

The specifications should have read as follows:

Surface Upsweep: Maximum 0.10 inch per foot with maximum of 0.80 inch or rail in excess of 80 feet. Maximum 0.10 inch in 5 feet from the rail ends provided it shall not occur at a point closer than 30 inches from the rail ends.

Surface Downsweep: Rail with surface downsweep and drop shall not be accepted.

Dated: July 5, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–16778 Filed 7–12–91; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the Final Affirmative Countervailing Duty Determination made by the U.S. Department of Commerce, International Trade Administration, Import Administration, respecting Fresh, Chilled and Frozen Pork from Canada, Secretariat File No. USA–89–1904–06.

SUMMARY: Pursuant to the Memorandum Opinion and Order of the Binational Panel dated June 3, 1991, the Panel Review of the final determination described above was completed on July 5, 1991.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: On March 8, 1991, the Binational Panel issued a decision which affirmed in part and remanded in part Commerce's determination on remand. Commerce filed a second redetermination on remand on April 11, 1991, which was challenged by separate motions for reconsideration under rule 75 and reexamination under rule 77. The Panel denied these motions in Memorandum Opinions and Orders dated May 15, 1991 and June 3, 1991. Pursuant to the June 3 Panel Order, the Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Order, if no Request for an Extraordinary Challenge was filed. No such request was filed. Therefore, the Panel Review was completed and the panelists discharged from their duties effective July 5, 1991.

Dated: July 9, 1991.

James R. Holbein,

United States Secretary FTA Binational Secretariat.

[FR Doc. 91–16740 Filed 7–12–91; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Announcement of Thunder Bay (MI) as an Active Candidate for Designation as a National Marine Sanctuary; Intent To Prepare a Draft Environment Impact Statement and Management Plan

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: NOAA is announcing Thunder Bay (Lake Huron, Michigan) as an Active Candidate for designation as a National Marine Sanctuary, and its intent to prepare a draft environmental impact statement and management plan (DEIS/MP). The proposed study area includes Thunder Bay and vicinity (up to Middle Island) extending out to 83 °W. Depths extend to over 300 feet (91 meters) along the northeast section of the site. Approximately 400 square miles are encompassed in the study area, all of which are within State of Michigan waters.

DISCUSSION: Pursuant to 15 CFR 922.309(b), selection of a site as an Active Candidate formally initiates the National Environmental Policy Act (NEPA) process; NOAA will prepare a DEIS/MP to examine management, boundary and regulatory alternatives associated with Sanctuary designation. NOAA will conduct public scoping meetings to gather information and comments from individuals, organizations, and governmental officials on the range and significance of issues related to this proposal. These scoping meetings will be announced in the **Federal Register** and in newspapers in the area(s) of local concern at a future date.

The management plan to be prepared for the proposed Sanctuary will specify the goals and objectives of Sanctuary designation and will describe programs for resource protection. The plan will identify specific needs and priorities relatd to resource protection, research, monitoring, education and interpretation at the proposed Sanctuary. It will contain an administration plan and budget as well as a discussion of volunteer programs, public access, visitor use policies, and facilities development needs. The various administrative and regulatory alternatives for Sanctuary management will be analyzed and preferred alternatives recommended.

Site Description

Natural Resources. The highly sculptured limestone bedrock, the undulatory pattern of the submerged terraces and scarps, and the extreme gradations in sediment size composition create a variety of biological niches in the Thunder Bay area. Marsh vegetation along the edges of the Michigan Islands provides a habitat and breeding area for thousands of colonial nesting birds such as ring-billed gulls, common terns, and herring gulls. Thunder Island alone hosts 11,000 breeding pairs of shorebirds. Scarecrow Island, part of the Michigan Islands National Wildlife Refuge, has the greatest variety of nesting birds in the National Wildlife Refuge. The gravel shoreline is heavily used by herring and ring-billed gulls, while many waterfowl (including great blue herons and cormorants) are observed nesting along the shores and within the bays. The American osprey and the American bald eagle, endangered species, have also been observed within the area as well as the rare sandhill crane.

The various geologic sites, including the Misery Bay Sinkhole and the Thunder Bay Island Rock Wall as well as the numerous shipwreck sites, serve as a habitat for 20 species of gamefish. Alewives, carp, black bass, smallmouth bass, catfish, brown trout, steelhead, splake, northern pike, and yellow perch can be observed within and around these sites. Chinook salmon, rainbow trout, brown trout, splake, and steelhead are annually stocked by the Michigan Department of Natural Resources in the inland rivers that feed Thunder Bay.

Human Uses. Situated in an area of medium population density, the area is primarily used for recreational boating, diving, and nature appreciation. Three interesting underwater geological sites (Rock Wall, Misery Bay Sinkhole, and the North Point Reef forming the northern boundary of Thunder Bay) and 83 identified shipwrecks attract large numbers of gamefish, anglers, and recreational divers to the area. The shipwrecks include wood-hulled schooners, steamers, barges, Great Lakes tugboats, a steel-hulled steamer, and an oceangoing freighter. The area also supports a shipwreck salvage industry that has reduced the recreational value of some of the wreck sites. Much of the area is not easily accessible, though some is visited by the more serious naturalists and birdwatchers.

The State of Michigan owns the waters, lake bed, islands, and much of the shore adjacent to Thunder Bay. The area is presently included in Michigan's Underwater Preserve System administered by the Michigan Department of Natural Resources in cooperation with the Department of State, Division of History. The Underwater Preserve System seeks to prevent damage to sunken ships due to improper salvage practices.

Four islands within this site are nature preserves. Two islands are managed, primarily to protect migratory and nesting birds, as part of the Michigan Island National Wildlife Refuge; two are owned by the Michigan Nature Association.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Durden, Atlantic and Great

Lakes Regional, Manager, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235 (Telephone 202/673–5122).

Federal Domestic Assistance Catalogue Number 11.429
Marine Santuary Program

Dated: May 24, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91–16717 Filed 7–12–91; 8:45 am]

BILLING CODE 3510–08–M

Patent and Trademark Office

[Docket No. 910766–1166]

Extension of Previously Issued Interim Orders

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 2 to Department Organization Order 10–14, the authority under section 914 of title 17 of the United States Code (the copyright law) to make findings and issue orders for the interim protection of mask works of foreign origin.

On June 28, 1991, President Bush signed into law S. 909, a bill to extend the authority of the Secretary of Commerce to issue orders under section 914 of the Semiconductor Chip Protection Act of 1984 (SCPA) until July 1, 1995. Because the existing interim orders are scheduled to expire on July 1, 1991, this order extends the expiration of these orders until December 31, 1992.

EFFECTIVE DATE: This order is effective on July 1, 1991.

TERMINATION DATE: This order shall terminate on December 31, 1992.

ADDRESSES: Questions should be submitted to Michael S. Keplinger by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington DC 20231.

FOR FURTHER INFORMATION: Contact Mr. Michael S. Keplinger at (703)557–3065.

SUPPLEMENTARY INFORMATION:

Background

The SCPA established a new form of intellectual property protection for mask works fixed in semiconductor chip products, now frequently referred to as semiconductor chip layout-designs or topographies. The new subject matter of protection is defined in 17 U.S.C. section 901(a)(2) as:

> a series of related images, however fixed or encoded
> (A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
> (B) in which series the relation of the images to one another is that each image has the pattern of the surfaces of one form of the semiconductor chip product.

The SCPA grants a 10-year term of protection to original mask works, measured from the earlier of the date of their registration in the U.S. Copyright Office, or the date of their first commercial exploitation anywhere in the world. Mask works must be registered within two years of first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, were eligible for protection if they were registered in the U.S. Copyright Office before July 1, 1985.

Eligibility of a foreign mask work for protection is governed by the alternative criteria set out in section 902. First, protection is available to owners of mask works who are nationals, domiciliaries, or sovereign authorities of a foreign nation that is a party to a treaty that provides for the protection of mask works and to which treaty the United States is also a party, or a stateless person wherever domiciled. Alternatively, protection is afforded to mask works that are first commercially exploited in the United States, or which come within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> a foreign nation extends, to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided in this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

To encourage progress toward international comity in mask work protection, section 914(a) permits the Secretary of Commerce to extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries, and sovereign authorities of a foreign nation if the Secretary finds:

> (1) That the foreign nation is making good faith efforts and reasonable progress toward—
> (A) Entering into a treaty described in section 902(a)(1)(A); or
> (B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and
> (2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation, of mask works; and
> (3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

While section 914 is silent on the specific procedures to be followed in making the requisite determinations and issuing the interim orders, the legislative history of the SCPA makes it clear that Congress intended that a process of public notice and hearing be followed.[1] On November 7, 1984, the Patent and Trademark Office issued "Guidelines for the Submission of Application for Interim Protection of Mask Works under 17 U.S.C. 914" along the lines suggested in the legislative history.[2] These Guidelines specify the content and procedures for the submission of petitions for the issuance or termination of interim orders. The Guidelines also specify the persons eligible to submit applications to initiate proceedings, the procedures to be followed by the Office, and the information to be submitted. It is important to note that while a petition for an interim order may be submitted by anyone, the Commissioner's findings must be made with respect to the actions of a government. Consequently, the Guidelines require that certain information be supplied by the government of the foreign nation in question. They also encourage the submission of additional material by the applicant that would aid in making the determinations.

Procedurally, the Guidelines require the Commissioner to receive petitions and to initiate proceedings to grant or revoke interim orders. The Commissioner may initiate proceedings upon his own motion or at the direction of the Secretary. The first step is to publish the petition in the **Federal Register** in order to solicit comments.

[1] See 130 Cong. Rec. 28958 at 28959 (1984) (explanatory memorandum accompanying Mathias-Lahy Amendment to S. 1201).

[2] 49 FR 44517 (Nov. 7, 1984).

Afterwards, the Commissioner may determine to hold a public hearing.

Pursuant to these procedures, the Commissioner has extended the benefits of protection under section 914 to nineteen foreign countries. In chronological order, these countries are: Japan, Sweden, Australia, Canada, the twelve Member States of the European Community (EC), [3] Switzerland, Finland, and Austria.[4] At present, all of these countries, except Switzerland, have enacted chip protection legislation, and have extended protection to U.S. nationals and domiciliaries under those laws.

When the SCPA was enacted, its supporters believed that the "transitional" provisions of section 914 were just that—transitional—and that they would go away in the near future. The provisions were intended to bridge the gap between the time when there was no multilateral instrument to provide standards for the protection of the layout-designs of integrated circuits, and the expected prompt adoption of a new international treaty that embodied the appropriate levels of protection and reflected fully the balance of the SCPA. Unfortunately, an acceptable multilateral treaty or agreement has not yet been concluded.

The Administration remains committed to the objective of establishing a multilateral arrangement that will ensure adequate and effective standards of protection for the layout-designs of U.S. semiconductor integrated circuits in foreign markets. We will continue to pursue that objective in all relevant international fora.

The final text of the World Intellectual Property Organization (WIPO) Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (Washington Treaty) was completed on May 26, 1989. However, because the text provides less than an adequate and effective level of protection, the United States and Japan—the world's major producers and consumers of semiconductor chips—voted against the Treaty. An agreement based on the U.S. SCPA and the laws of many other countries that provide an equivalent level of protection would have been an acceptable alternative to the WIPO draft, but an accord could not be reached.

In the view of the Administration, the Washington Treaty is unacceptable because it permits an inadequate term of protection, allows the grant of compulsory licenses in a broad range of circumstances, and does not require that purchasers of infringing chips pay a royalty after learning that the chips are infringing. Also, the mechanism used to settle disputes between governments that join the Treaty is largely unworkable.

To correct the deficiencies identified in the Washington Treaty, the United States and most other industrialized countries are seeking in the Uruguay Round multilateral trade negotiations to set minimum standards for the protection of chips that comply with existing national laws and the EC's Directive on the Legal Protection of the Topographies of Semiconductor Products. There is general agreement among the developed countries participating in the negotiations on the trade related aspects of intellectual property (TRIPS) concerning the deficiencies in the Washington Treaty, but there are differences among the proposals to correct those deficiencies. The U.S. TRIPS proposal relies on a stand-alone text approach, where the standard would specify all of the essential elements of an adequate and effective chip protection regime that will be fully compatible with the SCPA.

As noted, other developed countries generally agree that this level of protection is appropriate for this particular subject matter. Japan has supported an approach similar to the United States. The EC, which speaks for its Member States in the TRIPS negotiations, supports an approach for attaining this level of protection by building on the Washington Treaty by incorporating its provisions and adding specific strengthening elements where increased protection is clearly called for.

Despite extended and detailed discussions, the multilateral TRIPS negotiations thus far also have failed to achieve a consensus on these standards for protection. Although the Uruguay Round negotiations have been resumed, it is unlikely that agreement on chip protection will be reached in that forum in the near future.

The continuing negotiations to achieve an acceptable multilateral instrument for the protection of layout-designs, and the progress of other countries in enacting legislation supports continuing this bilateral protection regime for at least as long as similar bilateral protection has been extended to the United States by the majority of other countries with chip protection laws. All foreign chip layout-designs, including U.S. chip layout-designs, are protected in Japan, regardless of national origin. Sweden and Austria protect foreign works on the condition of reciprocity, so they are obligated to protect U.S. works for as long as we protect Swedish and Austrian works. U.S. works are protected under the laws of the Member States of the EC in accordance with the terms of a Commission order that extends protection until December 31, 1992. Australia extends protection for an indefinite period. Canada is in the process of drafting regulations to implement its chip protection law. Legislation for the protection of semiconductor chips is pending before the Swiss Parliament, and Switzerland has actively supported efforts to achieve an agreement on chip protection in the TRIPS negotiations. Consequently, in the interests of international comity, the existing interim orders for Japan, Sweden, Australia, Canada, the twelve Member States of the European Community, Switzerland, Finland, and Austria are extended until December 31, 1992.

Dated: June 28, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-16676 Filed 7-12-91; 8:45 am]

BILLING CODE 3510-16-M

[3] The Member States of the European Community are: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

[4] Extension of Previously-Granted Interim Orders under the Semiconductor Chip Protection Act of 1984, 52 FR 44200 (Novembsr 18, 1987).

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 91-3-SCRA]

1991 Satellite Carrier Royalty Rate Adjustment; Correction

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice; correction.

SUMMARY: In the notice published July 1, 1991 (56 FR 29951) concerning the initiation of voluntary negotiation proceedings for the purpose of adjusting the satellite carrier royalty rate, the names of those parties who intend to participate in the negotiations were listed. One of the parties' names was inadvertently left out. That notice is corrected to read that SESAC, Inc., a music performing rights society, intends to participate in the negotiations.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202-606-4400).

Dated: July 10, 1991.
Mario F. Aguero,
Chairman.
[FR Doc. 91-16771 Filed 7-12-91; 8:45 am]
BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records Notices

AGENCY: Office of the Secretary, DoD.
ACTION: Amend System of Record Names.

SUMMARY: The Department of Defense proposes to amend the system names of the Department of the Air Force, Defense Mapping Agency, Defense Contract Audit Agency, and Defense Investigative Service system of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, Defense Privacy Office, 400 Army Navy Drive, Suite 205, Arlington, VA 22202-2884.

SUPPLEMENTARY INFORMATION: The amendments to the systems names consist of only deleting the system identification number. For example, the Department of the Air Force system which currently reads as F010 AF A System name: F010 AF A Automated Orders Data System will now be F010 AF A System name: Automated Orders Data System.

The system identification numbers are not needed in the system name and are therefore being deleted. This amendment will benefit the public by standardizing the way all DoD Components name their systems of records, without the system identification number in the system name. The system identification numbers and the amended systems names are provided below.

Dated: July 9, 1991.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

United States Air Force

SYSTEM IDENTIFICATION NUMBER:
F010 AF A.

SYSTEM NAME:
Automated Orders Data System.

SYSTEM IDENTIFICATION NUMBER:
F010 AFIS B.

SYSTEM NAME:
Prisoner of War (PW) Debriefing Files.

SYSTEM IDENTIFICATION NUMBER:
F010 ARPC A.

SYSTEM NAME:
Background Material.

SYSTEM IDENTIFICATION NUMBER:
F010 AU A.

SYSTEM NAME:
Potential Faculty Rating System.

SYSTEM IDENTIFICATION NUMBER:
F010 CVAE A.

SYSTEM NAME:
Secretary of the Air Force Historical Records.

SYSTEM IDENTIFICATION NUMBER:
F010 DAS A.

SYSTEM NAME:
Usual and Incoherent Translation Material.

SYSTEM IDENTIFICATION NUMBER:
F010 RE A.

SYSTEM NAME:
Inquiries (Presidential, Congressional).

SYSTEM IDENTIFICATION NUMBER:
F011 AF A.

SYSTEM NAME:
Locator, Registration and Postal Director Files.

SYSTEM IDENTIFICATION NUMBER:
F011 AF B.

SYSTEM NAME:
Check Cashing Privilege Files.

SYSTEM IDENTIFICATION NUMBER:
F011 AF MP A.

SYSTEM NAME:
Congressional and Other High Level Inquiries.

SYSTEM IDENTIFICATION NUMBER:
F011 AFA A.

SYSTEM NAME:
Class Committee Products.

SYSTEM IDENTIFICATION NUMBER:
F011 AFA A.

SYSTEM NAME:
Faculty Biographical Sketch.

SYSTEM IDENTIFICATION NUMBER:
F011 AFSG A.

SYSTEM NAME:
High Level Inquiry File.

SYSTEM IDENTIFICATION NUMBER:
F011 ARPC A.

SYSTEM NAME:
Locator or Personnel Data.

SYSTEM IDENTIFICATION NUMBER:
F011 ATC A.

SYSTEM NAME:
Graduate Evaluation Master File.

SYSTEM IDENTIFICATION NUMBER:
F011 ATC E.

SYSTEM NAME:
Four-Year Reserve Officer Training Corps (AFROTC) Scholarship Program Files.

SYSTEM IDENTIFICATION NUMBER:
F011 DAS A.

SYSTEM NAME:
Operational Reference File.

SYSTEM IDENTIFICATION NUMBER:
F011 LLI A.

SYSTEM NAME:
Congressional/Executive Inquiries.

SYSTEM IDENTIFICATION NUMBER:
F011 PACAF A.

SYSTEM NAME:
General and Colonel Personnel Data Action Records.

SYSTEM IDENTIFICATION NUMBER:
F011 SAC A.

SYSTEM NAME:
SAC Logistic Personnel Management System.

SYSTEM IDENTIFICATION NUMBER:
F011 SG A.

SYSTEM NAME:
Professional Inquiry Records System.

SYSTEM IDENTIFICATION NUMBER:
F012 AF A.

SYSTEM NAME:
Information Requests—Freedom of Information Act.

SYSTEM IDENTIFICATION NUMBER:
F012 AF B.

SYSTEM NAME:
Privacy Act Request File.

SYSTEM IDENTIFICATION NUMBER:
F012 ARPC A.

SYSTEM NAME:
Fee Case File.

SYSTEM IDENTIFICATION NUMBER:
F030 AF A.

SYSTEM NAME:
Automated Personnel Management System.

SYSTEM IDENTIFICATION NUMBER:
F030 AF JA A.

SYSTEM NAME:
Confidential Statement of Affiliations and Financial Interests.

SYSTEM IDENTIFICATION NUMBER:
F030 AF LE A.

SYSTEM NAME:
Equal Opportunity in Off-Base Housing.

SYSTEM IDENTIFICATION NUMBER:
F030 AF LE B.

SYSTEM NAME:
Off-Base Housing Referral Service.

SYSTEM IDENTIFICATION NUMBER:
F030 AF LE C.

SYSTEM NAME:
Base Housing Management.

SYSTEM IDENTIFICATION NUMBER:
F030 AF LE D.

SYSTEM NAME:
On/Off Base Housing Records.

SYSTEM IDENTIFICATION NUMBER:
F030 AF MP A.

SYSTEM NAME:
Personnel Data System (PDS).

SYSTEM IDENTIFICATION NUMBER:
F030 AF MP B.

SYSTEM NAME:
Substance Abuse Reorientation and Treatment Case Files.

SYSTEM IDENTIFICATION NUMBER:
F030 AF MP C.

SYSTEM NAME:
Casualty Files.

SYSTEM IDENTIFICATION NUMBER:
F030 AF MP D.

SYSTEM NAME:
Contingency Operations System (COMPES).

SYSTEM IDENTIFICATION NUMBER:
F030 AF MP E.

SYSTEM NAME:
Drug Abuse Waiver Requests.

SYSTEM IDENTIFICATION NUMBER:
F030 AF SG A.

SYSTEM NAME:
Aerospace Physiology Personnel Career Information System.

SYSTEM IDENTIFICATION NUMBER:
F030 AF SP A.

SYSTEM NAME:
Documentation for Identification and Entry Authority.

SYSTEM IDENTIFICATION NUMBER:
F030 AFIS A.

SYSTEM NAME:
For Cause Discharge Program.

SYSTEM IDENTIFICATION NUMBER:
F030 AFIS B.

SYSTEM NAME:
Air Force Attache Personnel System.

SYSTEM IDENTIFICATION NUMBER:
F030 AFIS C.

SYSTEM NAME:
Intelligence Applicant Files.

SYSTEM IDENTIFICATION NUMBER:
F030 AFSC A.

SYSTEM NAME:
Discrimination Complaint File.

SYSTEM IDENTIFICATION NUMBER:
F030 AFSC A.

SYSTEM NAME:
Field Management Center (FMC) Personnel Data.

SYSTEM IDENTIFICATION NUMBER:
F030 ARPC A.

SYSTEM NAME:
Applications for Identification (ID) Cards.

SYSTEM IDENTIFICATION NUMBER:
F030 ARPC B.

SYSTEM NAME:
Point Credit Accounting Record System (PCARS).

SYSTEM IDENTIFICATION NUMBER:
F030 ATC A.

SYSTEM NAME:
Drug Abuse Control Case Files.

SYSTEM IDENTIFICATION NUMBER:
F030 ATC C.

SYSTEM NAME:
Processing and Classification of Enlistees (PACE).

SYSTEM IDENTIFICATION NUMBER:
F030 MPC A.

SYSTEM NAME:
Deceased Service Member's Dependent File.

SYSTEM IDENTIFICATION NUMBER:
F030 MPC B.

SYSTEM NAME:
Indebtedness, Nonsupport, Paternity.

SYSTEM IDENTIFICATION NUMBER:
F030 REDCOM A.

SYSTEM NAME:
USREDCOM Military Personnel Data File.

SYSTEM IDENTIFICATION NUMBER:
F030 SAC A.

SYSTEM NAME:
Automated Command and Control Executive Support System.

SYSTEM IDENTIFICATION NUMBER:
F030 SG A.

SYSTEM NAME:
Bioenvironmental Engineer Personnel Career Information System.

SYSTEM IDENTIFICATION NUMBER:
F030 SB B.

SYSTEM NAME:
Aerospace Medicine Personnel Career Information System.

SYSTEM IDENTIFICATION NUMBER:
F035 AF A.

SYSTEM NAME:
Officer Quality Force Management Records.

SYSTEM IDENTIFICATION NUMBER:
F035 AF DP A.

SYSTEM NAME:
Family Support Center Case Files.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP A.

SYSTEM NAME:
Effectiveness/Performance Reporting System.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP B.

SYSTEM NAME:
Geographically Separated Unit Copy Officer Effectiveness/Airman Performance Report.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP D.

SYSTEM NAME:
Officer Effectiveness Report/Airman Performance Report Appeal Case Files.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP E.

SYSTEM NAME:
United States Air Force (USAF) Airman Retraining Program.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP F.

SYSTEM NAME:
Request for Selective Reenlistment Bonus (SRB) and/or Advance Payment of SRB.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP G.

SYSTEM NAME:
Selective Reenlistment Consideration.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP H.

SYSTEM NAME:
Air Force Enlistment/Commissioning Records System.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP I.

SYSTEM NAME:
Incoming Clearance Record.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP J.

SYSTEM NAME:
Absentee and Deserter Information Files.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP K.

SYSTEM NAME:
Relocation Preparation Project Folders.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP L.

SYSTEM NAME:
Unfavorable Information Files (UIFs).

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP M.

SYSTEM NAME:
Officer Promotion and Appointment.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP N.

SYSTEM NAME:
Individual Weight Management File.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP O.

SYSTEM NAME:
Unit Assigned Personnel Information.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP P.

SYSTEM NAME:
General Officer Personnel Data Systems.

SYSTEM IDENTIFICATION NUMBER:
F035 AF MP R.

SYSTEM NAME:
Application for Appointment and Extended Active Duty Files.

SYSTEM IDENTIFICATION NUMBER:
F035 AFA A.

SYSTEM NAME:
Cadet Personnel Management System.

SYSTEM IDENTIFICATION NUMBER:
F035 AFA B.

SYSTEM NAME:
Mastr Cadet Personnel Record (Active/Historical).

SYSTEM IDENTIFICATION NUMBER:
F035 AFA C.

SYSTEM NAME:
Prospective Instructor Files.

SYSTEM IDENTIFICATION NUMBER:
F035 AFAA A.

SYSTEM NAME:
Air Force Audit Agency Office File.

SYSTEM IDENTIFICATION NUMBER:
F035 AFAA B.

SYSTEM NAME:
Air Force Audit Agency Office Personnel File.

SYSTEM IDENTIFICATION NUMBER:
F035 AFAA C.

SYSTEM NAME:
Informal Airmen/Reserve Information Record.

SYSTEM IDENTIFICATION NUMBER:
F035 AFCC A.

SYSTEM NAME:
Scope Leader Program.

SYSTEM IDENTIFICATION NUMBER:
F035 AFCC B.

SYSTEM NAME:
Management Control System (MCS).

SYSTEM IDENTIFICATION NUMBER:
F035 AFIS A.

SYSTEM NAME:
Intelligence Reserve Information System (IRIS).

SYSTEM IDENTIFICATION NUMBER:
F035 AFOSI B.

SYSTEM NAME:
Career Development Folder.

SYSTEM IDENTIFICATION NUMBER:
F035 AFOSI C.

SYSTEM NAME:
Informational Personnel Records.

SYSTEM IDENTIFICATION NUMBER:
F035 AFOSI D.

SYSTEM NAME:
Internal Personnel Data System.

SYSTEM IDENTIFICATION NUMBER:
F035 AFRES A.

SYSTEM NAME:
Personnel Interview Record.

SYSTEM IDENTIFICATION NUMBER:
F035 AFRES B.

SYSTEM NAME:
Recruiters Automated Management System (RAMS).

SYSTEM IDENTIFICATION NUMBER:
F035 AFSC A.

SYSTEM NAME:
Personnel Management Information System for AFSC Commanders.

SYSTEM IDENTIFICATION NUMBER:
F035 ARPC A.

SYSTEM NAME:
Administrative Discharge for Cause on Reserve Personnel.

SYSTEM IDENTIFICATION NUMBER:
F035 ARPC B.

SYSTEM NAME:
Information Personnel Management Records.

SYSTEM IDENTIFICATION NUMBER:
F035 ARPC C.

SYSTEM NAME:
Correction of Military Records of Officers and Airmen.

SYSTEM IDENTIFICATION NUMBER:
F035 ARPC D.

SYSTEM NAME:
Data Change/Suspense Notification.

SYSTEM IDENTIFICATION NUMBER:
F035 ARPC E.

SYSTEM NAME:
Flying Status Actions.

SYSTEM IDENTIFICATION NUMBER:
F035 ARPC F.

SYSTEM NAME:
Biographical File.

SYSTEM IDENTIFICATION NUMBER:
F035 ARPC G.

SYSTEM NAME:
Officer Promotions.

SYSTEM IDENTIFICATION NUMBER:
F035 ARPC I.

SYSTEM NAME:
Requests for Discharge from the Air Force Reserve.

SYSTEM IDENTIFICATION NUMBER:
F035 ATC A.

SYSTEM NAME:
Officer Training School Resource Management System School Staff.

SYSTEM IDENTIFICATION NUMBER:
F035 ATC B.

SYSTEM NAME:
Air Force Junior ROTC (AFJROTC) Applicant/Instructor System.

SYSTEM IDENTIFICATION NUMBER:
F035 ATC C.

SYSTEM NAME:
Air Force Reserve Officer Training Corps Qualifying Test Scoring System.

SYSTEM IDENTIFICATION NUMBER:
F035 ATC D.

SYSTEM NAME:
Basic Trainee Interview Record.

SYSTEM IDENTIFICATION NUMBER:
F035 ATC F.

SYSTEM NAME:
Lead Management System (LMS).

SYSTEM IDENTIFICATION NUMBER:
F035 ATC G.

SYSTEM NAME:
Recruiting Activities Management Support System (RAMSS).

SYSTEM IDENTIFICATION NUMBER:
F035 ATC H.

SYSTEM NAME:
Recruiting Research and Analysis System.

SYSTEM IDENTIFICATION NUMBER:
F035 ATC I.

SYSTEM NAME:
Status of Ineffective Recruiter.

SYSTEM IDENTIFICATION NUMBER:
F035 HC A.

SYSTEM NAME:
Chaplain Information Sheet.

SYSTEM IDENTIFICATION NUMBER:
F035 HC B.

SYSTEM NAME:
Chaplain Personnel Record.

SYSTEM IDENTIFICATION NUMBER:
F035 HC C.

SYSTEM NAME:
Chaplain Personnel Action Folder.

SYSTEM IDENTIFICATION NUMBER:
F035 MP A.

SYSTEM NAME:
Files on General Officers and Colonels Assigned to General Officer Position.

SYSTEM IDENTIFICATION NUMBER:
F035 MP B.

SYSTEM NAME:
Statutory Tour Program.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC B.

SYSTEM NAME:
Civilian/Military Service Reveiw Board.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC C.

SYSTEM NAME:
Chaplain Applicant Processing Folder.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC D.

SYSTEM NAME:
Correction of Military Record Card.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC E.

SYSTEM NAME:
Disability/Non-disability Retirements Records.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC F.

SYSTEM NAME:
Health Education Records.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC G.

SYSTEM NAME:
Medical Officer Personnel Utilization Records.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC H.

SYSTEM NAME:
Medical Opinions on Board for Correction of Military Records Cases (BCMR).

SYSTEM IDENTIFICATION NUMBER:
F035 MPC I.

SYSTEM NAME:
Office File.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC J.

SYSTEM NAME:
Airmen Utilization Records System.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC K.

SYSTEM NAME:
Airman Promotion Historical Records.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC L.

SYSTEM NAME:
Historical Airman Promotion Master Test File (MTF).

SYSTEM IDENTIFICATION NUMBER:
F035 MPC N.

SYSTEM NAME:
Assignment Action File.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC P.

SYSTEM NAME:
Recorder's Roster.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC Q.

SYSTEM NAME:
Officer Utilization Records System.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC R.

SYSTEM NAME:
Air Force Personnel Test 851, Test Answer Sheets.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC S.

SYSTEM NAME:
Aviation Service Branch File.

SYSTEM IDENTIFICATION NUMBER:
F035 MPC U.

SYSTEM NAME:
Separation Case Files (Officer and Airman).

SYSTEM IDENTIFICATION NUMBER:
F035 RE A.

SYSTEM NAME:
Personnel Files on Statutory Tour Officers.

SYSTEM IDENTIFICATION NUMBER:
F035 RE B.

SYSTEM NAME:
Files on Reserve General Officers; Colonels Assigned to General Officer Positions.

SYSTEM IDENTIFICATION NUMBER:
F035 SAC B.

SYSTEM NAME:

Officer Involuntary Administrative Separation File.

SYSTEM IDENTIFICATION NUMBER:

F035 SAC C.

SYSTEM NAME:

Public Affairs Personnel Background Record.

SYSTEM IDENTIFICATION NUMBER:

F035 SAFCB A.

SYSTEM NAME:

Military Records Processed by the Air Force Correction Board.

SYSTEM IDENTIFICATION NUMBER:

F035 SAFPA A.

SYSTEM NAME:

Mobilization Augmentee Training Folders.

SYSTEM IDENTIFICATION NUMBER:

F035 SAFPC A.

SYSTEM NAME:

Air Force Discharge Review Board Retain Files.

SYSTEM IDENTIFICATION NUMBER:

F035 SAFPC B.

SYSTEM NAME:

Air Force Discharge Review Board Original Case Files.

SYSTEM IDENTIFICATION NUMBER:

F035 SAFPC C.

SYSTEM NAME:

Air Force Discharge Review Board Voting Cards.

SYSTEM IDENTIFICATION NUMBER:

F035 SAFPC D.

SYSTEM NAME:

Air Force Discharge Review Board Case Control/Locator Cards.

SYSTEM IDENTIFICATION NUMBER:

F035 SG A.

SYSTEM NAME:

Application for Aeronautical Rating (Senior and Chief Flight Surgeon).

SYSTEM IDENTIFICATION NUMBER:

F035 SG B.

SYSTEM NAME:

Medical Service Corps Personnel Files.

SYSTEM IDENTIFICATION NUMBER:

F035 SG C.

SYSTEM NAME:

Veterinary Personnel Files.

SYSTEM IDENTIFICATION NUMBER:

F035 TAC A.

SYSTEM NAME:

Informational Personnel Records (PA Personnel Background).

SYSTEM IDENTIFICATION NUMBER:

F040 AA A.

SYSTEM NAME:

Civilian Personnel Files.

SYSTEM IDENTIFICATION NUMBER:

F040 AF DP A.

SYSTEM NAME:

Civilian Employee Drug Testing Records.

SYSTEM IDENTIFICATION NUMBER:

F040 AF MP H.

SYSTEM NAME:

Employee Assistance Program Case Record Systems.

SYSTEM IDENTIFICATION NUMBER:

F040 AF NAFI A.

SYSTEM NAME:

Non-Appropriated Fund (NAF) Civilian Personnel Records.

SYSTEM IDENTIFICATION NUMBER:

F040 AFAA A.

SYSTEM NAME:

Merit Promotion File.

SYSTEM IDENTIFICATION NUMBER:

F040 AFLC A.

SYSTEM NAME:

Air Force Logistics Command (AFLC) Senior Civilian Information File.

SYSTEM IDENTIFICATION NUMBER:

F040 AFRES A.

SYSTEM NAME:

Air Reserve Technician (ART) Officer Selection Folders.

SYSTEM IDENTIFICATION NUMBER:

F040 ASG A.

SYSTEM NAME:

Civilian Pay-Personnel-Manpower (Paperman).

SYSTEM IDENTIFICATION NUMBER:

F045 AFRES A.

SYSTEM NAME:

Reserve Medical Service Corps Officer Appointments.

SYSTEM IDENTIFICATION NUMBER:

F045 ARPC A.

SYSTEM NAME:

Air Force Reserve Application.

SYSTEM IDENTIFICATION NUMBER:

F045 ARPC B.

SYSTEM NAME:

Inactive Duty Training, Extension Course Institute (ECI) Training.

SYSTEM IDENTIFICATION NUMBER:

F045 ATC B.

SYSTEM NAME:

AFROTC Cadet Personnel System (CPS).

SYSTEM IDENTIFICATION NUMBER:

F045 ATC C.

SYSTEM NAME:

Cadet Records.

SYSTEM IDENTIFICATION NUMBER:

F045 ATC D.

SYSTEM NAME:

AFROTC Field Training Assignment System.

SYSTEM IDENTIFICATION NUMBER:

F045 ATC E.

SYSTEM NAME:

Four-Year Reserve Officer Training Corps (AFROTC) Scholarship Program Files.

SYSTEM IDENTIFICATION NUMBER:

F045 MPC A.

SYSTEM NAME:

Educational Delay Board Findings.

SYSTEM IDENTIFICATION NUMBER:

F050 AF A.

SYSTEM NAME:

Student Record.

SYSTEM IDENTIFICATION NUMBER:

F050 AF MP A.

SYSTEM NAME:

Education Services Program Records (Individual).

SYSTEM IDENTIFICATION NUMBER:

F050 AF SG A.

SYSTEM NAME:

Nursing Skill Inventory.

SYSTEM IDENTIFICATION NUMBER:

F05 AF SP A.

SYSTEM NAME:

Unit Training Program.

SYSTEM IDENTIFICATION NUMBER:

F050 AFA A.

SYSTEM NAME:

Military Performance Average.

SYSTEM IDENTIFICATION NUMBER:
F050 AFA B.

SYSTEM NAME:
Instructor Academic Records.

SYSTEM IDENTIFICATION NUMBER:
F050 AFA C.

SYSTEM NAME:
Academy Athletic Records.

SYSTEM IDENTIFICATION NUMBER:
F050 AFAA A.

SYSTEM NAME:
Air Force Audit Agency Office Training File.

SYSTEM IDENTIFICATION NUMBER:
F050 AFAA B.

SYSTEM NAME:
Employee Training and Career Development File.

SYSTEM IDENTIFICATION NUMBER:
F050 AFCC A.

SYSTEM NAME:
ASAF Air Traffic Control (ATC) Certification and Withdrawal Documentation.

SYSTEM IDENTIFICATION NUMBER:
F050 AFCC C.

SYSTEM NAME:
Individual Academic Training Record.

SYSTEM IDENTIFICATION NUMBER:
F050 AFCC D.

SYSTEM NAME:
Student Record.

SYSTEM IDENTIFICATION NUMBER:
F050 AFOSI A.

SYSTEM NAME:
Air Force Special Investigations Academy Individual Academic Records.

SYSTEM IDENTIFICATION NUMBER:
F050 AFRES A.

SYSTEM NAME:
Undergraduate Pilot and Navigator Training.

SYSTEM IDENTIFICATION NUMBER:
F050 AFSC A.

SYSTEM NAME:
Systems Acquisition Schools Student Records.

SYSTEM IDENTIFICATION NUMBER:
F050 AFSPACECOM A.

SYSTEM NAME:
Space Command Operations Training.

SYSTEM IDENTIFICATION NUMBER:
F050 ARPC A.

SYSTEM NAME:
Professional Military Education (PME).

SYSTEM IDENTIFICATION NUMBER:
F050 ATC A.

SYSTEM NAME:
Officer Training School Resource Management System—Officer Trainees.

SYSTEM IDENTIFICATION NUMBER:
F050 ATC B.

SYSTEM NAME:
Community College of the Air Force Student Record System.

SYSTEM IDENTIFICATION NUMBER:
F050 ATC D.

SYSTEM NAME:
Individual Academic Records—Survival Training Students.

SYSTEM IDENTIFICATION NUMBER:
F050 ATC E.

SYSTEM NAME:
Maintenance Management Automated Training System (MMATS).

SYSTEM IDENTIFICATION NUMBER:
F050 ATC H.

SYSTEM NAME:
Student Record of Training.

SYSTEM IDENTIFICATION NUMBER:
F050 ATC I.

SYSTEM NAME:
Defense English Language Management Information System (DELMIS).

SYSTEM IDENTIFICATION NUMBER:
F050 ATC J.

SYSTEM NAME:
Branch Level Training Management System (BLTMS).

SYSTEM IDENTIFICATION NUMBER:
F050 AU F.

SYSTEM NAME:
Air University Academic Records.

SYSTEM IDENTIFICATION NUMBER:
F050 AU G.

SYSTEM NAME:
Student Record Folder.

SYSTEM IDENTIFICATION NUMBER:
F050 AU J.

SYSTEM NAME:
Student Questionnaire.

SYSTEM IDENTIFICATION NUMBER:
F050 AU K.

SYSTEM NAME:
Institutional Research Analysis System.

SYSTEM IDENTIFICATION NUMBER:
F050 ESC A.

SYSTEM NAME:
208XX Voice Processor Student History.

SYSTEM IDENTIFICATION NUMBER:
F050 ESC B.

SYSTEM NAME:
Training Progress.

SYSTEM IDENTIFICATION NUMBER:
F050 MAC A.

SYSTEM NAME:
Training Instructors (Academic Instructor Improvement/Evaluation).

SYSTEM IDENTIFICATION NUMBER:
F050 MAC B.

SYSTEM NAME:
Training Progress (Permanent Student Record).

SYSTEM IDENTIFICATION NUMBER:
F050 MAC C.

SYSTEM NAME:
Training Systems Research and Development Materials.

SYSTEM IDENTIFICATION NUMBER:
F050 SAC A.

SYSTEM NAME:
ADP Training Management System.

SYSTEM IDENTIFICATION NUMBER:
F050 SAC B.

SYSTEM NAME:
Instructional Systems Development (ISD) Evaluation.

SYSTEM IDENTIFICATION NUMBER:
F050 SAC C.

SYSTEM NAME:
SAC Operations Personnel Training Management System.

SYSTEM IDENTIFICATION NUMBER:
F050 SAFPA A.

SYSTEM NAME:
Graduates of Air Force Short Course in Communication (Oklahoma University).

SYSTEM IDENTIFICATION NUMBER:
F050 SAFPA B.

SYSTEM NAME:
Information officer Short Course Eligibility File.

SYSTEM IDENTIFICATION NUMBER:
F050 TAC A.

SYSTEM NAME:
Student Record File.

SYSTEM IDENTIFICATION NUMBER:
F050 USAFE A.

SYSTEM NAME:
Student Identification/Locator Card.

SYSTEM IDENTIFICATION NUMBER:
F051 AF A.

SYSTEM NAME:
Flying Training Records.

SYSTEM IDENTIFICATION NUMBER:
F051 AF B.

SYSTEM NAME:
Flying Training Records—Nonstudent.

SYSTEM IDENTIFICATION NUMBER:
F051 AF C.

SYSTEM NAME:
Flying Training Records—Student.

SYSTEM IDENTIFICATION NUMBER:
F051 MAC A.

SYSTEM NAME:
Air Crew Instruction Records.

SYSTEM IDENTIFICATION NUMBER:
F053 AFA A.

SYSTEM NAME:
Educational Research Data Base.

SYSTEM IDENTIFICATION NUMBER:
F053 AFA B.

SYSTEM NAME:
Preparatory School Records.

SYSTEM IDENTIFICATION NUMBER:
F053 AFA C.

SYSTEM NAME:
Admissions and Registrar Records.

SYSTEM IDENTIFICATION NUMBER:
F053 MP A.

SYSTEM NAME:
Air Force Academy Appointment and Separation Records.

SYSTEM IDENTIFICATION NUMBER:
F060 AF A.

SYSTEM NAME:
Air Force Operations Resource Management Systems (AFORMS).

SYSTEM IDENTIFICATION NUMBER:
F06- AF B.

SYSTEM NAME:
Contractor Flight Operations.

SYSTEM IDENTIFICATION NUMBER:
F060 ANG A.

SYSTEM NAME:
Progress Report, Undergraduate Pilot Training.

SYSTEM IDENTIFICATION NUMBER:
F066 AF A.

SYSTEM NAME:
Maintenance Management Information and Control System (MMICS).

SYSTEM IDENTIFICATION NUMBER:
F066 SAC A.

SYSTEM NAME:
ICBM Maintenance Standardization and Evaluation Program.

SYSTEM IDENTIFICATION NUMBER:
F067 AF A.

SYSTEM NAME:
Government Furnishings Issue Record.

SYSTEM IDENTIFICATION NUMBER:
F067 AF B.

SYSTEM NAME:
Base Service Store/Tool Issue Center Access.

SYSTEM IDENTIFICATION NUMBER:
F067 AF LE A.

SYSTEM NAME:
Personal Clothing and Equipment Record.

SYSTEM IDENTIFICATION NUMBER:
F067 AFSC A.

SYSTEM NAME:
Equipment Maintenance Management Program.

SYSTEM IDENTIFICATION NUMBER:
F070 AF AFO A.

SYSTEM NAME:
Accounts Payable Records.

SYSTEM IDENTIFICATION NUMBER:
F075 AA A.

SYSTEM NAME:
Office, Secretary of Air Force Travel Files.

SYSTEM IDENTIFICATION NUMBER:
F075 AF DP A.

SYSTEM NAME:
Application for Early Return of Dependents.

SYSTEM IDENTIFICATION NUMBER:
F075 AF LE A.

SYSTEM NAME:
Household Goods Nontemporary Storage System (NOTEMPS).

SYSTEM IDENTIFICATION NUMBER:
F075 AF LE B.

SYSTEM NAME:
Personal Property Movement Records.

SYSTEM IDENTIFICATION NUMBER:
F075 USAFE A.

SYSTEM NAME:
Customs Control Records.

SYSTEM IDENTIFICATION NUMBER:
F076 MAC A.

SYSTEM NAME:
Passenger Reservation and Movement System.

SYSTEM IDENTIFICATION NUMBER:
F077 AF LE A.

SYSTEM NAME:
Motor Vehicle Operators' Records.

SYSTEM IDENTIFICATION NUMBER:
F080 AFA A.

SYSTEM NAME:
Minnesota Multiphase Personality Inventory.

SYSTEM IDENTIFICATION NUMBER:
F080 AFSC A.

SYSTEM NAME:
Aeromedical Research Data.

SYSTEM IDENTIFICATION NUMBER:
F090 AF A.

SYSTEM NAME:
Visiting Officer Quarters-Transient Airman Quarters Reservation.

SYSTEM IDENTIFICATION NUMBER:
F090 AF B.

SYSTEM NAME:
Unaccompanied Personnel Quarters Assignment/Termination.

SYSTEM IDENTIFICATION NUMBER:
F100 AFCC A.

SYSTEM NAME:
Military Affiliate Radio System (MARS) Member Records.

SYSTEM IDENTIFICATION NUMBER:
F110 AF JA A.

SYSTEM NAME:
Legal Assistance Administration.

SYSTEM IDENTIFICATION NUMBER:
F110 AF JA B.

SYSTEM NAME:

Litigation Records (Except Patents).

SYSTEM IDENTIFICATION NUMBER:

F110 AFAFC H.

SYSTEM NAME:

Legal Administration Records of the Staff Judge Advocate.

SYSTEM IDENTIFICATION NUMBER:

F110 AFRES A.

SYSTEM NAME:

Reserve Judge Advocate Training Report

SYSTEM IDENTIFICATION NUMBER:

F110 JA A.

SYSTEM NAME:

Freedom of Information Act Appeals.

SYSTEM IDENTIFICATION NUMBER:

F110 JA B.

SYSTEM NAME:

Invention, Patent Application, Application Security, and Patent Files.

SYSTEM IDENTIFICATION NUMBER:

F110 JA C.

SYSTEM NAME:

Judge Advocate Personnel Records.

SYSTEM IDENTIFICATION NUMBER:

F110 JA D.

SYSTEM NAME:

Patent Infringement and Litigation Records.

SYSTEM IDENTIFICATION NUMBER:

F110 JA E

SYSTEM NAME:

Air Force Reserve Judge Advocate Personal Data.

SYSTEM IDENTIFICATION NUMBER:

F110 USAFE A.

SYSTEM NAME:

Civil Process Case Files.

SYSTEM IDENTIFICATION NUMBER:

F111 AF JA A.

SYSTEM NAME:

Automated Military Justice Analysis and Management System (AMJAMS).

SYSTEM IDENTIFICATION NUMBER:

F111 AF JA B.

SYSTEM NAME:

Court-Martial and Article 15 Records.

SYSTEM IDENTIFICATION NUMBER:

F112 AF JA A.

SYSTEM NAME:

Claims Administrative Management Program (CAMP).

SYSTEM IDENTIFICATION NUMBER:

F112 AF JA B.

SYSTEM NAME:

Claims Records.

SYSTEM IDENTIFICATION NUMBER:

F120 AF IG A.

SYSTEM NAME:

Inspector General Records—Freedom of Information Act.

SYSTEM IDENTIFICATION NUMBER:

F120 AF IG B.

SYSTEM NAME:

Inspector General Records.

SYSTEM IDENTIFICATION NUMBER:

F123 AFISC A.

SYSTEM NAME:

United States Air Force (USAF) Inspection Scheduling System.

SYSTEM IDENTIFICATION NUMBER:

F124 AF A.

SYSTEM NAME:

Counterintelligence Operations and Collection Records.

SYSTEM IDENTIFICATION NUMBER:

F124 AF B.

SYSTEM NAME:

Security and Related Investigative Records.

SYSTEM IDENTIFICATION NUMBER:

F124 AF C.

SYSTEM NAME:

Criminal Records.

SYSTEM IDENTIFICATION NUMBER:

F124 AF D.

SYSTEM NAME:

Investigative Support Records.

SYSTEM IDENTIFICATION NUMBER:

F124 AFOSI A.

SYSTEM NAME:

Badge and Credentials.

SYSTEM IDENTIFICATION NUMBER:

F124 AFOSI B.

SYSTEM NAME:

Investigative Applicant Processing Records.

SYSTEM IDENTIFICATION NUMBER:

F125 AF A.

SYSTEM NAME:

Correction and Rehabilitation Records.

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP A.

SYSTEM NAME:

Air Force Policy Statement—Firearms Safety and Use of Force.

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP B.

SYSTEM NAME:

Complaint/Incident Reports.

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP D

SYSTEM NAME:

Field Interview Card.

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP E.

SYSTEM NAME:

Security Police Automated System (SPAS).

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP F.

SYSTEM NAME:

Notification Letters to Persons Barred From Entry to Air Force Installations.

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP G.

SYSTEM NAME:

Pick-up or Restriction Order.

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP H.

SYSTEM NAME:

Provisional Pass.

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP I.

SYSTEM NAME:

Registration Records (Excluding Private Vehicle Records).

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP J.

SYSTEM NAME:

Serious Incident Reports.

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP K.

SYSTEM NAME:

Vehicle Administration Records.

SYSTEM IDENTIFICATION NUMBER:

F125 AF SP L.

SYSTEM NAME:

Traffic Accident and Violation Reports.

SYSTEM IDENTIFICATION NUMBER:

F125 AFSC A.

SYSTEM NAME:

AFSC Badge and Vehicle Control Records.

SYSTEM IDENTIFICATION NUMBER:

F125 ATC A.

SYSTEM NAME:

Behavioral Automated Research System (BARS).

SYSTEM IDENTIFICATION NUMBER:

F127 AFISC A.

SYSTEM NAME:

Safety Education File.

SYSTEM IDENTIFICATION NUMBER:

F160 AF SG A.

SYSTEM NAME:

USAF Hearing Conservation Record System.

SYSTEM IDENTIFICATION NUMBER:

F160 AF SG B.

SYSTEM NAME:

Medical Professional Staffing Records.

SYSTEM IDENTIFICATION NUMBER:

F160 AF SG C.

SYSTEM NAME:

Medical Treatment Facility Tumor Registry.

SYSTEM IDENTIFICATION NUMBER:

F160 AF SG D.

SYSTEM NAME:

Drug Abuse Rehabilitation Report System.

SYSTEM IDENTIFICATION NUMBER:

F160 AFA A.

SYSTEM NAME:

Cadet Hospital/Clinic Records.

SYSTEM IDENTIFICATION NUMBER:

F160 ARPC A.

SYSTEM NAME:

Physical Examination Reports Suspense File.

SYSTEM IDENTIFICATION NUMBER:

F160 DODMERB A.

SYSTEM NAME:

Department of Defense Medical Examination Review Board Medical Examination Files.

SYSTEM IDENTIFICATION NUMBER:

F160 MPC A.

SYSTEM NAME:

Medical Assignment Limitation Record System.

SYSTEM IDENTIFICATION NUMBER:

F160 SG A.

SYSTEM NAME:

Aircrew Standards Case File.

SYSTEM IDENTIFICATION NUMBER:

F161 AF SG A.

SYSTEM NAME:

Air Force Aerospace Physiology Training Programs.

SYSTEM IDENTIFICATION NUMBER:

F161 AF SG B.

SYSTEM NAME:

Compression Chamber Operation.

SYSTEM IDENTIFICATION NUMBER:

F161 AF SG C.

SYSTEM NAME:

USAF Master Radiation Exposure Registry.

SYSTEM IDENTIFICATION NUMBER:

F162 AF SG A.

SYSTEM NAME:

Dental Health Records.

SYSTEM IDENTIFICATION NUMBER:

F162 SG A.

SYSTEM NAME:

Dental Personnel Actions.

SYSTEM IDENTIFICATION NUMBER:

F168 AF SG S.

SYSTEM NAME:

Automated Medical/Dental Record System.

SYSTEM IDENTIFICATION NUMBER:

F168 AF SG B.

SYSTEM NAME:

Family Advocacy Program Record.

SYSTEM IDENTIFICATION NUMBER:

F168 AF SG C.

SYSTEM NAME:

Medical Record System.

SYSTEM IDENTIFICATION NUMBER:

F168 AF SG D.

SYSTEM NAME:

Medical Service Accounts.

SYSTEM IDENTIFICATION NUMBER:

F168 AF SG E.

SYSTEM NAME:

Nursing Service Records.

SYSTEM IDENTIFICATION NUMBER:

F168 AF SG F.

SYSTEM NAME:

Air Force Blood Program.

SYSTEM IDENTIFICATION NUMBER:

F168 TAC A.

SYSTEM NAME:

Physician Retention Program.

SYSTEM IDENTIFICATION NUMBER:

F175 AFAA A.

SYSTEM NAME:

Air Force Audit Agency Management Information System—Report File.

SYSTEM IDENTIFICATION NUMBER:

F176 AA A.

SYSTEM NAME:

Accounts Receivable.

SYSTEM IDENTIFICATION NUMBER:

F176 AF HC A.

SYSTEM NAME:

Chaplain Fund Service Contract File.

SYSTEM IDENTIFICATION NUMBER:

F176 AF MP A.

SYSTEM NAME:

Nonappropriated Fund Instrumentalities (NAFIs) Financial System.

SYSTEM IDENTIFICATION NUMBER:

F176 AF MP B.

SYSTEM NAME:

Nonappropriated Fund (AF NAF) Employee Insurance and Benefits System File.

SYSTEM IDENTIFICATION NUMBER:

F176 AF MP C.

SYSTEM NAME:

Morale, Welfare, and Recreation (MWR) Participation/Membership/ Training Records.

SYSTEM IDENTIFICATION NUMBER:

F176 AF MP D.

SYSTEM NAME:

Nonappropriated Funds Standard Payroll System.

SYSTEM IDENTIFICATION NUMBER:

F176 AFCC A.

SYSTEM NAME:

Individual Earning Data.

SYSTEM IDENTIFICATION NUMBER:
F177 AF AFC A.

SYSTEM NAME:
Accounts Receivable Records Maintained by Accounting and Finance.

SYSTEM IDENTIFICATION NUMBER:
F177 AF AFC B.

SYSTEM NAME:
Travel Records.

SYSTEM IDENTIFICATION NUMBER:
F177 AF AFC C.

SYSTEM NAME:
Air Reserve Pay and Allowance System (ARPAS).

SYSTEM IDENTIFICATION NUMBER:
F177 AF AFC D.

SYSTEM NAME:
Joint Uniform Military Pay System (JUMPS).

SYSTEM IDENTIFICATION NUMBER:
F177 AF AFC E.

SYSTEM NAME:
Reports of Survey.

SYSTEM IDENTIFICATION NUMBER:
F177 AF AFC F.

SYSTEM NAME:
Civilian Pay Records.

SYSTEM IDENTIFICATION NUMBER:
F177 AF SG A.

SYSTEM NAME:
Control Logs.

SYSTEM IDENTIFICATION NUMBER:
F177 AFA A.

SYSTEM NAME:
Cadet Accounting and Finance System.

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC A.

SYSTEM NAME:
Accounting and Finance Officer Accounts and Substantiating Documents.

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC B.

SYSTEM NAME:
Accrued Military Pay System, Discontinued.

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC C.

SYSTEM NAME:
Uniformed Services Savings Deposit Program (USSDP).

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC D.

SYSTEM NAME:
Claims Case File—Active Duty Casualty Case Records.

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC E.

SYSTEM NAME:
Claims Case File—Corrected Military Records.

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC F.

SYSTEM NAME:
Claims Case File—Missing in Action Data.

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC G.

SYSTEM NAME:
Indebtedness and Claims.

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC I.

SYSTEM NAME:
Loss of Funds Case Files.

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC J.

SYSTEM NAME:
Military Pay Records.

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC K.

SYSTEM NAME:
Pay and Allotment Records.

SYSTEM IDENTIFICATION NUMBER:
F177 AFAFC L.

SYSTEM NAME:
USAF Retired Pay System.

SYSTEM IDENTIFICATION NUMBER:
F177 ATC A.

SYSTEM NAME:
Air Force ROTC Cadet Pay System.

SYSTEM IDENTIFICATION NUMBER:
F178 AFCC A.

SYSTEM NAME:
Center Automated Manpower and Update System (CAMPUS).

SYSTEM IDENTIFICATION NUMBER:
F178 AFSC A.

SYSTEM NAME:
Rome Air Development Center (RADC) Manpower Resources Expenditure System.

SYSTEM IDENTIFICATION NUMBER:
F178 AFSC B.

SYSTEM NAME:
Manhour Accounting System (MAS).

SYSTEM IDENTIFICATION NUMBER:
F178 AFSC C.

SYSTEM NAME:
Integrated Management Information and Control System (IMICS).

SYSTEM IDENTIFICATION NUMBER:
F190 AF PA A.

SYSTEM NAME:
Special Events Planning—Protocol.

SYSTEM IDENTIFICATION NUMBER:
F190 AF PA B.

SYSTEM NAME:
Hometown New Release Background Data File.

SYSTEM IDENTIFICATION NUMBER:
F190 SAFPA A.

SYSTEM NAME:
Biographies of Officers and Key Civilians Assigned to SAF/PA.

SYSTEM IDENTIFICATION NUMBER:
F190 SAFPA B.

SYSTEM NAME:
Official Biographies.

SYSTEM IDENTIFICATION NUMBER:
F190 SAFPA C.

SYSTEM NAME:
Public Affairs References.

SYSTEM IDENTIFICATION NUMBER:
F200 AFIS A.

SYSTEM NAME:
Security File for Foreign Intelligence Collection.

SYSTEM IDENTIFICATION NUMBER:
F200 AFIS B.

SYSTEM NAME:
DIA Program for Foreign Intelligence Collection.

SYSTEM IDENTIFICATION NUMBER:
F205 AF A.

SYSTEM NAME:
Personnel Security Access Records.

SYSTEM IDENTIFICATION NUMBER:
F205 AF SP A.

SYSTEM NAME:
Special Security Files.

SYSTEM IDENTIFICATION NUMBER:
F205 AFIS A.

SYSTEM NAME:
Sensitive Compartmented Information Personnel Records.

SYSTEM IDENTIFICATION NUMBER:
F205 AFSC A.

SYSTEM NAME:
Space Human Assurance and Reliability Program (SHARP).

SYSTEM IDENTIFICATION NUMBER:
F205 AFSCO A.

SYSTEM NAME:
Special Security Case Files.

SYSTEM IDENTIFICATION NUMBER:
F205 AFSCO B.

SYSTEM NAME:
Presidential Support Files.

SYSTEM IDENTIFICATION NUMBER:
F205 AFSCO C.

SYSTEM NAME:
Personnel Security Clearance and Investigation Records.

SYSTEM IDENTIFICATION NUMBER:
F205 AFSP A.

SYSTEM NAME:
Requests for Access to Classified Information by Historical Researchers.

SYSTEM IDENTIFICATION NUMBER:
F210 ESC A.

SYSTEM NAME:
Historical Research and Retrieval System (HORRS).

SYSTEM IDENTIFICATION NUMBER:
F213 AF MP A.

SYSTEM NAME:
Individual Class Record Form.

SYSTEM IDENTIFICATION NUMBER:
F211 AF MP A.

SYSTEM NAME:
Family Services Volunteer Record.

SYSTEM IDENTIFICATION NUMBER:
F213 AFWB A.

SYSTEM NAME:
Air Force Educational Assistance Loans.

SYSTEM IDENTIFICATION NUMBER:
F215 AFA A.

SYSTEM NAME:
Library Authorized Patron File.

SYSTEM IDENTIFICATION NUMBER:
F215 AFA B.

SYSTEM NAME:
Library/Special Collections Records.

SYSTEM IDENTIFICATION NUMBER:
F215 AF DP A.

SYSTEM NAME:
Child Development/Youth Activities Records.

SYSTEM IDENTIFICATION NUMBER:
F215 AU A.

SYSTEM NAME:
Air University (AU) Library Patron Database.

SYSTEM IDENTIFICATION NUMBER:
F265 AFA A.

SYSTEM NAME:
Cadet Chaplain Records.

SYSTEM IDENTIFICATION NUMBER:
F265 HC A.

SYSTEM NAME:
Non-Chaplain Ecclesiastical Endorsement Files.

SYSTEM IDENTIFICATION NUMBER:
F265 HC B.

SYSTEM NAME:
Chaplain Personnel Roster.

SYSTEM IDENTIFICATION NUMBER:
H265 HC C.

SYSTEM NAME:
Directory of Active Duty and Retired Chaplains.

SYSTEM IDENTIFICATION NUMBER:
F265 HC D.

SYSTEM NAME:
Records on Baptisms, Marriages and Funerals by Air Force Chaplains.

SYSTEM IDENTIFICATION NUMBER:
F900 AF MP A.

SYSTEM NAME:
Military Decorations.

SYSTEM IDENTIFICATION NUMBER:
F900 AF MP B.

SYSTEM NAME:
Suggestions, Inventions, Scientific Achievements.

SYSTEM IDENTIFICATION NUMBER:
F900 AFA A.

SYSTEM NAME:
Cadet Awards Files.

SYSTEM IDENTIFICATION NUMBER:
F900 AFA B.

SYSTEM NAME:
Thomas D. White National Defense Award.

SYSTEM IDENTIFICATION NUMBER:
F900 Day A.

SYSTEM NAME:
Annual Outstanding Air Force Administration and Executive Support Awards.

SYSTEM IDENTIFICATION NUMBER:
F900 TAC A.

SYSTEM NAME:
Special Awards File.

Defense Mapping Agency

SYSTEM IDENTIFICATION NUMBER:
B0210–06 HQHTASID.

SYSTEM NAME:
Inspector General Investigative Files.

SYSTEM IDENTIFICATION NUMBER:
B0210–07 HQHTASID.

SYSTEM NAME:
Inspector General Complaint Files.

SYSTEM IDENTIFICATION NUMBER:
B0228–04 HT.

SYSTEM NAME:
Historical Photographic Files.

SYSTEM IDENTIFICATION NUMBER:
B0228–10 HT.

SYSTEM NAME:
Installation Historical Files.

SYSTEM IDENTIFICATION NUMBER:
B0302–13 HTA.

SYSTEM NAME:
Record of Accounts Receivable.

SYSTEM IDENTIFICATION NUMBER:
B0302–21 HTA.

SYSTEM NAME:
Record of Travel Payments.

SYSTEM IDENTIFICATION NUMBER:
B0303–01 A.

SYSTEM NAME:
Individual Pay Record Files.

SYSTEM IDENTIFICATION NUMBER:
B0303–05 A.

SYSTEM NAME:
Leave Record Files.

SYSTEM IDENTIFICATION NUMBER:
B0303–20 HTA.

SYSTEM NAME:
Compensation Data Request Files.

SYSTEM IDENTIFICATION NUMBER:
B0401–02 HQHTA.

SYSTEM NAME:
Statements of Employment and Financial Interest and Ethics Act Files.

SYSTEM IDENTIFICATION NUMBER:
B0401–03 HQHTA.

SYSTEM NAME:
Legal Assistance Case Files.

SYSTEM IDENTIFICATION NUMBER:
B0402–05 HQHTA.

SYSTEM NAME:
Legal Claims File.

SYSTEM IDENTIFICATION NUMBER:
B0408–11 HQHTASID.

SYSTEM NAME:
Biography Files.

SYSTEM IDENTIFICATION NUMBER:
B0502–03 HQHTASP.

SYSTEM NAME:
Master Billet/Access Record.

SYSTEM IDENTIFICATION NUMBER:
B0502–03–2 HQHTASISP.

SYSTEM NAME:
Classified Material Access Files.

SYSTEM IDENTIFICATION NUMBER:
B0502–15 HQHTASISP.

SYSTEM NAME:
Security Compromise Case Files.

SYSTEM IDENTIFICATION NUMBER:
B0503–02 HTASISP.

SYSTEM NAME:
Security Identification Accountability Files.

SYSTEM IDENTIFICATION NUMBER:
B0503–03 HTA.

SYSTEM NAME:
Firearms Authorization Files.

SYSTEM IDENTIFICATION NUMBER:
B0503–04 HQHTAI.

SYSTEM NAME:
Parking Permit Control Files.

SYSTEM IDENTIFICATION NUMBER:
B0503–05 HQHTAI.

SYSTEM NAME:
Vehicle Registration and Driver Record File.

SYSTEM IDENTIFICATION NUMBER:
B0503–09 HQHT SI.

SYSTEM NAME:
Key Accountability Files.

SYSTEM IDENTIFICATION NUMBER:
B0504–01 HQHTSP.

SYSTEM NAME:
Personnel Special Security and Investigative Files.

SYSTEM IDENTIFICATION NUMBER:
B0504–01–2 HQHTASISP.

SYSTEM NAME:
Personnel Security Files.

SYSTEM IDENTIFICATION NUMBER:
B0614–01 HQ.

SYSTEM NAME:
Official Records (Military) Files and Extracts.

SYSTEM IDENTIFICATION NUMBER:
B0614–02 HQA.

SYSTEM NAME:
Military Services Administrative Record Files.

SYSTEM IDENTIFICATION NUMBER:
B0615–07 HQHTASI.

SYSTEM NAME:
Safety Awards Files.

SYSTEM IDENTIFICATION NUMBER:
B0901–04 HTA.

SYSTEM NAME:
Civilian Employee Health Clinic Record.

SYSTEM IDENTIFICATION NUMBER:
B0901–07 HTAI.

SYSTEM NAME:
Alcoholism and Drug Abuse Files.

SYSTEM IDENTIFICATION NUMBER:
B0901–08 HQCPSOHTA.

SYSTEM NAME:
Civilian Employee Drug Abuse Testing Program Records.

SYSTEM IDENTIFICATION NUMBER:
B1202–17 HTA.

SYSTEM NAME:
Contracting Officer Designation Files.

SYSTEM IDENTIFICATION NUMBER:
B1205–05 HTA.

SYSTEM NAME:
Property Officer Designation Files.

SYSTEM IDENTIFICATION NUMBER:
B1205–23 HTASID.

SYSTEM NAME:
Report of Survey Files.

SYSTEM IDENTIFICATION NUMBER:
B1206–02 HTA.

SYSTEM NAME:
Self Service Store Authorization Card Files.

SYSTEM IDENTIFICATION NUMBER:
B1208–06 HTA.

SYSTEM NAME:
Motor Vehicle Operator's Permits and Qualification Files.

SYSTEM IDENTIFICATION NUMBER:
B1211–03 HQHTAI.

SYSTEM NAME:
Passport Files.

SYSTEM IDENTIFICATION NUMBER:
B1211–07 HQHTASDISP.

SYSTEM NAME:
Individual Government Transportation Files.

Defense Contract Audit Agency

SYSTEM IDENTIFICATION NUMBER:
RDCAA 152.1.

SYSTEM NAME:
Security Information System (SIS).

SYSTEM IDENTIFICATION NUMBER:
RDCAA 152.2.

SYSTEM NAME:
Personnel Security Data Files.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 152.5.

SYSTEM NAME:
Notification of Security Determinations.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 152.6.

SYSTEM NAME:
Regional and DCAI Security Clearance Request Files.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 152.7.

SYSTEM NAME:
Clearance Certification.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 152.17.

SYSTEM NAME:
Security Status Master List.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 152.22.

SYSTEM NAME:
Classified Information Nondisclosure Agreement (NdA).

SYSTEM IDENTIFICATION NUMBER:
RDCAA 160.5.

SYSTEM NAME:
Travel Orders.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 211.11.

SYSTEM NAME:
Drug-Free Federal Workplace Records.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 240.3.

SYSTEM NAME:
Legal Opinions.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 240.5.

SYSTEM NAME:
Standards of Conduct, Conflict of Interest.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 358.3.

SYSTEM NAME:
Grievance and Appeal Files.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 367.5.

SYSTEM NAME:
Employee Assistance Program (EAP) Counseling Records.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 371.5.

SYSTEM NAME:
Locator Records.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 440.2.

SYSTEM NAME:
Time and Attendance Reports.

SYSTEM IDENTIFICATION NUMBER:
RDCAA 590.8.

SYSTEM NAME:
Field Audit Office Management Information System (FMIS).

SYSTEM IDENTIFICATION NUMBER:
RDCAA 590.9.

SYSTEM NAME:
DCAA Automated Personnel Inventory System (APIS).

SYSTEM IDENTIFICATION NUMBER:
V1–01.

SYSTEM NAME:
Privacy and Freedom of Information Request Records.

SYSTEM IDENTIFICATION NUMBER:
V1–02.

SYSTEM NAME:
DIS Personnel Locator System.

SYSTEM IDENTIFICATION NUMBER:
V2–01.

SYSTEM NAME:
Inspector General Complaints.

SYSTEM IDENTIFICATION NUMBER:
V3–01.

SYSTEM NAME:
EEO Complaints.

SYSTEM IDENTIFICATION NUMBER:
V4–01.

SYSTEM NAME:
Personnel Records.

SYSTEM IDENTIFICATION NUMBER:
V4–04.

SYSTEM NAME:
Applicant Records.

SYSTEM IDENTIFICATION NUMBER:
V4–06.

SYSTEM NAME:
Federal Personnel Management System (FPMS).

SYSTEM IDENTIFICATION NUMBER:
V4–07.

SYSTEM NAME:
Adverse Actions, Grievance Files, and Administrative Appeals.

SYSTEM IDENTIFICATION NUMBER:
V4–09.

SYSTEM NAME:
Merit Promotion Plan Records.

SYSTEM IDENTIFICATION NUMBER:
V4–11.

SYSTEM NAME:
DIS Drug-Free Workplace Files.

SYSTEM IDENTIFICATION NUMBER:
V4–12.

SYSTEM NAME:
DIS Employee Assistance Program Records.

SYSTEM IDENTIFICATION NUMBER:
V5–01.

SYSTEM NAME:
Investigative Files System.

SYSTEM IDENTIFICATION NUMBER:
V5–02.

SYSTEM NAME:
Defense Cenral Index of Investigations (DCII).

SYSTEM IDENTIFICATION NUMBER:
V5–03.

SYSTEM NAME:
Defense Integrated Management System (DIMS).

SYSTEM IDENTIFICATION NUMBER:
V5–05.

SYSTEM NAME:
Subject and Reference Locator Records.

SYSTEM IDENTIFICATION NUMBER:
V6–01.

SYSTEM NAME:
Personnel Security Files (PSF's).

SYSTEM IDENTIFICATION NUMBER:
V6–02.

SYSTEM NAME:
Sensitive Compartmented Information (SCI) Access File.

SYSTEM IDENTIFICATION NUMBER:
V7–01.

SYSTEM NAME:
Enrollment, Registration and Course Completion Record.

SYSTEM IDENTIFICATION NUMBER:
V7–02.

SYSTEM NAME:
Guest/Instructor Identification Records.

SYSTEM IDENTIFICATION NUMBER:
V8–01.

SYSTEM NAME:
Industrial Personnel Security Clearance File.

[FR Doc. 91–16624 Filed 7–12–91; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Colorado School of Mines; Grant

AGENCY: Department of Energy (DOE).

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to the Colorado School of Mines (CSM) in the amount of $75,000 for fiscal year 91, in partial support of the FE Annual Field Institute on Energy and Minerals Opportunities, Problems and Policy Issues. Pursuant to

§ 600.7(b)(2)(i)(B) of the DOE Financial Assistance Rules, 10 CFR part 600, DOE has determined that eligibility for this grant award shall be limited to the Colorado School of Mines.

PROCUREMENT REQUEST NUMBER: 01–91FE62420.000.

FOR FURTHER INFORMATION CONTACT: L. John Wells, U.S. Department of Energy, Office of Placement and Administration, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6388.

SUPPLEMENTARY INFORMATION: Each year since 1978, the Colorado School of Mines has successfully conducted a Summer Institute on Western Energy and Minerals Opportunities which has provided important background information for Congressional and Executive staff engaged in developing energy related legislation. The Colorado School of Mines is the only insitute with this amount of previous experience in conducting this particular summer institute which has given CSM a capability that is currently unique. There is no other such source now providing a comparable session. The CSM Summer Field Institute is primarily for senior staff members from Congress, GAO, OMB etc. The Institute holds its two one-week programs in July and during the Congressional break in August for each year of the program.

Therefore, the DOE has determined that this award to the Colorado School of Mines on a restricted eligibility basis is appropriate.

Jeffrey Rubenstein,

Director, Operations Division "A", Office of Placement and Administration.

[FR Doc. 91–16768 Filed 7–12–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ST91–8889–000 through ST91–9343–000]

Texas Eastern Transmission Corp. et al.; Self-Implementing Transactions

July 8, 1991.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under section 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Affiliated Y/N	Date commenced	Projected termination date
ST91–8889	Texas Eastern Transmission Corp.	CNG Transmission Corp	06–03–91	G	850,000	N	05–01–91	Indef.
ST91–8890	United Gas Pipe Line Co	Sonat Marketing Co	06–03–91	G–S	25,750	N	05–23–91	09–20–91.
ST91–8891	Williston Basin Interstate P/L Co.	K N Engery, Inc	06–03–91	B	16,660	N	05–03–91	03–31–92.
ST91–8892	Williston Bain Interstate P/L Co.	Koch Hydrocarbon Co	06–03–91	G–S	16,600	N	05–03–91	05–01–93.
ST91–8893	El Paso Natural Gas Co	Bridgegas U.S.A. Inc	06–03–91	G–S	206,000	Y	05–17–91	09–14–91.
ST91–8894	Viking Gas Transmission Co	Enron Gas Marketing, Inc	06–03–91	G–S	200,000	N	04–24–91	08–22–91.
ST91–8895	Viking Gas Transmission Co	Poco Petroleums Ltd	06–03–91	G–S	207,450	N	03–01–91	06–29–91.
ST91–8896	Viking Gas Transmission Co	Wisconsin Public Service Corp.	06–03–91	G–S	11,820	N	02–01–91	06–01–91.
ST91–8897	Great Lakes Gas Transmission L.P.	Northern States Power Co	06–03–91	G–S	75,000	N	05–02–91	08–29–91.
ST91–8898	Great Lakes Gas Transmission L.P.	Brymore Energy, Inc	06–03–91	G–S	500,000	N	05–02–91	08–29–91.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Affiliated Y/N	Date commenced	Projected termination date
ST91-8899	Great Lakes Gas Transmission L.P.	Dekalb Energy Co	06-03-91	G-S	125,000	N	05-02-91	08-29-91
ST91-8900	Houston Pipe Line Co	El Paso Natural Gas Co	06-03-91	C	10,000	N	01-01-91	Indef
ST91-8901	Houston Pipe Line Co	Natural Gas P/L Co. of America.	06-03-91	C	50,000	N	01-01-91	Indef.
ST91-8902	Houston Pipe Line Co	Northern Natural Gas Co	06-03-91	C	5,000	N	02-01-91	Indef.
ST91-8903	Houston Pipe Line Co	Black Marlin Pipeline Co	06-03-91	C	50,000	N	02-01-91	Indef.
ST91-8904	Houston Pipe Line Co	Sabine Pipeline Co	06-03-91	C	15,000	N	02-13-91	Indef.
ST91-8905	Houston Pipe Line Co	Tennessee Gas Pipeline Co	06-03-91	C	10,000	N	02-02-91	Indef.
ST91-8906	Oasis Pipe Line Co	El Paso Natural Gas Co	06-03-91	C	25,000	N	04-15-91	Indef.
ST91-8907	Oasis Pipe Line Co	El Paso Natural Gas Co	06-03-91	C	100,000	N	03-15-91	Indef.
ST91-8908	Oasis Pipe Line Co	El Paso Natural Gas Co	06-03-91	C	50,000	N	01-19-91	Indef.
ST91-8909	Oasis Pipe Line Co	Northern Natural Gas Co	06-03-91	C	100,000	N	01-29-91	Indef.
ST91-8910	CNG Transmission Corp	Hope Gas, Inc	06-03-91	B	500	N	01-23-91	Indef.
ST91-8911	CNG Transmission Corp	New York State Elect. & Gas Corp.	06-03-91	B	15,000	N	01-18-91	Indef.
ST91-8912	CNG Transmission Corp	Hope Gas, Inc	06-03-91	B	2,000	N	12-28-91	Indef.
ST91-8913	CNG Transmission Corp	East Ohio Gas Co	06-03-91	B	1,755	N	05-20-91	Indef.
ST91-8914	CNG Transmission Corp	New York State Elect. & Gas Corp.	06-03-91	B	20,000	N	11-16-90	Indef.
ST91-8915	CNG Transmission Corp	Texas Eastern Transmission Corp.	06-03-91	G	50,000	N	01-02-91	Indef.
ST91-8916	CNG Transmission Corp	New York State Elect. & Gas Corp.	06-03-91	B	2,344	N	01-01-88	Indef.
ST91-8917	CNG Transmission Corp	Niagara Mohawk Power Corp	06-03-91	B	12,000	N	01-01-91	Indef.
ST91-8918	CNG Transmission Corp	Meridian Marketing & Transportation.	06-03-91	G-S	1,200	N	05-02-91	08-28-91.
ST91-8919	CNG Transmission Corp	Endevco Oil & Gas	06-03-91	G-S	1,000	N	05-04-91	08-30-91.
ST91-8920	CNG Transmission Corp	Brooklyn Interstate	06-03-91	G-S	50,000	N	05-09-91	09-06-91.
ST91-8921	CNG Transmission Corp	Consolidated Fuel	06-03-91	G-S	10,000	N	05-04-91	08-30-91.
ST91-8922	National Fuel Gas Supply Corp.	Columbia Gas Development Corp.	05-31-91	G-S	50,000	N	04-30-91	08-28-91.
ST91-8923	National Fuel Gas Supply Corp.	Indeck-Yerkes, L.P	05-31-91	G-S	12,000	N	05-14-91	09-11-91.
ST91-8924	National Fuel Gas Supply Corp.	Hadson Gas Systems, Inc	05-31-91	G-S	20,000	N	05-14-91	09-11-91.
ST91-8925	ANR Pipeline Co	Public Service Electric & Gas Co.	06-04-91	B	7,000	Y	05-14-91	Indef.
ST91-8926	ANR Pipeline Co	CNG Trading Co	06-04-91	G-S	50,000	Y	05-09-91	09-05-91.
ST91-8927	ANR Pipeline Co	Tejas Power Corp	06-04-91	G-S	80,000	Y	05-11-91	09-07-91.
ST91-8928	ANR Pipeline Co	Northern Indiana Public Service Co.	06-04-91	B	25,000	Y	05-14-91	Indef.
ST91-8929	ANR Pipeline Co	Wisconsin Gas Co	06-04-91	B	75,000	Y	05-22-91	Indef.
ST91-8930	ANR Pipeline Co	Wisconsin Gas Co	06-04-91	B	75,000	Y	05-22-91	Indef.
ST91-8931	Transcontinental Gas P/L Corp.	New Jersey Natural Gas Co	06-04-91	B	193,000	N	11-21-90	Indef.
ST91-8932	Transcontinental Gas P/L Corp.	Olympic Pipeline Co	06-05-91	B	20,000	N	05-14-91	Indef.
ST91-8933	Transcontinental Gas P/L Corp.	Columbia Gas Transmission Corp.	06-04-91	G	770,000	N	05-15-91	Indef.
ST91-8934	Transcontinental Gas P/L Corp.	Mississippi Fuel Co	06-04-91	B	3,000,000	N	05-15-91	Indef.
ST91-8935	Tennessee Gas Pipeline Co	East Ohio Gas Co	06-05-91	B	6,000	N	05-22-91	Indef.
ST91-8936	U-T Offshore System	Williams Gas Marketing Co	06-05-91	K-S	50,000	N	05-17-91	09-13-91.
ST91-8937	Columbia Gulf Transmission Co.	Chevron U S.A., Inc	06-05-91	G-S	10,000	N	06-01-91	09-28-91.
ST91-8938	Columbia Gulf Transmission Co.	NGC Transportation, Inc	06-05-91	G-S	100,000	N	06-02-91	09-29-91.
ST91-8939	Columbia Gulf Transmission Co.	Adobe Gas Marketing Co	06-05-91	G-S	100,000	N	06-01-91	09-28-91.
ST91-8940	Transwestern Pipeline Co	Sunrise Energy Co	06-06-91	G-S	30,000	N	05-17-91	09-14-91
ST91-8941	Transwestern Pipeline Co	Enron Gas Marketing, Inc	06-06-91	G-S	100,000	Y	05-22-91	09-19-91
ST91-8942	Arkla Energy Resources	Enogex Inc	06-06-91	B	75,000	N	10-02-90	Indef.
ST91-8943	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	06-06-91	G-S	206,000	N	05-24-91	09-21-91.
ST91-8944	Trailblazer Pipeline Co	Northern Illinois Gas Co	06-06-91	B	353,000	N	05-13-91	Indef.
ST91-8945	Transamerican Gas Trans. Corp.	Peoples Gas Light & Coke Co.	06-06-91	C	3,000	N	03-07-90	Indef.
ST91-8946	Transamerican Gas Trans. Corp.	United Gas Pipe Line Co	06-06-91	C	25,000	N	06-15-90	Indef.
ST91-8947	Transamerican Gas Trans. Corp.	Tennessee Gas Pipeline Co	06-06-91	C	5,000	N	12-08-90	Indef.
ST91-8948	Transamerican Gas Trans. Corp.	Panandle Eastern Pipe Line Co.	06-06-91	C	10,000	N	12-22-90	Indef.
ST91-8949	Transamerican Gas Trans. Corp.	Tennessee Gas Pipeline Co	06-06-91	C	5,000	N	12-12-90	Indef.
ST91-8950	Transamerican Gas Trans. Corp.	Philadelphia Electric Co	06-06-91	C	20,000	N	01-19-91	Indef.
ST91-8951	Transamerican Gas Trans. Corp.	San Diego Gas & Electric	06-06-91	C	10,000	N	09-20-90	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Affiliated Y/N	Date commenced	Projected termination date
ST91-8952	Transamerican Gas Trans. Corp.	LGS Pipeline, Inc	06-06-91	C	5,000	N	03-28-90	Indef.
ST91-8953	Transamerican Gas Trans. Corp.	Petroleos Mexicanos	06-06-91	C	20,000	N	06-07-91	Indef.
ST91-8954	Transamerican Gas Trans. Corp.	El Paso Natural Gas Co	06-06-91	C	10,000	N	07-21-90	Indef.
ST91-8955	Transamerican Gas Trans. Corp.	El Paso Natural Gas Co	06-06-91	C	5,000	N	12-26-90	Indef.
ST91-8956	Transamerican Gas Trans. Corp.	Northern Illinois Gas Co	06-06-91	C	500	N	02-13-90	Indef.
ST91-8957	Transamerican Gas Trans. Corp.	Trunkline Gas Co	06-06-91	C	5,000	N	11-01-90	Indef.
ST91-8959	Transamerican Gas Trans. Corp.	Consumers Power Co	06-06-91	C	25,000	N	07-17-90	Indef.
ST91-8960	Transamerican Gas Trans. Corp.	United Gas Pipe Line Co	06-06-91	C	25,000	N	01-11-90	Indef.
ST91-8962	Transamerican Gas Trans. Corp.	United Gas Pipe Line Co	06-06-91	C	20,000	N	01-11-90	Indef.
ST91-8963	Transamerican Gas Trans. Corp.	Florida Gas Transmission Co	06-06-91	C	5,000	N	01-12-90	Indef.
ST91-8964	Transamerican Gas Trans. Corp.	United Gas Pipe Line Co	06-06-91	C	5,000	N	12-13-90	Indef.
ST91-8965	Equitrans, Inc	Philadelphia Gas Works	06-06-91	G-S	9,685	N	04-01-91	07-29-91.
ST91-8966	Arkla Energy Resources	VHC Gas Systems, L.P	06-06-91	G-S	200,000	N	05-01-91	08-29-91.
ST91-8967	Arkla Energy Resources	Arkla Louisiana Gas Co	06-06-91	B	4,500	Y	05-01-91	Indef.
ST91-8969	Natural Gas P/L Co. of America.	Texaco Producing, Inc	06-07-91	G-S	50,000	N	10-01-90	Indef.
ST91-8970	Natural Gas P/L Co. of America.	Access Energy Corp	06-07-91	G-S	3,000	N	10-01-90	02-01-91
ST91-8971	Natural Gas P/L Co. of America.	Northern Illinois Gas Co	06-07-91	B	100,000	N	05-09-91	Indef.
ST91-8972	Natural Gas P/L Co. of America.	Southern California Gas Co	06-07-91	B	250,000	N	05-09-91	Indef.
ST91-8976	Williston Basin Interstate P/L Co.	Koch Hydrocarbon Co	06-07-91	G-S	5,142	N	05-08-91	05-31-91.
ST91-8977	United Gas Pipe Lin eCo	Eagle Natural Gas Co	06-07-91	G-S	25,750	N	05-28-91	09-25-91.
ST91-8978	Texas Gas Transmission Corp.	Western Kentucky Gas Co	06-07-91	B	3,000	N	06-01-91	Indef.
ST91-8979	Texas Gas Transmission Corp.	Bridgeline Gas Distribution Co	06-07-91	B	40,000	N	05-24-91	Indef.
ST91-8980	Texas Gas Transmission Corp.	Exxon Corp	06-07-91	G-S	100,000	N	05-31-91	09-27-91.
ST91-8981	Texas Gas Transmission Corp.	Exxon Corp	06-07-91	G-S	100,000	N	05-31-91	09-27-91.
ST91-8982	Texas Gas Transmission Corp.	Exxon Corp	06-07-91	G-S	100,000	N	05-31-91	09-27-91.
ST91-8983	Northern Natural Gas Co	Llano, Inc	06-07-91	B	14,000	N	05-07-91	Indef.
ST91-8984	Louisiana-Nevada Transit Co	Cokinos Natural Gas Co	06-07-91	G-S	5,000	N	06-01-91	09-28-91.
ST91-8985	Mississippi River Trans. Corp	Torch Energy Marketing, Inc	06-10-91	B	50,000	N	05-09-91	Indef.
ST91-8986	Stingray Pipeline Co	CNG Producing Co	06-10-91	K-S	50,000	N	05-10-91	09-07-91.
ST91-8987	Tennessee Gas Pipeline Co	Yankee Gas Services Co	06-10-91	B	118,700	N	05-11-91	Indef.
ST91-8988	Tennessee Gas Pipeline Co	Granite State Gas Trans., Inc	06-10-91	B	118,700	N	05-11-91	Indef.
ST91-8989	Tennessee Gas Pipeline Co	Fitchburg Gas and Elect. Light Co.	06-10-91	B	118,700	N	05-11-91	Indef.
ST91-8990	Panhandle Eastern Pipe Line Co.	East Ohio Gas Co	06-10-91	B	30,000	N	05-01-91	Indef.
ST91-8991	Panhandle Eastern Pipe Line Co.	East Ohio Gas Co	06-10-91	B	5,000	N	05-01-91	Indef.
ST91-8992	Panhandle Eastern Pipe Line Co.	East Ohio Gas Co	06-10-91	B	5,000	N	05-01-91	Indef.
ST91-8993	Enogex Inc	Arkla Energy Resources	06-11-91	C	10,000	N	05-23-91	Indef.
ST91-8994	Algonquin Gas Transmission Co.	Philbro Energy, Inc	06-11-91	G-S	100,000	N	05-12-91	09-09-91.
ST91-8995	Tennessee Gas Pipeline Co	East Ohio Gas Co	06-11-91	B	60,000	N	05-21-91	Indef.
ST91-8996	Tennessee Gas Pipeline Co	East Ohio Gas Co	06-11-91	B	25,000	N	05-01-91	Indef.
ST91-8997	ONG Transmission Co	Natural Gas P/L Co. of America.	06-11-91	C	25,000	N	12-01-90	11-30-92
ST91-8998	ONG Transmission Co	Arkla Energy Resources	06-11-91	C	100,000	N	04-05-91	04-04-93
ST91-8999	ONG Transmission Co.	Phillips Gas Pipeline Co	06-11-91	C	50,000	N	04-01-91	03-31-93
ST91-9000	Stingray Pipeline Co	Laser Marketing Co	06-12-91	K-S	4,100	N	05-03-91	08-31-91
ST91-9001	Northern Border Pipeline Co	K N Energy, Inc	06-12-91	G	16,000	N	05-28-91	05-31-93.
ST91-9002	Northern Border Pipeline Co	Aquila Energy Marketing Corp.	06-12-91	G-S	20,000	N	05-14-91	09-11-91
ST91-9003	Natural Gas P/L Co. of America.	CNG Producing Co	06-12-91	G-S	2,000	N	05-17-91	09-14-91.
ST91-9004	Natural Gas P/L Co. of America.	CNG Producing Co	06-12-91	G-S	20,000	N	05-17-91	09-14-91.
ST91-9005	Trunkline Gas Co	Enron Gas Marketing, Inc	06-12-91	G-S	100,000	N	05-22-91	09-19-91.
ST91-9006	Trunkline Gas Co	Louisiana Intrastate Gas Corp.	06-12-91	B	100,000	N	05-22-91	Indef.
ST91-9007	Trunkline Gas Co	Enron Gas Marketing, Inc	06-12-91	G-S	100,000	N	05-22-91	09-19-91.
ST91-9008	Trunkline Gas Co	BP Gas, Inc	06-12-91	G-S	15,000	N	05-25-91	09-22-91.
ST91-9009	Trunkline Gas Co	Enron Gas Marketing, Inc	06-12-91	G-S	100,000	N	05-24-91	09-21-91.
ST91-9010	Trunkline Gas Co	Enron Gas Marketing, Inc	06-12-91	G-S	50,000	N	05-22-91	09-19-91.
ST91-9010	Trunkline Gas Co	Enron Gas Marketing, Inc	06-12-91	G-S	50,000	N	05-22-91	09-19-91.
ST91-9011	Trunkline Gas Co	Exxon Corp	06-12-91	G-S	150,000	N	05-21-91	09-18-91.
ST91-9012	Trunkline Gas Co	Enron Gas marketing, Inc	06-12-91	G-S	50,000	N	05-24-91	09-21-91.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Affiliated Y/N	Date commenced	Projected termination date
ST91-9013	East Texas Gas Systems	Tennessee Gas Pipeline Co	06-13-91	C	550,000	N	11-01-90	Indef.
ST91-9014	East Texas Gas Systems	Texas Gas Transmission Co	06-13-91	C	550,000	N	11-01-90	Indef.
ST91-9015	East Texas Gas Systems	United Gas Pipe Line Co	06-13-91	C	550,000	N	11-01-90	Indef.
ST91-9016	East Texas Gas Systems	Tennessee Gas Pipeline Co	06-13-91	C	150,000	N	12-01-90	Indef.
ST91-9017	East Texas Gas Systems	Arkla Energy Co	06-13-91	C	550,000	N	11-01-90	Indef.
ST91-9018	East Texas Gas Systems	Natural Gas P/L Co. of America.	06-13-91	C	550,000	N	12-14-90	Indef.
ST91-9019	Williston Basin Interstate P/L Co.	Western Gas Resources, Inc	06-13-91	G-S	6,800	N	05-16-91	09-12-91.
ST91-9020	Questar Pipeline Co	John Brown E & C, Inc	06-14-91	G-S	300,000	N	06-01-91	09-28-91.
ST91-9021	Texas Gas Transmission Corp	Stellar Gas Co	06-14-91	G-S	35,000	N	06-01-91	09-28-91.
ST91-9022	Texas Gas Transmission Corp	Transco Energy Marketing Co	06-14-91	G-S	50,000	Y	06-01-91	09-28-91.
ST91-9023	Texas Gas Transmission Corp	Philbro Energy Inc	06-14-91	G-S	250,000	N	05-24-91	09-20-91.
ST91-9024	Texas Gas Transmission Corp	Hadson Gas systems, Inc	06-14-91	G-S	100,000	Y	06-02-91	09-29-91.
ST91-9025	Columbia Gas Transmission Corp.	Virginia Natural Gas, Inc	06-14-91	B	500	N	11-01-90	Indef.
ST91-9026	Columbia Gas Transmission Corp.	Virginia Natural Gas, Inc	06-14-91	B	6,000	N	11-01-90	Indef.
ST91-9027	Columbia Gas Transmission Corp.	Virginia Natural Gas, Inc	06-14-91	B	2,000	N	11-01-90	Indef.
ST91-9028	Valero Transmission, L.P	United Gas Pipe Line Co	06-14-91	C	12,500	N	05-25-91	01-01-99.
ST91-9029	Transtexas Pipeline	United Gas Pipe Line Co	06-14-91	C	12,500	N	05-25-91	01-01-99.
ST91-9030	Valero Transmission, L.P	Tennessee Gas Pipeline Co	06-14-91	C	12,500	N	05-24-91	01-01-99.
ST91-9031	Transtexas Pipeline	Tennessee Gas Pipeline Co	06-14-91	C	12,500	N	05-24-91	01-01-99.
ST91-9032	El Paso Natural Gas Co	Gasmark, Inc	06-14-91	G-S	8,034	Y	06-01-91	09-30-91.
ST91-9033	El Paso Natural Gas Co	Gasmark, Inc	06-14-91	G-S	1,030	Y	06-01-91	09-30-91.
ST91-9034	Delta natural Gas Co., Inc	Columbia Gulf Transmission Co.	06-14-91	C	1,500	N	06-01-91	Indef.
ST91-9035	Tennessee Gas Pipeline Co	East Ohio Gas Co	06-14-91	B	10,000	N	05-29-91	Indef.
ST91-9036	Tennessee Gas Pipeline Co	Cincinnati Gas & Elect. Co	06-14-91	B	15,000	N	05-16-91	Indef.
ST91-9037	Tennessee Gas Pipeline Co	Salmon Resources Ltd	06-14-91	G-S	25,000	N	06-01-91	09-29-91.
ST91-9040	Natural Gas P/L Co. of America.	Peoples Gas Light and Coke Co.	06-14-91	B	100,000	N	06-30-91	Indef.
ST91-9041	Natural Gas P/L Co. of America.	East Ohio Gas Co	06-17-91	B	500,000	N	05-17-91	Indef.
ST91-9042	Gas Co. of New Mexico	El Paso natural Gas Co	06-17-91	G-HT	1,000	N	05-12-91	04-24-92
ST91-9043	Channel Industries Gas Co	Transcontinental Gas P/L Corp.	06-17-91	C	75,000	N	05-17-91	Indef.
ST91-9044	Channel Industries Gas Co	Tennessee Gas Pipeline Co	06-17-91	C	75,000	N	05-17-91	Indef.
ST91-9045	Tennessee Gas Pipeline Co	CMS Gas marketing	06-17-91	G-S	50,000	N	05-19-91	09-16-91.
ST91-9046	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp.	06-17-91	G	2,400	N	06-02-91	11-21-91.
ST91-9047	Tennessee Gas Pipeline Co	Transcontinental Gas P/L Corp.	06-17-91	G	35,000	N	06-01-91	11-01-91.
ST91-9048	Tennessee Gas Pipeline Co	East Ohio Gas Co	06-17-91	B	20,000	N	06-02-91	Indef.
ST91-9049	Tennessee Gas Pipeline Co	East Ohio Gas Co	06-17-91	B	150,000	N	05-01-91	Indef.
ST91-9050	Trunkline Gas Co	Citizens Gas Supply Corp	06-17-91	G-S	120,000	N	04-23-91	08-21-91
ST91-9051	Williams natural Gas Co	Panoak Gas Co., Inc	06-17-91	G-S	2,800	N	05-17-91	09-13-91.
ST91-9052	Mississippi River Trans. Corp	Bridgegas U.S.A	06-17-91	G-S	1,000	N	05-31-91	09-28-91
ST91-9053	Tennessee Gas Pipeline Co	Orange & Rockland Utilities, Inc.	06-17-91	G-S	50,000	N	06-04-91	10-02-91.
ST91-9054	Columbia Gulf Transmission Co.	Enron Gas Marketing, Inc	06-17-91	G-S	20,000	N	06-04-91	10-10-91.
ST91-9055	Tennessee Gas Pipeline Co	Florida Gas Transmission Co	06-18-91	B	10,000	N	05-21-91	11-21-91.
ST91-9056	Tennessee Gas Pipeline Co	East Ohio Gas Co	06-18-91	B	25,000	N	06-23-91	Indef.
ST91-9057	United Gas Pipe Line Co	Red River Gas Co	06-18-91	G-S	1,030	N	06-01-91	09-29-91.
ST91-9058	United Gas Pipe Line Co	Equitable Resources Marketing Co.	06-18-91	G-S	257,500	N	06-07-91	10-05-91.
ST91-9059	United Gas Pipe Line Co	Production Gathering Co	06-18-91	G-S	257,500	N	06-01-91	09-29-91.
ST91-9060	United Gas Pipe Line Co	Unocal Exploration Corp	06-18-91	G-S	25,750	N	06-01-91	09-29-91.
ST91-9061	Columbia Gas Transmission Corp.	Dayton Power & Light Co	06-18-91	G-S	5,000	Y	06-02-91	09-30-91.
ST91-9062	Exxon Gas System, Inc	Texas Eastern Transmission Corp.	06-18-91	C	120,000	N	02-01-91	Indef.
ST91-9063	Natural Gas P/L Co. of America.	O & R Energy, Inc	06-19-91	G-S	120,000	N	05-20-91	09-17-91.
ST91-9064	ONG Transmission Co	Panhandle Eastern Pipe Line Co.	06-19-91	C	50,000	N	06-05-91	06-04-93.
ST91-9065	ONG Transmission Co	Panhandle Eastern Pipe Line Co.	06-19-91	C	50,000	N	05-24-91	05-23-93.
ST91-9066	ONG Transmission Co	Panhandle Eastern Pipe Line Co.	06-19-91	C	50,000	N	05-24-91	05-23-93.
ST91-9067	Arkla Energy Resources	Arkla Louisiana Gas Co	06-19-91	B	15,000	Y	05-01-91	Indef.
ST91-9068	Arkla Energy Resources	Arkla Louisiana Gas Co	06-19-91	B	200,000	Y	05-01-91	Indef.
ST91-9069	Arkla Energy Resources	Arkla Louisiana Gas Co	06-19-91	B	10,000	Y	05-01-91	Indef.
ST91-9070	Arkla Energy Resources	Cincinnati Gas & Electric, et al.	06-19-91	B	45,000	N	06-01-91	Indef.
ST91-9071	Arkla Energy Resources	MEGA Natural Gas Co	06-19-91	G-S	150,000	N	06-01-91	09-29-91.
ST91-9072	Tennessee Gas Pipeline Co	East Ohio Gas Co	06-20-91	B	30,000	N	05-25-91	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Affiliated Y/N	Date commenced	Projected termination date
ST91-9074	United Texas Transmission Co.	Tennessee Gas Pipeline Co	06-20-91	C	50,000	N	05-16-91	Indef.
ST91-9075	Enogex Inc.	Arkla Energy Resources	06-20-91	C	75,000	N	05-23-91	Indef.
ST91-9076	Enogex Inc	Phillips Gas Pipeline Co	06-20-91	C	75,000	N	06-01-91	Indef.
ST91-9077	Florida Gas Transmission Co	Georgia Pacific Corp	06-20-91	G-S	4,932	N	06-01-91	09-28-91.
ST91-9078	Florida Gas Transmission Co	St. Joe Natural Gas Co	06-20-91	G-S	304	N	06-01-91	09-28-91.
ST91-9079	Florida Gas Transmission Co	St. Joe Natural Gas Co	06-21-91	G-S	2,378	N	06-01-91	09-28-91
ST91-9080	El Paso Natural Gas Co	California Edison Co	06-21-91	G-S	500,000	N	06-01-91	09-29-91.
ST91-9081	Tennessee Gas Pipeline Co	East Ohio Gas Co	06-21-91	B	500,000	N	06-02-91	Indef.
ST91-9082	Tennessee Gas Pipeline Co	Piedmont Natural Gas Co	06-21-91	B	60,000	N	05-31-91	Indef.
ST91-9083	Channel Industries Gas Co	Texas Eastern Gas Pipeline Co.	06-21-91	C	15,000	N	04-06-91	Indef.
ST91-9084	Arkla Energy Resources	East Ohio Gas Co., et al	06-21-91	B	30,000	N	11-01-90	Indef.
ST91-9085	Arkla Energy Resources	Intersearch Corp	06-21-91	B	1,500	N	06-01-91	Indef.
ST91-9086	Arkla Energy Resources	Georgia Pacific	06-21-91	G-S	10,000	N	01-01-91	08-31-91.
ST91-9087	Arkla Energy Resources	Vesta Energy Co	06-21-91	G-S	60,000	N	05-01-91	08-28-91.
ST91-9088	Panhandle Eastern Pipe Line Co.	BP Gas Inc.	06-21-91	G-S	50,000	N	5-01-91	8-29-91.
ST91-9089	Panhandle EasternPipe Line Co.	BP Gas Inc	06-21-91	G-S	50,000	N	05-01-01	08-29-91.
ST91-9090	Panhandle Eastern Pipe Line Co.	BP Gas Inc	06-21-91	G-S	50,000	N	05-01-91	08-29-91.
ST91-9091	Panhandle Eastern Pipe Line Co.	AmGas, Inc	06-21-91	G-S	20	N	05-22-91	09-19-91.
ST91-9092	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co	06-21-91	B	200	N	05-31-91	Indef.
ST91-9093	Panhandle Eastern Pipe Line Co.	AmGas, Inc	06-21-91	G-S	20	N	05-22-91	09-21-91.
ST91-9094	Arkla Energy Resources	Vesta Energy Co	06-21-91	G-S	1,575	N	03-01-91	06-28-91.
ST91-9095	Sea Robin Pipeline Co	Total Minatome Corp	06-20-91	G-S	100,000	N	04-01-91	07-30-91.
ST91-9096	South Georgia Natural Gas Co.	Peoples Gas System, Inc	06-21-91	B	50,000	N	05-29-91	Indef.
ST91-9097	Southern Natural Gas Co	Enermax Corp	06-20-91	G-S	150,000	N	06-08-91	10-06-91.
ST91-9098	Southern Natural Gas Co	Peoples Gas System, Inc	06-21-91	N	50,000	N	05-29-91	Indef.
ST91-9099	Southern Natural Gas Co	Gulf Ohio Corp	06-21-91	G-S	20,000	N	05-23-91	09-20-91.
ST91-9100	K N Energy, Inc	Centran Corp	06-24-91	G-S	50,000	N	05-17-91	09-13-91.
ST91-9101	Channel Industries Gas Co	Corpus Christi Industrial P/L Corp.	06-24-91	C	35,000	N	01-01-90	08-01-90.
ST91-9102	Transwestern Pipeline Co	Landmark Gas Corp	06-24-91	G-S	5,000	N	06-01-91	09-29-91.
ST91-9103	Transwestern Pipeline Co	Ice Brothers, Inc	06-24-91	G-S	5,000	N	06-07-91	10-05-91.
ST91-9104	Northern Natural Gas Co	NGC Transportation, Inc	06-24-91	G-S	300,000	N	06-03-91	10-01-91.
ST91-9105	Northern Natural Gas Co	Sunrise Energy Co	06-24-91	G-S	50,000	N	06-01-91	09-30-91.
ST91-9106	Northern Natural Gas Co	City of Duluth	06-24-91	B	300,000	N	06-01-91	Indef.
ST91-9107	Northern Natural Gas Co	Texpar Energy, Inc	06-24-91	G-S	100,000	N	06-01-91	09-30-91.
ST91-9108	Northern Natural Gas Co	Northern States Power Co	06-24-91	B	10,006	N	06-07-91	Indef.
ST91-9109	Northern Natural Gas Co	Aquila Gas Systems Corp	06-24-91	B	100,000	N	05-24-91	Indef.
ST91-9110	Northern Natural Gas Co	Westar Transmission Co	06-24-91	B	25,000	N	06-07-91	12-31-91.
ST91-9111	Columbia Gas Transmission Corp.	Northern Indust. Energy Dev., Inc.	06-24-91	B	15	N	05-24-91	Indef.
ST91-9112	Columbia Gas Transmission Corp.	Bishop Pipeline Corp	06-24-91	G-S	757,000	Y	05-23-91	09-20-91.
ST91-9113	Peach Ridge Pipeline Inc	El Paso Natural Gas Co	06-24-91	C	700	N	06-01-91	Indef.
ST91-9114	Trunkline Gas Co.	Stellar Gas Co	06-24-91	G-S	10,000	N	06-01-91	09-29-91.
ST91-9115	Trunkline Gas Co	Marathon Oil Co	06-24-91	G-S	480,000	N	06-01-91	09-29-91.
ST91-9116	Trunkline Gas Co	Vesta Energy Co	06-24-91	G-S	5,000	N	06-01-91	09-29-91.
ST91-9117	Trunkline Gas Co	Bishop Pipeline Corp	06-24-91	G-S	20,000	N	06-01-91	09-29-91.
ST91-9118	Trunkline Gas Co	Panhandle Trading Co	06-24-91	G-S	5,000	Y	06-01-91	09-29-91.
ST91-9119	Trunkline Gas Co	Panhandle Trading Co	06-24-91	G-S	15,000	Y	06-01-91	09-29-91.
ST91-9120	Trunkline Gas Co	Polaris Corp	06-24-91	G-S	50,000	Y	06-01-91	09-29-91.
ST91-9121	Trunkline Gas Co	Columbia Gas of KY, Inc., et al.	06-24-91	B	50,000	N	06-01-91	Indef.
ST91-9122	Trunkline Gas Co	East Ohio Gas Co	06-24-91	B	100,000	N	06-01-91	Indef.
ST91-9123	Trunkline Gas Co	Tennessee Gas Pipeline Co	06-24-91	G	150,000	N	06-05-91	Indef.
ST91-9124	Trunkline Gas Co	Baltimore Gas & Elect. Co., et al.	06-24-91	B	100,000	N	06-04-91	Indef.
ST91-9125	Trunkline Gas Co	Bishop Pipeline Corp	06-24-91	B	50,000	N	06-01-91	Indef.
ST91-9126	Trunkline Gas Co	Sun Refining and Marketing Co.	06-24-91	G-S	30,000	N	06-01-91	09-29-91.
ST91-9127	Texas Gas Transmission Corp.	Transco Energy Marketing Co.	06-25-91	G-S	50,00	Y	06-14-91	10-11-91.
ST91-9128	Texas Gas Transmission Corp.	Transco Energy Marketing Co.	06-25-91	G-S	50,000	Y	06-14-91	10-11-91.
ST91-9129	Texas Gas Transmission Corp.	North Canadian Marketing Corp.	06-25-91	G-S	100,000	N	06-15-91	10-12-91.
ST91-9130	Paiute Pipeline Co	CP National Corp	06-25-91	G-S	15,300	N	06-01-91	09-28-91.
ST91-913'	Paiute Pipeline Co	Sierra Pacific Power Co	06-25-91	G-S	83,000	N	06-01-91	09-28-91.
ST91-9132	Paiute Pipeline Co	Southwest Gas Corp	06-25-91	G-S	10,316	N	06-01-91	09-28-91.
ST91-9133	Paiute Pipeline Co	Southwest Gas Corp	06-25-91	G-S	61,651	N	06-01-91	09-28-91.
ST91-9134	Florida Gas Transmission Co	Shell Offshore, Inc	06-25-91	G-S	25,000	N	06-01-91	09-28-91.
ST91-9135	Florida Gas Transmission Co	Amoco Energy Trading Co	06-25-91	G-S	100,000	N	06-01-91	09-28-91.
S191-9136	Northern Natural Gas Co	Semco Energy Services, Inc	06-25-91	G-S	13,500	N	06-01-91	09-30-91

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Affiliated Y/N	Date commenced	Projected termination date
ST91-9137	Northern Natural Gas Co	Michigan Gas Co	06-25-91	B	6,564	N	05-31-92.	
ST91-9138	Northern Natural Gas Co	Manning Municipal Gas	06-25-91	B	14,336	N	06-01-91	05-31-92.
ST91-9139	Northern Natural Gas Co	Fremont Dept. of Utilities	06-25-91	B	4,410	N	06-01-91	05-31-92.
ST91-9140	Transwestern Pipeline Co	Landmark Gas Corp	06-25-91	G-S	32,000	N	06-02-91	Indef.
ST91-9141	Mississippi River Trans. Corp	Northern Illinois Gas Co	06-25-91	B	10,000	Y	03-01-91	Indef.
ST91-9142	Mississippi River Trans. Corp	New Jersey Natural Gas Co	06-25-91	B	45,000	Y	03-01-91	Indef.
ST91-9143	Mississippi River Trans. Corp	Public Service Elect. & Gas Co.	06-25-91	B	45,000	Y	03-01-91	Indef.
ST91-9144	Mississippi River Trans. Corp	Mega Natural Gas Co	06-25-91	B	15,000	Y	03-01-91	Indef.
ST91-9145	Arkla Energy Resources	Seagull Marketing Services, Inc.	06-25-91	G-S	15,000	N	06-21-91	10-19-91.
ST91-9146	Northern Natural Gas Co.	Iowa Southern Utilities Co	06-25-91	B	532	N	06-01-91	05-31-92.
ST91-9147	CNG Transmission Corp	Northeast Energy Assoc	06-25-91	G-S	150,000	N	06-11-91	10-09-91.
ST91-9148	CNG Transmission Corp	Northeast Energy Assoc	06-25-91	G-S	150,000	N	06-11-91	10-09-91.
ST91-9149	CNG Transmission Corp	North Jersey Energy Assoc	06-25-91	G-S	150,000	N	06-11-91	10-09-91.
ST91-9150	CNG Transmission Corp	Consolidated Fuel Corp	06-25-91	G-S	8,000	N	06-08-91	10-06-91.
ST91-9151	CNG Transmission Corp	Santana Natural Gas	06-25-91	G-S	11,225	N	06-11-91	10-09-91.
ST91-9152	CNG Transmission Corp	Consolidated Fuel Corp	06-25-91	G-S	8,000	N	06-11-91	10-09-91.
ST91-9153	CNG Transmission Corp	North Jersey Energy Assoc	06-25-91	G-S	150,000	N	06-05-91	10-04-91.
ST91-9154	CNG Transmission Corp	Manville Sales Corp	06-25-91	G-S	2,000	N	06-05-91	10-04-91.
ST91-9155	CNG Transmission Corp	Northeast Energy Assoc	06-25-91	G-S	150,000	N	06-05-91	10-04-91.
ST91-9156	CNG Transmission Corp	Ashland Exploration, Inc	06-25-91	G-S	8,000	N	06-07-91	10-05-91.
ST91-9157	CNG Transmission Corp	Northeast Energy Assoc	06-25-91	G-S	150,000	N	06-05-91	10-04-91.
ST91-9158	CNG Transmission Corp	Northeast Energy Assoc	06-25-91	G-S	150,000	N	06-05-91	10-04-91.
ST91-9159	CNG Transmission Corp	North Jersey Energy Assoc	06-25-91	G-S	150,000	N	06-05-91	10-04-91.
ST91-9160	CNG Transmission Corp	Meridian Marketing & Transp	06-25-91	G-S	1,200	N	05-31-91	09-30-91.
ST91-9161	CNG Transmission Corp	North Jersey Energy Assoc	06-25-91	G-S	150,000	N	06-11-91	10-09-91.
ST91-9162	CNG Transmission Corp	Northeast Energy Assoc	06-25-91	G-S	150,000	N	06-11-91	10-09-91.
ST91-9163	CNG Transmission Corp	Sterling Power Partners, L.P	06-25-91	G-S	13,000	N	06-04-91	10-03-91.
ST91-9164	CNG Transmission Corp	North Jersey Energy Assoc	06-25-91	G-S	150,000	N	06-11-91	10-09-91.
ST91-9165	CNG Transmission Corp	Wayne Finger Lakes Boces	06-25-91	B	500	N	03-15-91	Indef.
ST91-9166	CNG Transmission Corp	North Jersey Energy Assoc	06-25-91	G-S	150,000	N	06-05-91	10-04-91.
ST91-9167	CNG Transmission Corp	Republic Engineered Steels	06-25-91	G-S	30,000	N	06-03-91	10-02-91.
ST91-9168	Arkla Energy Resources	Exxon U.S.A	06-25-91	G-S	57,232	N	05-01-91	08-28-91.
ST91-9169	Arkla Energy Resources	Amoco Production Co	06-25-91	G-S	75,000	N	06-01-91	09-28-91.
ST91-9170	Texas Eastern Transmission Corp.	Vesta Energy Co	06-25-91	G-S	120,000	N	06-01-91	09-29-91.
ST91-9171	Trunkline Gas Co	Central Illinois Light Co	06-25-91	B	150,000	N	06-01-91	Indef.
ST91-9172	Trunkline Gas Co	Northern Indiana Public Service Co.	06-25-91	B	40,000	N	06-01-91	Indef.
ST91-9173	Trunkline Gas Co	Kansas Pipeline Co., L.P	06-25-91	G-S	60,000	N	06-02-91	09-30-91.
ST91-9174	Trunkline Gas Co	Howell Gas Management Co	06-25-91	G-S	30,000	N	06-01-91	09-29-91.
ST91-9175	Trunkline Gas Co	Tex/Con Gas Marketing Co	06-25-91	G-S	50,000	N	06-01-91	09-29-91.
ST91-9176	Trunkline Gas Co	Citizens Gas Fuel Co	06-25-91	B	1,200	N	06-01-91	Indef.
ST91-9177	Delhi Gas Pipeline Corp	Northern Natural Gas Co	06-26-91	C	1,500	N	06-04-91	Indef.
ST91-9178	Delhi Gas Pipeline Corp	Panhandle Eastern Pipeline Co.	06-26-91	C	250,000	N	06-07-91	Indef.
ST91-9179	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	06-26-91	C	5,000	N	06-01-91	Indef.
ST91-9180	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	06-26-91	C	1,400	N	06-01-91	Indef.
ST91-9181	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	06-26-91	C	15,000	N	06-01-91	Indef.
ST91-9182	Tennessee Gas Pipeline Co	Indeck-Yerkes, L.P	06-26-91	G-S	6,000	N	05-22-91	09-19-91.
ST91-9183	Northern Natural Gas Co	Owantonna Public Utilities	06-26-91	B	1,669	N	06-01-91	05-31-92.
ST91-9184	Northern Natural Gas Co	Northwestern Public Service Co.	06-26-91	B	4,100	N	06-01-91	05-31-92.
ST91-9185	Northern Natural Gas Co	Iowa Electric Light and Power Co.	06-26-91	B	20,000	N	06-01-91	05-31-92.
ST91-9186	Northern Natural Gas Co	St. Croix Valley Natural Gas Co.	06-26-91	B	47,168	N	06-01-91	05-31-92.
ST91-9187	Northern Natural Gas Co	Peoples Natural Gas Co	06-26-91	B	111,600	N	06-01-91	05-31-92.
ST91-9188	Northern Natural Gas Co	Superior Water, Light and Power Co.	06-26-91	B	1,667	N	06-01-91	05-31-92.
ST91-9189	Northern Natural Gas Co	Western Gas Utilities, Inc	06-26-91	B	487	N	06-01-91	05-31-92.
ST91-9190	Northern Natural Gas Co	Metropolitan Utilities District	06-26-91	B	10,000	N	06-01-91	05-31-92.
ST91-9191	Northern Natural Gas Co	Minnegasco	06-26-91	B	169,726	N	06-01-91	05-31-92.
ST91-9192	Northern Natural Gas Co	City of New Ulm	06-26-91	B	2,810	N	06-01-91	05-31-92.
ST91-9193	Northern Natural Gas Co	Midwest Gas, Iowa Pub. Ser. Co.	06-26-91	B	46,695	N	06-01-91	05-31-92.
ST91-9194	Northern Natural Gas Co	Northern States Power Co	06-26-91	B	54,995	N	06-01-91	05-31-92.
ST91-9195	Northern Natural Gas Co	Great Plains Natural Gas Co	06-26-91	B	2,237	N	06-01-91	05-31-92.
ST91-9196	Northern Natural Gas Co	Northern States Power Co	06-26-91	B	9,193	N	06-01-91	05-31-92.
ST91-9197	Northern Natural Gas Co	Osage Municipal Utilities	06-26-91	B	846	N	06-01-91	05-31-92.
ST91-9198	Transcontinental Gas P/L Corp.	City of Liberty	06-26-91	B	3,330	N	06-01-91	Indef.
ST91-9199	Transcontinental Gas P/L Corp.	Valero Transmission Co	06-26-91	B	100,000	N	06-01-91	Indef.
ST91-9200	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc	06-26-91	G-S	30,000	N	06-01-91	09-28-91.
ST91-9201	Transcontinental Gas P/L Corp.	Power Authority of the State of NY.	06-26-91	G-S	400,000	N	06-07-91	10-04-91.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Affiliated Y/N	Date commenced	Projected termination date
ST91-9202	Transcontinental Gas P/L Corp.	Mid Con Marketing Corp	06-26-91	G-S	3,400,000	N	05-29-91	09-25-91.
ST91-9203	ANR Pipeline Co	Texpar Energy, Inc	06-27-91	G-S	100,000	N	06-01-91	09-28-91.
ST91-9204	ANR Pipeline Co	Phillips 66 Natural Gas Co	06-27-91	G-S	100,000	N	06-01-91	09-28-91.
ST91-9205	ANR Pipeline Co	Rangeline Corp	06-27-91	G-S	50,000	N	06-01-91	09-28-91.
ST91-9206	ANR Pipeline Co	Cincinnati Gas & Elect. Co	06-27-91	B	100,000	N	06-01-91	Indef.
ST91-9207	ANR Pipeline Co	Ohio Gas Co	06-27-91	B	78	N	06-01-91	Indef.
ST91-9208	K N Energy, Inc	GPC Marketing Co	06-27-91	G-S	6,000	N	06-01-91	09-28-91.
ST91-9209	K N Energy, Inc	Hiland Partners	06-27-91	G-S	5,000	N	06-01-91	09-28-91.
ST91-9210	Panola/Rusk Gathers	Texas Eastern Gas Transmission Co.	06-27-91	C	5,000	N	03-01-91	Indef.
ST91-9211	K N Energy, Inc	John Brown E & C, Inc	06-27-91	G-S	8,000	N	06-01-91	09-28-91.
ST91-9212	Westar Transmission Co	West Texas Gas, Inc	06-27-91	C	25,000	N	05-01-91	Indef.
ST91-9213	Westar Transmission Co	El Paso Natural Gas Co	06-27-91	C	100,000	N	05-30-91	Indef.
ST91-9214	Natural Gas P/L Co. of America.	Columbia Gas of Ohio, Inc	06-27-91	B	50,000	N	05-29-91	Indef.
ST91-9215	Delhi Gas Pipeline Corp	Polaris Corp	06-27-91	C	8,000	N	06-02-91	Indef.
ST91-9218	Northern Natural Gas Co	City of Waukee	06-27-91	B	387	N	06-01-91	05-31-92.
ST91-9219	Northern Natural Gas Co	City of Two Harbors	06-27-91	B	473	N	06-01-91	05-31-92.
ST91-9220	Northern Natural Gas Co	Brooklyn Inter. Natural Gas Corp.	06-27-91	G-S	88,457	N	06-01-91	09-30-91.
ST91-9221	Northern Natural Gas Co	West Texas Gas, Inc	06-27-91	B	10,000	N	06-13-91	Indef.
ST91-9222	Northern Natural Gas Co	Westar Transmission Co	06-27-91	B	20,000	N	06-01-91	Indef.
ST91-9223	Northern Natural Gas Co	Wisconsin Gas Co	06-27-91	B	3,908	N	06-01-91	05-31-92.
ST91-9224	Northern Natural Gas Co	City of Tipton	06-27-91	B	850	N	06-01-91	05-31-92.
ST91-9225	Northern Natural Gas Co	City of Sac City	06-27-91	B	481	N	06-01-91	05-31-92.
ST91-9226	Northern Natural Gas Co	City of Brooklyn	06-27-91	B	215	N	06-01-91	05-31-92.
ST91-9227	Northern Natural Gas Co	City of Sabula	06-27-91	B	129	N	06-01-91	05-31-92.
ST91-9228	Northern Natural Gas Co	Northern Minnesota Utilities	06-27-91	B	4,000	N	06-01-91	05-31-92.
ST91-9229	Northern Natural Gas Co	NGC Transportation, Inc	06-27-91	G-S	88,457	N	06-01-91	09-30-91.
ST91-9230	Northern Natural Gas Co	Llano, Inc	06-27-91	B	20,000	N	06-01-91	Indef.
ST91-9231	Northern Natural Gas Co	City of Ponca	06-27-91	B	163	N	06-01-91	05-31-92.
ST91-9232	Northern Natural Gas Co	Lake Park Municipal Utilities	06-27-91	B	170	N	06-01-91	05-31-92.
ST91-9233	Northern Natural Gas Co	Sheehan's Gas Co	06-27-91	B	172	N	06-01-91	05-31-92.
ST91-9234	Northern Natural Gas Co	Emmetsburg Municipal Utilities.	06-27-91	B	333	N	06-01-91	05-31-92.
ST91-9235	Northern Natural Gas Co	Wisconsin Power & Light Co	06-27-91	B	2,227	N	06-01-91	05-31-92.
ST91-9236	Northern Natural Gas Co	Cedar Falls Utilities	06-27-91	B	4,522	N	06-01-91	05-31-92.
ST91-9237	Northern Natural Gas Co	Austin Utility Dept	06-27-91	B	4,892	N	06-01-91	05-31-92.
ST91-9238	Northern Natural Gas Co	Cibola Corp	06-27-91	G-S	50,000	N	06-01-91	09-30-91.
ST91-9239	Northern Natural Gas Co	West Texas Gas, Inc	06-27-91	B	10,000	N	06-13-91	Indef.
ST91-9240	Columbia Gas Transmission Corp.	Enserch Gas Co	06-27-91	G-S	100,000	N	06-01-91	09-29-91.
ST91-9241	Columbia Gas Transmission Corp.	Aristech Chemical Corp	06-27-91	G-S	8,527	Y	06-01-91	09-29-91.
ST91-9242	Trunkline Gas Co	Exxon Corp	06-27-91	G-S	50,000	N	06-01-91	09-29-91.
ST91-9243	Trunkline Gas Co	Exxon Corp	06-27-91	G-S	25,000	N	06-01-91	09-29-91.
ST91-9244	Trunkline Gas Co	Shell Offshore Inc	06-27-91	G-S	30,000	N	06-01-91	09-29-91.
ST91-9245	Llano, Inc	Wisconsin Power & Light Co	06-27-91	C	5,151	N	04-01-91	Indef.
ST91-9246	Llano, Inc	Iowa Electric Light and Power Co.	06-27-91	C	14,000	N	06-01-91	Indef.
ST91-9247	Llano, Inc	Interstate Power Co	06-27-91	C	7,990	N	06-01-91	Indef.
ST91-9248	Houston Pipe Line Co	Transcontinental Gas P/L Corp.	06-27-91	C	50,000	N	04-03-91	Indef.
ST91-9249	Houston Pipe Line Co	Northern Natural Gas Co	06-27-91	C	50,000	N	04-01-91	Indef.
ST91-9250	Houston Pipe Line Co	Black Marlin Pipeline Co	06-27-91	C	36,000	N	04-01-91	Indef.
ST91-9251	Houston Pipe Line Co	Transcontinental Gas P/L Corp.	06-27-91	C	50,000	N	03-26-91	Indef.
ST91-9252	Houston Pipe Line Co	Seagull Interstate Corp	06-27-91	C	50,000	N	04-06-91	Indef.
ST91-9253	Houston Pipe Line Co	Florida Gas Transmission Co	06-27-91	C	100,000	N	03-01-91	Indef.
ST91-9254	Houston Pipe Line Co	Natural Gas P/L Co. of America.	06-27-91	C	50,000	N	03-01-91	Indef.
ST91-9255	Houston Pipe Line Co	Natural Gas P/L Co. of America.	06-27-91	C	50,000	N	04-14-91	Indef.
ST91-9256	Houston Pipe Line Co	Tennessee Gas Pipeline Co	06-27-91	C	100,000	N	04-01-91	Indef.
ST91-9257	Houston Pipe Line Co	Natural Gas P/L Co. of America.	06-27-91	C	100,000	N	04-10-91	Indef.
ST91-9258	Houston Pipe Line Co	Northern Natural Gas Co	06-27-91	C	100,000	N	03-01-91	Indef.
ST91-9259	Houston Pipe Line Co	Seagull Interstate Corp	06-27-91	C	100,000	N	03-01-91	Indef.
ST91-9260	Exxon Gas System, Inc	Corpus Christi Indudust. P/L Co.	06-28-91	C	150,000	N	12-01-90	01-01-94.
ST91-9261	Exxon Gas System, Inc	Cincinnati Gas & Elect. Co	06-28-91	C	100,000	N	12-01-90	01-01-94.
ST91-9262	Tennessee Gas P/L Co	Louisiana Gas System, Inc	06-28-91	B	75,000	N	03-14-91	Indef.
ST91-9263	ONG Transmission Co	Williams Natural Gas Co	06-28-91	C	75,000	N	06-17-91	06-16-93.
ST91-9264	East Texas Gas Systems	Tennessee Gas P/L Co	06-28-91	C	50,000	N	12-01-90	Indef.
ST91-9265	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	71,000	N	01-29-91	09-30-90.
ST91-9266	Natural Gas P/L Co. of America.	Archer-Daniels-Midland Co	06-28-91	G-S	21,500	N	01-15-88	09-30-90.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Affiliated Y/N	Date commenced	Projected termination date
ST91-9267	Natural Gas P/L Co. of America.	Mega Natural Gas Co	06-28-91	G-S	50,000	N	06-22-87	09-30-90.
ST91-9268	Natural Gas P/L Co. of America.	Golden Gas Energies, Inc	06-28-91	G-S	200,000	N	04-06-87	09-30-90
ST91-9269	Natural Gas P/L Co. of America.	Northern Illinois Gas Co	06-28-91	B	10,000	N	02-01-88	Indef.
ST91-9270	Natural Gas P/L Co. of America.	Golden Gas Energies, Inc	06-28-91	G-S	200,000	N	04-06-87	09-30-90
ST91-9271	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	71,000	N	01-29-88	09-30-90
ST91-9272	Natural Gas P/L Co. of America.	Iowa-Illinois Gas and Elect. Co.	06-28-91	B	400,000	N	08-26-88	Indef.
ST91-9273	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	71,000	N	01-29-88	09-30-90
ST91-9274	Natural Gas P/L Co. of America.	Northern Indiana Public Serv. Co.	06-28-91	B	5,000	N	01-24-89	Indef.
ST91-9275	Natural Gas P/L Co. of America.	Delhi Gas Pipeline Corp	06-28-91	B	55,000	N	08-23-88	09-30-90
ST91-9276	Natural Gas P/L Co. of America.	Wisconsin Southern Gas Co., Inc.	06-28-91	B	100,000	N	06-01-91	Indef.
ST91-9277	Natural Gas P/L Co. of America.	Northern Indiana Public Serv. Co.	06-28-91	B	150,000	N	06-01-91	Indef.
ST91-9278	Natural Gas P/L Co. of America.	Northern Indiana Public Serv. Co.	06-28-91	B	200,000	N	06-01-91	Indef.
ST91-9279	Natural Gas P/L Co. of America.	Maple Gas Corp	06-28-91	B	50,000	N	06-21-91	Indef.
ST91-9280	Natural Gas P/L Co. of America.	Golden Gas Energies, Inc	06-28-91	G-S	200,000	N	04-06-87	09-30-90
ST91-9281	Natural Gas P/L Co. of America.	Northern Illinois Gas Co	06-28-91	B	100,000	N	06-01-91	Indef.
ST91-9282	Natural Gas P/L Co. of America.	Northern Illinois Gas Co	06-28-91	B	100,000	N	05-09-91	Indef.
ST91-9283	Natural Gas P/L Co. of America.	Peoples Gas Light & Coke Co.	06-28-91	B	100,000	N	06-12-91	Indef.
ST91-9284	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	71,000	N	01-29-88	09-30-90
ST91-9285	Natural Gas P/L Co. of America.	ONG Transmission Co	06-28-91	B	400,000	N	08-26-88	Indef.
ST91-9286	Natural Gas P/L Co. of America.	Central Illinois Light Co	06-28-91	B	400,000	N	08-26-88	Indef.
ST91-9287	Natural Gas P/L Co. of America.	Transok, Inc	06-28-91	B	400,000	N	08-26-88	Indef.
ST91-9288	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	71,000	N	01-29-88	09-30-90
ST91-9289	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc	06-28-91	G-S	96,000	N	09-15-86	09-30-90
ST91-9290	Natural Gas P/L Co. of America.	Northern Illinois Gas Co	06-28-91	B	400,000	N	08-26-90	Indef.
ST91-9291	Natural Gas P/L Co. of America.	Pontchartrain Natural Gas System.	06-28-91	B	15,000	N	01-25-89	Indef.
ST91-9292	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	71,000	N	01-29-88	09-30-90
ST91-9293	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	71,000	N	01-29-88	09-30-90
ST91-9294	Natural Gas P/L Co. of America.	Iowa Southern Utilities Co	06-28-91	B	400,000	N	08-26-88	Indef.
ST91-9295	Natural Gas P/L Co. of America.	North Shore Gas Co	06-28-91	B	400,000	N	08-26-88	Indef.
ST91-9296	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	96,000	N	01-29-88	09-30-90
ST91-9297	Natural Gas P/L Co. of America.	Citizens Gas Supply Corp	06-28-91	G-S	50,000	N	01-22-88	09-30-90
ST91-9298	Natural Gas P/L Co. of America.	Lavaca Pipe Line Co	06-28-91	B	100	N	07-20-90	09-30-90
ST91-9299	Natural Gas P/L Co. of America.	Peoples Gas Light and Coke Co.	06-28-91	B	400,000	N	08-26-88	Indef.
ST91-9300	Natural Gas P/L Co. of America.	Citizens Gas Supply Corp	06-28-91	G-S	50,000	N	01-22-88	09-30-90.
ST91-9301	Natural Gas P/L Co. of America.	Central Illinois Light Co	06-28-91	B	25,000	N	12-12-88	Indef.
ST91-9302	Natural Gas P/L Co. of America.	Illinois Power Co	06-28-91	B	25,000	N	12-12-88	Indef.
ST91-9303	Natural Gas P/L Co. of America.	Gulf Ohio Corp	06-28-91	G-S	25,000	N	05-09-89	09-30-90.
ST91-9304	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	71,000	N	01-29-88	09-30-90.
ST91-9305	Natural Gas P/L Co. of America.	Venture Pipeline Co	06-28-91	B	11,000	N	02-26-88	Indef.
ST91-9306	Natural Gas P/L Co. of America.	Pontchartrain Natural Gas System.	06-28-91	G-S	30,000	N	06-23-88	09-30-90.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Affiliated Y/N	Date commenced	Projected termination date
ST91-9307	Natural Gas P/L Co. of America.	Delhi Gas Pipeline Corp	06-28-91	B	99,000	N	08-23-88	09-30-90.
ST91-9308	Natural Gas P/L Co. of America.	Enogex Inc	06-28-91	B	400,000	N	08-26-88	09-30-90.
ST91-9309	Natural Gas P/L Co. of America.	CNG Producing Co	06-28-91	G-S	8,000	N	05-30-91	09-27-91.
ST91-9310	Natural Gas P/L Co. of America.	Neste OY	06-28-91	G-S	3,100,000	N	05-30-91	09-27-91.
ST91-9311	Natural Gas P/L Co. of America.	Golden Gas Energies, Inc	06-28-91	G-S	200,000	N	04-06-87	09-30-90.
ST91-9312	Natural Gas P/L Co. of America.	Golden Gas Energies, Inc	06-28-91	G-S	200,000	N	04-06-87	09-30-90.
ST91-9313	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	71,000	N	01-29-88	09-30-90.
ST91-9314	Natural Gas P/L Co. of America.	Golden Gas Energies, Inc	06-28-91	G-S	200,000	N	04-06-87	09-30-90.
ST91-9315	Natural Gas P/L Co. of America.	Continental Natural Gas, Inc	06-28-91	G-S	71,000	N	01-29-88	09-30-90.
ST91-9316	Natural Gas P/L Co. of America.	Columbia Gas of PA, Inc., et al.	06-28-91	B	150,000	N	09-20-89	Indef.
ST91-9317	Natural Gas P/L Co. of America.	Louisiana Gas Marketing Co	06-28-91	B	300,000	N	08-30-88	Indef.
ST91-9318	Natural Gas P/L Co. of America.	Delhi Gas Pipeline Corp	06-28-91	B	80,000	N	08-23-88	09-30-90.
ST91-9319	Natural Gas P/L Co. of America.	Peoples Gas Light and Coke Co.	06-28-91	B	25,000	N	12-12-88	Indef.
ST91-9320	ANR Pipeline Co	Texpar Energy, Inc	06-28-91	G-S	50,000	N	06-01-91	09-28-91.
ST91-9321	ANR Pipeline Co	Mobil Natural Gas Inc	06-28-91	G-S	100,000	N	06-01-91	09-28-91.
ST91-9322	ANR Pipeline Co	Northern Illinois Gas Co	06-28-91	B	100,000	N	06-01-91	Indef.
ST91-9323	ANR Pipeline Co	Bishop Pipeline Corp	06-28-91	B	40,000	N	06-01-91	Indef.
ST91-9324	ANR Pipeline Co	SEMCO Energy Services, Inc	06-28-91	G-S	30,000	N	06-01-91	09-28-91.
ST91-9325	Panhandle Eastern Pipe Line Co.	Northern Indiana Public Service Co.	06-28-91	G-S	10,000	N	04-01-91	07-30-91.
ST91-9326	Panhandle Eastern Pipe Line Co.	Western Gas Marketing USA Ltd.	06-28-91	G-S	40,000	N	06-01-91	09-29-91.
ST91-9327	Panhandle Eastern Pipe Line Co.	Krupp & Associates	06-28-91	G-S	50,000	N	06-01-91	09-29-91.
ST91-9328	Panhandle Eastern Pipe Line Co.	Michigan Gas Storage Co	06-28-91	G	50,000	N	04-01-91	11-01-92.
ST91-9329	Panhandle Eastern Pipe Line Co.	Tri-Power Fuels, Inc	06-28-91	G-S	25,000	N	06-01-91	09-29-91.
ST91-9330	Panhandle Eastern Pipe Line Co.	Western Gas Marketing USA Ltd.	06-28-91	G-S	40,000	N	06-01-91	09-29-91.
ST91-9331	Panhandle Eastern Pipe Line Co.	Western Gas Marketing USA Ltd.	06-28-91	G-S	100,000	N	06-01-91	09-29-91.
ST91-9332	Panhandle Eastern Pipe Line Co.	Twister Transmission Co	06-28-91	G-S	40,000	N	06-01-91	09-29-91.
ST91-9333	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co	06-28-91	G-S	100,000	N	06-01-91	09-29-91.
ST91-9334	Panhandle Eastern Pipe Line Co.	Northern Indiana Public Service Co.	06-28-91	G-S	5,000	N	04-01-91	07-30-91.
ST91-9335	Trunkline Gas Co	American Central Gas Co., Inc.	06-28-91	G-S	100,000	N	06-01-91	09-29-91.
ST91-9336	Texas Eastern Transmission Corp.	Yuma Gas Corp	06-28-91	G-S	40,000	N	06-05-91	10-03-91.
ST91-9337	Williams Natural Gas Co	K N Gas Marketing, Inc	06-28-91	G-S	150,000	N	05-31-91	09-27-91.
ST91-9338	El Paso Natural Gas Co	Northwest Pipeline Corp	06-28-91	B	5,150	N	06-01-91	Indef.
ST91-9339	Northwest Pipeline Corp	Sierra Pacific Power Co	06-28-91	G-S	61,696	N	06-01-91	09-28-91.
ST91-9340	Northwest Pipeline Corp	Southwest Gas Corp	06-28-91	G-S	45,826	N	06-01-91	09-28-91.
ST91-9341	Northwest Pipeline Corp	CP National Corp	06-28-91	G-S	11,373	N	06-01-91	09-28-91.
ST91-9342	Northwest Pipeline Corp	Southwest Gas Corp	06-28-91	G-S	7,668	N	06-01-91	09-28-91.
ST91-9343	Transcontinental Gas P/L Corp.	Energy Marketing Exchange, Inc.	06-28-91	G-S	150,000	N	06-04-91	10-01-91.

BELOW ARE 28 ST-DOCKETED INITIAL REPORTS WHICH ARE NOTICED OUT OF SEQUENCE. THESE INITIAL REPORTS WERE NOT NOTICED PREVIOUSLY BECAUSE THEY REQUIRED ADDITIONAL COMMISSION STAFF REVIEW.

ST91-5726 [3]	Arkla Energy Resources	Seagull Marketing Services, Inc.	12-13-90	G-S	15,000	N	11-01-90	Indef.
ST91-5727 [3]	Arkla Energy Resources	Golden Gas Energies, Inc	12-13-90	G-S	50,000	N	11-01-90	Indef.
ST91-5728 [3]	Arkla Energy Resources	Brockway, Inc	12-13-90	G-S	2,975	N	11-01-90	Indef.
ST91-5729 [3]	Arkla Energy Resources	Chicopee Manufacturing	12-13-90	G-S	2,000	N	11-01-90	Indef.
ST91-5730 [3]	Arkla Energy Resources	Delhi Gas Pipeline Co	12-13-90	G-S	10,000	N	11-01-90	Indef.
ST91-5731 [3]	Arkla Energy Resources	Arco Natural Gas Marketing, Inc.	12-13-90	G-S	48,000	N	11-01-90	Indef.
ST91-5732 [3]	Arkla Energy Resources	MacMillian Petroleum, Inc	12-13-90	G-S	3,000	N	11-01-90	Indef.
ST91-5733 [3]	Arkla Energy Resources	Derby Refining Co	12-13-90	G-S	8,000	N	11-01-90	Indef.
ST91-5734 [3]	Arkla Energy Resources	Reynolds Metals Co	12-13-90	G-S	5,000	N	11-01-90	Indef.
ST91-5735 [3]	Arkla Energy Resources	Williams Gas Marketing	12-13-90	G-S	50,000	N	11-01-90	Indef.
ST91-5736 [3]	Arkla Energy Resources	Dow Chemical Co.	12-13-90	G-S	2,370	N	11-01-90	Indef.
ST91-5737 [3]	Arkla Energy Resources	Reliance Mas Marketing Co	12-13-90	G-S	20,000	N	11-01-90	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Affiliated Y/N	Date commenced	Projected termination date
ST91-5738 [3]	Arkla Energy Resources	R. Lacy, Inc	12-13-90	G-S	25,000	N	11-01-90	Indef.
ST91-5739 [3]	Arkla Energy Resources	International Paper Co	12-13-90	G-S	112,000	N	11-01-90	Indef.
ST91-5740 [3]	Arkla Energy Resources	Agrico Chemical Co	12-13-90	G-S	49,000	N	11-01-90	Indef.
ST91-5741 [3]	Arkla Energy Resources	Arkasas Glass Container Corp.	12-13-90	G-S	3,000	N	11-01-90	Indef.
ST91-5742 [3]	Arkla Energy Resources	Vesta Energy Co	12-13-90	G-S	25,000	N	11-01-90	Indef.
ST91-5743 [3]	Arkla Energy Resources	Vesta Energy Co	12-13-90	G-S	2,000	N	11-01-90	Indef.
ST91-5744 [3]	Arkla Energy Resources	Mobil Natural Gas, Inc	12-13-90	G-S	15,000	N	11-01-90	Indef.
ST91-5854 [3]	Arkla Energy Resources	Hadson Gas System	12-13-90	G-S	12,400	N	11-01-90	Indef.
ST91-5857 [3]	Arkla Energy Resources	Amoco Production Co	12-13-90	G-S	75,000	N	11-01-90	Indef.
ST91-5891 [3]	Arkla Energy Resources	Mega Natural Gas Co	12-13-90	G-S	150,000	N	11-01-90	Indef.
ST91-5892 [3]	Arkla Energy Resources	Reliance Gas Marketing Co	12-13-90	G-S	20,000	N	11-01-90	Indef.
ST91-5893 [3]	Arkla Energy Resources	Continental Natural Gas, Inc	12-13-90	G-S	50,000	N	11-01-90	Indef.
ST91-5894 [3]	Arkla Energy Resources	Vesta Energy Co	12-13-90	G-S	20,000	N	11-01-90	Indef.
ST91-5913 [3]	Arkla Energy Resources	Vesta Energy Co	12-13-90	G-S	25,000	N	11-01-90	Indef.
ST91-5914 [3]	Arkla Energy Resources	Sunbelt Oilfield Services, Inc	12-13-90	G-S	15,000	N	11-01-90	Indef.
ST91-8520	National Fuel Supply Corp	Natural Fuel Gas Distribution Corp.	12-13-90	B	7,300	N	04-11-91	03-31-11.

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Order no. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3] Transportation service converted from authority under 18 CFR 284.106, subpart B, to authority under 18 CFR 284.223(F)(1), subpart G-S

[Docket Nos. TF-91-4-20-000 TM91-10-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 8, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 3, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed To Be Effective July 1, 1991

4 Rev Sheet No. 21
4 Rev Sheet No. 22
Original Sheet No. 25
4 Rev Sheet No. 26
4 Rev Sheet No. 27
4 Rev Sheet No. 28
4 Rev Sheet No. 29

Algonquin states that the revised tariff sheets listed above, are being filed as part of an Interim Purchased Gas Adjustment ("PGA") pursuant to Algonquin's PGA Provision as set forth in section 17 of the General Terms and Conditions of Algonquin's FERC Gas Tariff to reflect the reduction in gas cost realized by Algonquin's purchase of system supply from other than its traditional pipeline suppliers. Algonquin states that with the authorization of an Account No. 858, Transmission and Compression by Others ("T&C") Tracker (Docket No. RP91-146-000, May 31, 1991), Algonquin has obtained system supply at favorable prices and has been able to reduce its sales demand rate by 5.60¢ per MMBtu.

Algonquin states that included in the instant filing is the use of Original Sheet No. 25 to set forth the rates under Rate Schedules I-I and E-1. Use of Sheet No. 25 was made necessary by the need to report additional information pursuant to the implementation of Algonquin T&C Tracker.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before July 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16700 Filed 7-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-22-000]

CNG Transmission Corp.; Proposed in FERC Gas Tariff

July 8, 1991.

Take notice that CNG Transmission Corporation (CNG), on July 2, 1991, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's Regulations and section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Tenth Revised Sheet No. 31
Alternate Tenth Revised Sheet No. 31
Fifth Revised Sheet No. 34
Alternate Fifth Revised Sheet No. 34

CNG states that the primary filing would increase CNG's RQ/CD/ACD commodity rate by 32.75 cents per dekatherm and increase the RQ/CD/ACD D-1 demand rate by $1.57 per dekatherm from the rates as filed on June 6, 1991 in Docket No. RP88-211, et. al. Other rates would change correspondingly.

CNG states that in the primary filing, CNG requested the following waivers of the Commission's regulations: The inclusion of the estimated unamortized carryover balance in the surcharge calculation, amortization of both the commodity portion of the above balance and the current deferral commodity unrecovered balance over the next three years, accelerated recovery of estimated gas inventory charges (GIC) from Texas Eastern, and elimination of the "rolling weighted average adjustment" from the computation of interest on CNG's Account No. 191 balance.

Also, CNG requested authorization to recover the GIC amounts in the D-1 demand component if its rates.

The alternate filing would increase CNG's RQ/CD/ACD commodity rate by 37.32 cents per dekatherm and increase the RQ/CD/ACD D-1 demand rate by $0.94 per dekatherm from the rates as filed on June 6, 1991 in Docket No. RP88-211, et. al. Other rates would change correspondingly.

CNG further states that in the alternate filing, CNG complied with the Commission's regulations with the

following exception—elimination of the "rolling weighted. average adjustment" from the computation of interest on CNG's Account No. 191 balance. Also, CNG requested authorization to recover actual incurred GIC amounts in the D–1 demand component of its rates.

CNG states that copies of this filing were mailed to CNG's sales customers and interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main office in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure. All motions or protests should be filed on or before July 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16701 Filed 7–12–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA91–1–24–000 and 001]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

July 8, 1991.

Take notice that on July 2, 1991, Equitrans, Inc. (Equitrans), pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's regulations (18 CFR part 154) and section 19 of the General Terms and Conditions of Original Volume No. 1 of Equitrans' tariff, Equitrans filed its third Annual Purchased Gas Adjustment, containing the following primary revised tariff sheets to Original Volume No. 1 to its FERC Gas Tariff:

Effective September 1, 1991

Twenty-Eighth Revised Sheet No. 18
Nineteenth Revised Sheet No. 34

Effective November 1, 1991

Twentieth Revised Sheet No. 34

Equitrans states that Twentieth Revised Sheet No. 34 reflects the seasonality of Equitrans' rates by showing the winter demand component of Rate Schedule ISS effective November 1, 1991.

As alternative tariff sheets, Equitrans also submits the following:

Effective September 1, 1991

Alternate Twenty-Eighth Revised Sheet No. 10
Alternate Nineteenth Revised Sheet No. 34

Effective November 1, 1991

Alternate Twentieth Revised Sheet No. 34

Equitrans sttes that the primary tariff sheets reflect "as-billed" recovery of producer purchased gas costs. Equitrans also states that the alternative tariff sheets reflect reclassification of producer demand payments to the commodity component of the sales rates.

Equitrans states that the changes proposed in the filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the demand component of $0.1686 per dth. Equitrans further states that the PLS commodity rate of $2.0357 per dth includes a $0.6228 per dth, and is designed to recover an estimated $4,814,910 in Texas Eastern Transmission Corporation CIG charges. Equitrans further states that the purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.1741 per dth for September, 1991 and $0.2354 per dth for November, 1991.

Equitrans requests a waiver of § 154.305(b)(1) of the Commission's Regulations to permit the flowthrough of certain producer purchases on an "as-billed" demand-commodity basis. The filing also reflects inclusion of $3,910,000 in Account No. 191 of payments made to settle a pricing dispute over the price of producer supplies actually purchased.

Equitrans notes that copies of the filing were served upon Equitrans' jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before July 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16702 Filed 7–12–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–25–001, TF91–8–25–001]

Mississippi River Transmission Corp.; Rate Change Filing

July 8, 1991.

Take notice that on June 28, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 to be effective June 1, 1991:

First Revised Fifty-Ninth Revised Sheet No. 4
First Revised Eighteenth Revised Sheet No. 4.1
First Revised Eighteenth Revised Sheet No. 4.2
First Revised Sixtieth Revised Sheet No. 4
First Revised Nineteenth Revised Sheet No. 4.1
First Revised Nineteenth Revised Sheet No. 4.2

MRT states that the purpose of the filing is to reflect adjustments made in compliance with the FERC's May 30, 1991 Order, and to update MRT's Interim PGA filed May 30, 1991 to reflect United Gas Pipe Line Company's currently effective rates.

MRT states that in compliance with the Commission's Order dated May 30, 1991, MRT submitted a magnetic tape which corrects the errors as discussed in the Order's enclosure. Also, First Revised Fifty-Ninth Revised Sheet No. 4, First Revised Eighteenth Revised Sheet No. 4.1, and First Revised Eighteenth Revised Sheet No. 4.2 and supporting workpapers reflect MRT's tracking of the currently effective United rates. Further, MRT has recomputed its exchange activity and transportatioin imbalances in the attached schedule. The recomputation yields a $47,956 jurisdictional adjustment which MRT will debit to its refund subaccount. Finally, MRT will make all the necessary adjustments in its next annual filing to correct the Exchange Gas Cost amortizing subaccount beginning balance.

MRT also included First Revised Sixtieth Revised Sheet No. 4, First Revised Nineteenth Revised Sheet No. 4.1, and First Revised Nineteenth Revised Sheet No. 4.2 in order to reflect United's currently effective rates in MRT's Interim PGA filed May 30, 1991 to be effective June 1, 1991.

MRT states that a copy of this filing has been mailed to each of MRT's jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE.,

Washington, DC 20426, in accordance with rule 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. All such protests should be filed on or before July 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16702 Filed 7-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-24-000]

Monterey Pipeline Co.; Petition for Rate Approval

July 8, 1991

Take notice that on July 1, 1991, Monterey Pipeline Company (Monterey) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 28 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Monterey states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and currently operates intrastate facilities in Louisiana. Monterey's previous maximum interruptible transportation rate of 24.4 cents per MMBtu for section 311(a)(2) service was approved by the a Commission order issued November 3, 1988, in Docket No. ST88-5350-000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before July 29, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16704 Filed 7-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-191-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 8, 1991

Take notice that Northern Natural Gas Company (Northern) on July 3, 1991, tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume 1, the following tariff sheets:

First Revised Sheet No. 6B
First Revised Sheet No. 25A
Fourth Revised Sheet No. 52F.3a
Sixth Revised Sheet No. 52F.4

Northern states that such tariff sheets, with a proposed effective date of August 1, 1991, are being submitted to clarify its currently effective Rate Schedule FT-1 and Argus Rate Schedule to include zone transfers of firm sales and transportation entitlement.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before July 15, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16705 Filed 7-12-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures From Thermo Products, Inc. (Case No. F-034)

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Thermo Products, Inc. (Thermo) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's GLC and GHC condensing gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Thermo. Thermo's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Thermo seeks to test using a blower delay time of 30 seconds for its GLC and GHC condensing gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than August 14, 1991.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-034, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA),

Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA). Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On May 2, and June 4, 1991, Thermo filed an Application for an Interim Waiver regarding blower time delay. Thermo's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Thermo requests the allowance to test using a 30-second blower time delay when testing its GLC and GHC condensing gas furnaces. Thermo states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.5 percent. Since current DOE test procedures do not address this variable blower time delay, Thermo asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Amana Refrigeration Inc., 56 FR 853, January 9, 1991; and Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Thermo an Interim Waiver for its GLC and GHC condensing gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Thermo Products, Inc. was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, July 9, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

May 2, 1991.

Assistant Secretary, Conservation and Renewable Resources,

United States Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

Gentlemen: This is a petition for waiver and application for interim waiver submitted pursuant to 10 CFR 430.27. Waiver is requested from the furnace test procedure found in Appendix N to subpart B of part 430.

The test procedure requires a 1.5 minute delay between burner on and blower on. Thermo Products Corporation is requesting use of a non-adjustable fan control device which automatically brings the fan on ahead of the 1.5 minutes specified, which prevents testing the basic models in a manner representative of their true performance thus providing inaccurate comparative data.

If this petition is granted, the fan control would be allowed to operate in its normal manner and the resultant true blower on time delay would be used in the test procedure and the calculations.

Thermo Products Corporation is using this fan delay device on our GLC and GHC line of condensing furnaces and the average energy savings is 1.5% on our AFUE test results.

Thermo Products Corporation is confident that this waiver will be granted and is requesting an interim waiver until the final ruling is made. Proposed ASHRAE Standard 103–1988 specifically addresses the use of timed blower devices. Similar waivers have been granted to other furnace manufacturers.

Confidential comparative data is available to you upon your request.

Domestic Manufacturers of similar products have been sent a copy of this correspondence.

Very truly yours,

Thermo Products, Inc.

Everett E. James,

Director of Engineering.

June 4, 1991.

U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–42, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585.

Attn.: Mr. Cyrus H. Hasseri:

Dear Mr. Hasseri: In follow-up to our phone conversation regarding our May 3, 1991 Petition for Waiver and Application for Interim Waiver. This waiver is pursuant to 10 CFR 430.27 requested from the furnace test procedure found in Appendix N to Subpart B.

The test procedure requires a 1.5 minute delay between burner on and blower on. Thermo Products Corporation is requesting use of a non-adjustable fan control device which automatically brings the fan on at 30 seconds instead of the 1.5 minutes.

Thermo Products Corporation is using this fan delay device on our GLC and GHC product line of condensing furnaces and the average energy savings is 1.5% on our AFUE test results.

The current prescribed test procedures prohibit Thermo Products from taking credit for the saved energy, thus providing inaccurate comparative data.

If this petition is granted, the fan control would be allowed to operate in its normal manner and the resultant true blower on time delay of 30 seconds would be used in the test procedure and the calculations.

Thermo Products is confident that this waiver will be granted and is requesting an

interim waiver until the final ruling is made. Proposed ASHRAE Standard 103–1988 specifically addresses the use of a timed blower operation.

The confidential comparative data is available for your review upon request.

Very truly yours,

THERMO PRODUCTS, INC.

Everett E. James,

Director of Engineering.

July 9, 1991.

Mr. Everett E. James
Director of Engineering
Thermo Products, Inc.
P.O. Box 217
North Judson,Indiana 46366.

Dear Mr. James: This is in response to your May 2, and June 4, 1991, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the Thermo Products, Inc. (Thermo) GLC and GHC condensing gas furnaces.

Previous waivers for timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Amana Refrigeration Inc., 56 FR 853, January 9, 1991; and Armstrong Air Conditioning Inc., 56 FR 10553, March 13, 1991.

Thermo's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Thermo will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Thermo's Application for an Interim Waiver from the DOE test procedures for its GLC and GHC condensing gas furnaces regarding blower time delay is granted.

Thermo shall be permitted to test its line of GLC and GHC condensing gas furnaces on the basis of the test procedures specified in 10 CFR part 430, Subpart B, Appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91–16767 Filed 7–12–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–17–NG]

Brymore Energy Inc.; Order Granting Blanket Authorization To Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Brymore Energy Inc. (BEI), blanket authorization to import up to 200 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery after the expiration of FE/DOE Opinion and Order 282 on August 19, 1991.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 9, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–16770 Filed 7–12–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–38–NG]

Grand Valley Gas Co.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 29, 1991, of an application filed by Grand Valley Gas Company (Grand Valley) for blanket authorization to import from Canada up to 75 Bcf of natural gas over a two-year term beginning on the date of first delivery after October 31, 1991, the date Grand Valley's existing blanket import authority expires (1 FE ¶ 70,203). The gas would be purchased from various Canadian suppliers on a short-term and spot market basis to supply U.S. purchasers that include, but are not limited to, industrial and commercial end-users, agricultural users, electric utilities, pipelines, and distribution companies. Grand Valley intends to use existing pipelines facilities for transportation of the volumes to be imported. No new construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 14, 1991.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:
Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394
Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Grand Valley is a Utah corporation and has its principal place of business in Salt Lake City, Utah. Grand Valley proposes to import Canadian natural gas on behalf of U.S. purchasers and/or Canadian suppliers, or on its own behalf for sale to U.S. purchasers. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes.

In support of its application, Grand Valley asserts that the requested extension of its existing blanket authorization under the same terms and conditions as granted in its current blanket authorization will be in the public interest.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance:

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures:

In reponse to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Grand Valley's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 9, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–16769 Filed 7–2–91; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–83002K; FRL 3930–5]

Receipt of Requests for Exclusion From Testing From Three Chemical Companies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: EPA requires that specified chemical substances be tested to determine if they are contaminated with halogenated dibenzo-*p*-dioxins (HDDs) or halogenated dibenzofurans (HDFs), and that results be reported to EPA. However, provisions are made for exclusion from these requirements if an appropriate application is submitted to EPA and is approved. EPA has received requests for exclusion from these requirements from Rhone-Poulenc Inc., ICI Americas Inc., and Pfister Chemical Inc., and will accept comments on these requests. EPA will publish another **Federal Register** notice announcing its decisions on these requests.

DATES: Submit written comments on or before July 30, 1991.

ADDRESSES: Submit written comments in triplicate, identified with the document control number OPTS–83002K, to: TSCA Public Docket Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 544–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR part 766 (52 FR 2112, June 5, 1987) EPA requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs.

Under 40 CFR 766.32(a)(1)(i) and (ii), a person may be granted an exclusion from the testing requirements of part 766 if appropriate testing of the chemical substance has already been done or the process and reaction conditions are

such that HDDs/HDFs would not be produced.

Under the regulation, a request for either an exclusion or waiver must be made before September 4, 1987, for persons manufacturing, importing, or processing a chemical substance as of June 5, 1987, or 60 days before resumption of manufacture or importation of a chemical substance not being manufactured, imported, or processed as of June 5, 1987.

Rhone-Poulenc Inc. requests an exclusion under 40 CFR 766.32(a)(1)(i) and (a)(1)(ii) for 2,3,5,6- tetrachloro-2,5-cyclohexadiene-1,4-dione (CAS No. 118–75–2, chloranil).

ICI Americas Inc. requests an exclusion under 40 CFR 766.32(a)(1)(ii) for 2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4- dione (CAS No. 118–75–2, chloranil).

Pfister Chemical Inc. requests an exclusion under 40 CFR 766.32(a)(1)(ii) for 3,4',5-tribromosalicylanilide (CAS No. 87–10–5).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC from 8 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: June 14, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91–16746 Filed 7–12–91; 8:45 am]

BILLING CODE 6560–50–F

[FRL–3974–3]

Revision of the Alabama National Pollutant Discharge Elimination System (NPDES) Program To Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the national Pollutant Discharge Elimination System General Permits Program for the State of Alabama.

SUMMARY: On June 26, 1991, the Regional Administrator for the Environmental Protection Agency (EPA), Region IV approved the State of Alabama's National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of Alabama to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Jim Patrick, Acting Chief, Facilities Performance Branch, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347–2913.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharge of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Alabama was authorized to administer the NPDES program in October 1979. Its program as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For those reasons the Alabama Department of Environmental Management requested a revision of its NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: storm water discharges from municipal, industrial and construction sites; hydrostatic test water; non-contact cooling water; once-through discharges from wet-decking operations; off-shore oil and gas activities not discharging drilling muds and cuttings; underground storage tank remediation sites; and sand and gravel operations.

Each general permit will be subject to EPA review as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Alabama submitted, in support of its request, copies of the relevant statues and regulations and proposed regulations. The State also has submitted a statement by the Attorney General certifying, with appropriate citations to the statues and regulations, that the State will have adequate legal authority to administer the general permits program consistent with 40 CFR 123.28. Based upon Alabama's Program Description and its experience in administering an approved NPDES program, EPA has concluded that the State will have necessary procedures and resources to administer the general permits program.

Under 40 CFR 123.62, NPDES program revisions are either substantial (requiring publication of proposed program approval in the **Federal Register** for public comment) or non-substantial (where approval may be granted by letter from EPA to the state). EPA has determined that assumption by Alabama of general permit authority is a non-substantial revision of its NPDES program. EPA has generally viewed approval of such authority as non-substantial because it does not alter the substantive obligations of any discharger under the State program, but merely simplifies the procedures by which permits are issued to a number of point sources.

Moreover, under the approved state program, the State retains authority to issue individual permits where appropriate, and any person may request the state to issue an individual permit to a discharger eligible for general permit coverage. While not required under § 123.62, EPA is publishing notice of this approval action to keep the public informed of the status of its general permit program approvals.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

The following table provides the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Alabama's authority to issue general permits.

STATE NPDES PROGRAM STATUS

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State Pretreatment program	Approved state general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	—	—	03/04/83
Connecticut	09/26/73	01//09/89	06/03/81	—

STATE NPDES PROGRAM STATUS—Continued

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State Pretreatment program	Approved state general permits program
Delaware	04/01/74	—	—	—
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	—
Illinois	10/23/77	09/20/79	—	01/04/84
Indiana	01/01/75	12/09/78	—	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	—
Kansas	06/28/74	08/28/85	—	—
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	—
Michigan	10/17/73	12/09/78	06/07/83	—
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	—
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	—	04/29/83
Nebraska	05/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	—	—
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/91	06/13/80	—	—
North Carolina	10/19/75	09/28/84	06/14/82	—
North Dakota	06/13/75	01/22/90	—	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	—
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	—	—
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	—
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	—	03/16/82	—
Virgin Islands	06/30/76	—	—	—
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73	—	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	—	—
Totals	39	34	27	22

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexability Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this State General Permits Program will not have a significant impact on a substantial number small entities. Approval of the Alabama NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Alabama State General NPDES Permits Program merely provides for a simplified administrative process.

June 26, 1991.

Joseph R. Franzmathes,

Asst. Regional Administrator.

[FR Doc. 91-16764 Filed 7-12-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Exchange Bankshares Corporation of Kansas; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

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 to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 31, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Exchange Bankshares Corporation of Kansas, Atchison, Kansas; to acquire 100 percent of the voting shares of The First Kansas Bancorp, Leavenworth, Kansas, and thereby indirectly acquire First National Bank & Trust Company, Leavenworth, Kansas.

Board of Governors of the Federal Reserve System, July 9, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16721 Filed 7-12-91; 8:45 am]

BILLING CODE 6210-01-F

First Virginia Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's

approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Virginia Banks, Inc., Falls Church, Virginia; to acquire, through its subsidiary, First Virginia Insurance Services, Inc., Falls Church, Virginia, certain assets of Ferraro & Pinholster, Inc., Fairfax, Virginia, and thereby engage in providing general insurance agency services, pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 9, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16722 Filed 7-12-91; 8:45 am]

BILLING CODE 6210-01-F

Old Kent Financial Corporation; Notice of 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 July 31, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to engage *de novo* in making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 9, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16723 Filed 7-12-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in July

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the **Federal Register** on June 21, 1991, Volume 56, No. 120, on page 28567 that:

The ADAMHA AIDS Advisory Committee would meet on July 30–31, 1991, at the National Institutes of Health. This meeting has been canceled.

Dated: July 9, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-16727 Filed 7-12-91; 8:45 am]

BILLING CODE 4160-20-M

Agency for Health Care Policy and Research

Establishment of Health Care Policy and Research Contracts Review Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. appendix 2), the Administrator, Agency for Health Care Policy and Research (AHCPR), announces the establishment of the following review committee.

Designation: Health Care Policy and Research Contracts Review Committee.

Purpose: The purpose of the Committee is to provide, through small Subcommittees of specially qualified reviewers, recommendations to the Administrator regarding the scientific and technical merit of contract proposals. These contracts are designed to: (a) Develop health care information that can be used by decisionmakers in the public and private sectors, (b) ensure that information resulting from Agency-supported research, demonstration and evaluation activities is disseminated rapidly, widely and in a readily usable form and/or (c) provide support for the research activities of the Agency.

Function: The Committee, through small Subcommittees of specially qualified Committee members, shall advise and make recommendations to the Administrator on the scientific and technical merit of contract proposals received in response to Requests for Proposals.

Structure: The Committee shall consist of approximately sixty-five members, including the chairperson. Members shall be appointed from among individuals who are not officers or employees of the United States and who by virtue of their training or experience are eminently qualified to carry out the duties of this Committee. Specifically, the membership will consist of experts knowledgeable in the fields of research pertaining to the planning, organization, and evaluation of health services including, but not limited to, such disciplines as: Economics, clinical medical research, clinical guideline development, primary care, nursing, allied health, analyses and dissemination of research findings, medical practice variations and patient outcomes, technology assessment, epidemiology, biostatistics, health care administration, and the cost and financing of health care.

Subcommittees, comprised of members of the Committee, will be formed to provide, on behalf of the Committee, appropriate scientific and technical review of the contract proposals for which the Committee is responsible. A Chairperson and members of the Committee shall be appointed by the Administrator and the Administrator will designate members for each Subcommittee.

Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Committee shall continue in existence until otherwise provided by law or upon a determination by the Administrator of the Agency, or by the Secretary or his designee, that the purpose of the Committee has been accomplished.

Inquires regarding the establishment of this Committee should be addressed to Ms. Lori Donovan, Contract Liaison, Agency for Health Care Policy and Research, Office of Management, room 18–15 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: July 3, 1991.

Willard B. Evans, Jr.,

Acting Administrator, Agency for Health Care Policy and Research.

[FR Doc. 91–16790 Filed 7–12–91; 8:45 am]

BILLING CODE 4160–90–M

Announcement of Priority Areas for Accelerated Small Grants Review

The Agency for Health Care Policy and Research (AHCPR) announces priority areas for small grant applications for health services research, including conferences, pursuant to title IX of the Public Health Service (PHS) Act (42 U.S.C. 299–299c–6) and section 1142 of the Social Security Act (42 U.S.C. 1320b–12) and invites applications for such grants. Small grant applications are those with total requested direct costs of $50,000 or less over the project period. The AHCPR is particularly interested in receiving small grant applications from individuals new to the health services research field.

Small grant applications proposing a conference or research in the priority areas identified below will be accorded an accelerated review. This accelerated review will permit AHCPR to notify applicants of funding decisions approximately six months after receipt of applications. A separate **Federal Register** notice with additional information pertaining to all conference grant proposals, including those in excess of $50,000, is also being issued by AHCPR.

Research priority areas, including conferences, that qualify as small grant proposals for accelerated review are:

1. Research on health care services for underserved/disadvantaged poplations, e.g., minority health issues, rural health issues, methods to improve access;
2. Research on costs, access, and quality of care for the uninsured/underinsured;
3. Research on health care services for individuals with HIV infections, including issues related to costs, access, and quality of care delivered to such individuals;
4. Research on medical liability issues, e.g., determinants of, or alternative approaches to reduce medical liability;
5. Research on clinical practice-oriented primary care that describes the natural history and the management of conditions commonly encountered in primary care practice; and
6. Conferences on the areas specified above as well as other health services research topics of general interest.

These priority areas supersede previously announced priorities for accelerated small grant review.

Comments Invited

Comments are invited on the areas specified. However, the purpose of this accelerated review is to expedite the funding of meritorious grant proposals that address currently identified priorities. Therefore, the review of applications submitted in response to this notice will be conducted in accordance with the schedule set forth below. Any changes in priority areas will be announced in the **Federal Register** and will apply only to accelerated grant review after the publication of such changes. AHCPR will not respond to individual comments, but will consider all comments received in determining whether changes in priority areas are needed to address national health concerns.

Comments pertaining to AHCPR small grant priority areas should be submitted within 60 days of the date of this notice to: Linda K. Demlo, Ph.D., Director, Office of Program Development, Office of Planning and Resource Management, AHCPR, Room 18A–30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9405.

The aims of the proposed project must be distinctly different from those of any pending grant applications or funded research projects submitted by the applicant. In addition, the request may not be used to supplement an applicant's currently supported projects, provide interim support for proposals under review by the Public Health Service, or obtain funding for a competing continuation of a small grant.

Within the research priority areas specified above, AHCPR urges applicants to submit small grant applications in priority areas, including conference, with relevance to specific objectives of the publication "Healthy People 2000." Potential applicants may obtain a copy of "Healthy People 2000" (full report; Stock No. 017–001–00474–0) (summary report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone 202–783–3238.

Special Instructions to Applicants Concerning Inclusion of Women and Minorities in Research Study Populations

AHCPR observes NIH and ADAMHA policy requiring applicants for research grants to include minorities and women in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study. Special emphasis should be placed on the need to include minorities and women in studies of diseases, disorders, and conditions which disporportionately affect them. This policy is intended to apply to makes and females of all ages. If women or minorities are excluded or inadequately represented in research,

particularly in proposed population-based studies, a clear, compelling rationale should be provided.

The composition of the proposed study group must be described in terms of general and race/ethnicity. In addition, gender and racial/ethnic issues should be addressed in developing the research design and sample size appropriate for the scientific objectives of the study. This information should be included on the form PHS 398 in section 2, A–D of the Research Plan and summarized in section 2, E, Human Subjects. State and local governments using form PHS 5161 should include this information in the Program Narrative section.

Applicants are urged to assess carefully the feasibility of including the broadest possible representation of minority groups. However, the AHCPR recognizes that it may not be feasible or appropriate in all research projects to include representation of the full array of United States racial/ethnic minority populations (i.e., Native Americans, Asian/Pacific Islanders, blacks, Hispanics). Where appropriate, the applicant should provide the rationale for studies on single minority population groups.

All applications for research submitted to AHCPR are required to address this policy with respect to the inclusion of women and minorities. AHCPR will not award grants for applications which do not comply. If the required information is not contained in the application, the application will be returned without review.

Review Process

The AHCPR accelerated review process involves technical and scientific review by Federal and/or non-Federal experts serving as field readers, rather than by an AHCPR standing advisory committee. Section 922(d)(2) of the PHS Act (42 U.S.C. 299c–1(d)(2)), allows the Administrator of AHCPR to make adjustments in AHCPR's usual peer review process for applications whose requested direct costs do not exceed $50,000. The accelerated review process allows AHCPR to notify applicants of funding decisions approximately six months after receipt of applications.

Small grant proposals submitted for research on topics not specified above, or for research conferences in excess of $50,000, will not be accepted for expedited review, although they may be eligible for the established AHCPR peer review process by a committee of non-Federal experts. The final determination as to whether an application qualifies for expedited review is made by AHCPR, based on its evaluation of the application's consistency with the above-listed six priority areas.

When AHCPR determines that an application intended by the applicant for expedited review is not so qualified, the application will be held for the next regular application deadline for routine grants receipt and peer review procedures.

Eligible Applicants

Applications may be submitted by public or private nonprofit institutions, units of State or local government, or individuals. For-profit institutions are not eligible for AHCPR grants.

Application Procedures

Applications must be submitted in accordance with Section 924 of the PHS Act (42 U.S.C. 299c–3) and with instructions in the application kit and 42 CFR 67.13.

Application Forms

All applicants, except units of State and local governments, must use form PHS 398. Applicants from State and local governments may use form PHS 5161, Application for Federal Assistance (nonconstruction programs). Grant application materials and instructions are available at most institutional business offices or from: Director, Office of Scientific Review, Office of Planning and Resource Management, AHCPR, Room 18A–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–3091.

Application Submission

To receive accelerated review, Item 2 of page 1 of the application should be checked "Yes", and the PA number PA 91–62 and the title "AHCPR Small Grants Program" should be entered.

The original and six copies of the application form (PHS 398) should be sent to: Division of Research Grants, National Institutes of Health, Westwood Building, room 240, Bethesda, MD 20892.

State and local governments using form PHS 5161 may submit the original and two copies of the completed application form to the same location.

Submission Deadline

The first deadline for receipt of priority and conference small grants applications for accelerated review is September 15, 1991. Thereafter, the following deadlines for receipt of applications apply for any Fiscal Year: January 15, May 15, and September 15.

Any future changes in this schedule will be announced.

Applications must be received by the Division of Research Grants, NIH, by the above due dates. However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than 1 week prior to the deadline date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day. The receipt date will be waived only in extenuating circumstances. To request such a waiver, an explanatory letter must be included with the signed completed application. No waiver will be granted prior to receipt of the application.

Review Criteria

Research grant applications will be reviewed according to the following criteria:

1. The significant and originality from a scientific or technical standpoint of the goals of the project;
2. The adequacy of the methodology proposed to carry out the project;
3. The availability of data or the proposed plan to collect data required in the analysis;
4. The adequacy and appropriateness of the plan for organizing and carrying out the project;
5. The qualifications of the principal investigator and the proposed staff;
6. The reasonableness of the proposed budget in relation to the proposed project;
7. The adequacy of the facilities and resources available to the grantee; and
8. The adequacy of steps proposed to protectg human subjects, as appropriate.

Additional Reivew Criteria for Conference Grant Applications

Research conference grant applications will be reviewed according to the following criteria:

Significance of the proposed conference

1. The importance of the issue or problem addressed in the delivery cost, quality of, or access to health services, or a methodological or technical issue in dealing with the development and conduct of health services research.
2. The implications of the conference's intended outcome(s) for future health services research, for identifying or resolving methodological problems and for organizing and managing research activities.
3. The implications of the conference for technological innovations in health care communications and dissemination of knowledge, information, or for the effective utilization of the material communicated and disseminated.

Conference Design

1. The logic and soundness of the conference's conceptual framework.

2. The role, composition, and expertise of individuals and advisory groups to be utilized in planning or conducting the conference, including the involvement of the potential users of the information or other products of the conference.

3. The reasonableness of the techniques proposed to ensure maximum participation and interaction among participants, e.g., discussion in large and small groups, prior distribution of papers, panels versus individual speakers; and periods for questions and answers.

4. The specificity of the proposed agenda of topics to be addressed, the proposed speakers and panel members for each topic, their credentials, and the criteria for their selection.

5. The nature and quality of the informational products to be disseminated as a result of the conference, (such as proceedings, research agendas, publications, training manuals and other products) and a plan for dissemination.

Personnel and Facilities

1. The experience and training of the applicant indicating the ability of the applicant to design, organize and carry out a health services research conference.

2. The adequacy of the facilities available for conducting the conference.

Appropriateness of Budget

1. The reasonableness of the overall cost of the conference, given the proposed approach.

2. The cost effectiveness of the total proposed expenditures in terms of the probable value of the conference results.

Funding Availability

The AHCPR expects to award up to $1 million per year for all small grants. Of this amount it is expected that approximately $700,000 will be awarded for up to 14 new small research grants and $300,000 will be awarded for up to 10 small conference grants a year. Support normally will not exceed 1 year.

For Further Information

Information on program aspects of small research grants is available from the Center for General Health Services Extramural Research, at the address below: Center for General Health Services Extramural Research, Agency for Health Care Policy and Research, room 678, Executive Office Center Building, 2101 East Jefferson St., Rockville, Maryland 20852–4993.

For each of the research areas, specific contacts (all located in the Center for General Health Services Extramural Research at the address above) are as follows:

Rural Health Issues:
Carole D. Dillard, Project Officer, Center for General Health Services Extramural Research (301) 443–6990.

Minority Health Issues:
Frantz C. Wilson, Project Officer, Center for General Health Services Extramural Research (301) 443–2080.

Costs, Access, and Quality of Care for the Uninsured/Underinsured:
Fred J. Hellinger, Ph.D., Director, Division of Costs and Financing, Center for General Health Services Extramural Research (301) 443–6990.

HIV/AIDS Issues:
Melford Henderson, M.A., M.P.H., Project Officer, Center for General Health Services Extramural Research (301) 443–6990.

Medial Liability Issues:
Gary J. Young, J.D., Ph.D., Project Officer, Center for General Health Services Extramural Research (301) 443–2716.

Clinical Practice-oriented Primary Care:
Carolyn Clancy, M.D., Project Officer, Center for General Health Services Extramural Research (301) 443–2080.

For information on program aspects of small conference grants, contact: Margaret A. VanAmringe, Director, Center for Research Dissemination and Liaison, Agency for Health Care Policy and Research, room 18A–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–2904.

For information on grants and business management aspects, contact: Ralph L. Sloat, Chief, Grants Management Branch, Office of Planning and Resource Management, Agency for Health Care Policy and Research, room 18A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–4033.

All grants funded under this announcement are subject to grant regulations set out in 42 CFR Part 67, Subpart A, and the PHS Grants Policy Statement. This AHCPR grant program is described in the Catalog of Federal Domestic Assistance as Numbers 93.226 and 93.180. AHCPR grant applications are not subject to Executive Order 12372.

Dated: May 14, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91–16792 Filed 7–12–91; 8:45 am]

BILLING CODE 4160–90–M

Announcement of Conference Grant Application Procedures and Criteria

The Agency for Health Care Policy and Research (AHCPR) announces procedures and criteria for health services and medical effectiveness research conference grants pursuant to title IX of the Public Health Service (PHS) Act (42 U.S.C. 299–299c-6) and section 1142 of the Social Security Act (42 U.S.C. 1320b-12) and invites applications for such grants.

Types of Conferences Supported

AHCPR awards grants for conferences and workshops related to general health services research and medical effectiveness research activities. In particular, AHCPR is interested in supporting conferences that further the following types of activities:

- Exchanging information on innovations in health services delivery and technology, and developing and improving methods of disseminating findings and information resulting from health services research activities of AHCPR.
- Promoting the dissemination and adoption of medical practice guidelines, clinical research findings, and health services data-related products.
- Improving health services research design and methods.
- Developing research agendas for addressing significant health services problems.

For conference proposals requesting $50,000 or less in direct costs ("small grants"), AHCPR is particularly interested in applications in areas described in the separate notice appearing in this issue of the **Federal Register** entitled "Announcement of Priority Areas for Accelerated Small Grants Review."

AHCPR also is particularly interested in conference grant applications that pertain to the above areas and applications that have relevance to the specific objectives of the publication "Healthy People 2000." Potential applicants may obtain a copy of "Healthy People 2000" (full report; Stock No. 017–001–00474–0) (summary report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC, 20402–9325, telephone 202–783–3238.

Special Instructions to Applicants Concerning the Inclusion of Women and Minorities in Research Study Populations

AHCPR observes NIH and ADAMHA policy requiring applicants for research grants to include minorities and women in study populations so that research findings can benefit all persons at risk of the disease, disorder, or condition under study. Under this policy, special emphasis is placed on the need to include minorities and women in the studies of diseases, disorders and conditions which disproportionately affect them. The policy is intended to apply to males and females of all ages. Although conferences will not conduct research *per se*, research is usually a primary focus of AHCPR-supported conferences and applications will be expected to demonstrate consideration for the special needs of minorities and women. This consideration should be reflected in the design of the agenda, selection of topics and speakers, as well as in the final product associated with the conference, whether it is a research agenda or conference proceedings.

Review Process

AHCPR's conference grant applications with requested direct costs of $50,000 or less over the project period are reviewed for scientific and technical merit by Federal and/or non-Federal experts serving as field readers, rather than a standing AHCPR advisory committee.

Section 922(d)(2) of the PHS Act (42 U.S.C. 299c-1(d)(2)) allows the Administrator of AHCPR to make adjustments in AHCPR's standard peer review process for applications with requested direct costs that do not exceed $50,000. The accelerated review process allows AHCPR to notify applicants of funding decisions approximately 6 months after receipt of applications.

Conference grant applications in excess of $50,000 over the project period will be reviewed under AHCPR's standard peer review procedures in accordance with section 922 of the PHS Act (42 U.S.C. 299c-1). Under its standard peer review process, AHCPR notifies applicants of funding decisions between 10 to 12 months after the receipt of applications.

Eligible Applicants

Applications may be submitted by public or private nonprofit institutions, units of State or local government, or individuals. For-profit institutions are not eligible for AHCPR grants.

Application Procedures

Applications must be submitted in accordance with section 924 of the PHS Act (42 U.S.c. 299c-3) and with the instructions in the application kit and 42 CFR 67.13.

Application Forms

All applicants, except units of State or local governments, must use form PHS 398. Applicants from State and local governments may use Form PHS 5161–1, Application for Federal Assistance (nonconstruction programs). Grant application materials and instructions are available at most institutional business offices or from: Director, Office of Scientific Review, Agency for Health Care Policy and Research, room 18A–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–3091.

Application Submission

Those applicants submitting an application with requested direct costs of $50,000 or less should check Item 2 of page 1 of the application "Yes," and the PA number PA–91–61 and the title "AHCPR Small Grants Program" should be entered.

The original and six copies of the application form (PHS 398) should be sent to: Division of Research Grants, National Institutes of Health, 5333 Westbard Avenue, Bethesda, Maryland 20892.

State and local governments using Form PHS 5161–1 may submit an original and two copies of the completed application form to the same location.

Submission Deadline

The deadline for submission of applications depends on whether the amount of direct costs over the project period exceeds $50,000.

Conference Applications Requesting More Than $50,000 in Direct Costs

The first deadline for receipt of these applications for Fiscal Year (FY) 1992 is October 1, 1991. Thereafter, the following deadlines for receipt of applications apply to conference grants for any fiscal year: February 1, June 1, and October 1. Applicants will be notified of funding decisions approximately 10 to 12 months after receipt of applications.

Conference Applications Requesting $50,000 or Less in Direct Costs

The first deadline for receipt of small conference grant applications for accelerated review is September 15, 1991. Thereafter, the following deadlines for receipt of applications apply for any fiscal year: January 15, May 15, and September 15. Small conference grant applications are accorded an accelerated review, which permits AHCPR to notify applicants of funding decisions approximately 6 months after receipt of applications.

Any future changes in this schedule will be announced.

Applications must be received by the Division of Research Grants, NIH, by the above due dates. However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than 1 week prior to the deadline date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day. The receipt date will be waived only in extenuating circumstances. To request such a waiver, an explanatory letter must be included with the signed completed application. No waiver will be granted prior to receipt of the application.

Review Criteria

Conference grant applications will be reviewed according to the following criteria:

Significance of the Proposed Conference

- The importance of the issue or problem addressed in the delivery, cost, quality of, or access to health services, or a methodological or technical issue in dealing with the development and conduct of health services research.
- The implications of the conference's intended outcome(s) for future health services research, for identifying or resolving methodological problems, and for organizing and managing research activities.
- The implications of the conference for technological innovations in health care communications and dissemination of knowledge, information, or for the effective utilization of the material communicated and disseminated.

Conference Design

- The logic and soundness of the conference's conceptual framework.
- The role, composition, and expertise of individuals and advisory groups to be utilized in planning or conducting the conference, including the involvement of the potential users of the information or other products of the conference.
- The reasonableness of the techniques proposed to ensure maximum participation and interaction among participants, e.g., discussion in large and small groups, prior distribution of papers, panels versus individual

speakers; and periods for questions and answers.

• The specificity of the proposed agenda of topics to be addressed, the proposed speakers and panel members for each topic, their credentials, and the criteria for their selection.

• The nature and quality of the informational products to be disseminated as a result of the conference (such as proceedings, research agendas, publications, training manuals and other products), and a plan for dissemination.

Personnel and Facilities

• The experience and training of the applicant indicating the ability of the applicant to design, organize and carry out a health services research conference.

• The adequacy of the facilities available for conducting the conference.

Appropriateness of Budget

• The reasonableness of the overall cost of the conference, given the proposed approach.

• The cost effectiveness of the total proposed expenditure in terms of the probable value of the conference results.

Funding Availability

AHCPR expects to award up to $300,000 in any fiscal year for up to ten small conference grants with direct costs of $50,000 or less. Grant applications for more than $50,000 in direct costs will compete with the total AHCPR grant application pool for funding. AHCPR anticipates that it may award from one to two new conference grants per year with direct costs in excess of $50,000. Grants made pursuant to this announcement will be reviewed and funded consistent with grant application procedures and policies set out in 42 U.S.C. 299c–1, 42 CFR part 67, subpart A, and the PHS Grants Policy Statement. As a rule, conference grants are not made for periods exceeding 1 year.

The Administrator, AHCPR, makes the final funding decisions, taking into consideration the recommendations of the reviewers and the availability of funds. Funding of a conference may be made conditional on grantee acceptance of changes recommended by the reviewers, including substantive changes in the conference design and/or budgetary considerations.

Conditions of Acceptance of Award

Grantees must agree to:

• Allow a limited number of AHCPR staff to attend or participate in the conference. The number of staff to attend will be negotiated with the grantee at the time of award.

• Hold the conference within 12 months of the date of the award.

• Submit three copies of an executive summary and three copies of a one-page abstract of the proceedings to AHCPR not later than 60 days after the conference, and provide AHCPR with three copies of the conference proceedings as soon as they are available.

For Further Information

Additional guidance on these conference grants is included in the AHCPR publication *Conference Grant Information*. Copies of this publication, along with the application forms may be obtained from: Director, Office of Scientific Review, Agency for Health Care Policy and Research, Room 18A–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–3091.

For additional program information, contact: Margaret VanAmringe, Director, Center for Research Dissemination and Liaison, Agency for Health Care Policy and Research, Room 18A–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2904.

For information relating to business management issues, contact: Ralph Sloat, Chief, Grants Management Branch, Agency for Health Care Policy and Research, Room 18A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–3033.

All grants funded under this announcement are subject to grant regulations set out in 42 CFR part 67, subpart A, and the PHS Grants Policy Statement. This AHCPR grant program is described in the Catalog of Federal Domestic Assistance as Numbers 93.226 and 93.180. Applications are not subject to Executive Order 12372.

Dated: May 8, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91–16791 Filed 7–12–91; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control

[Program Announcement 151]

State-Based Capacity Building Projects for the Prevention of Primary and Secondary Disabilities; Notice of Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC) announces that cooperative agreement applications are being accepted for state-based projects to prevent primary and secondary disabilities. Financial assistance is being provided to develop or expand capacity of states to prevent disabilities through public health leadership, coordination of services, surveillance, technical assistance, and implementation and evaluation of community intervention programs. This program was initiated at CDC in Fiscal Year 1988 and awards were made to nine state-based projects for capacity building for a three-year project period which will conclude in September 1991.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas Unintentional Injuries; Maternal and Infant Health; and Diabetes and Chronic Disabling Conditions. (For ordering a copy of Health People 2000, see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized by section 301(a) (42 U.S.C. 241(a)) and section 317 (42 U.S.C. 247(b)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are state health departments or other state agencies or departments deemed most appropriate by the state to lead, coordinate, and conduct the state's disabilities prevention program. This eligibility includes the health departments or other official organizational authorities (agencies or instrumentalities) of the District of Columbia, the Commonwealth of Puerto Rico, and any U.S. territory or possession.

If a state agency applying for cooperative agreement funds is other than the official state health department (except in the case of the current state-based projects), written concurrence of the state health department must be provided. Only one application from a state may enter the review process and be considered for an award under this program.

Eligible applicants may enter into contracts and consortia agreements and understandings as necessary to meet the requirements of the program and strengthen the overall application.

Availability of Funds

It is anticipated that approximately $5,600,000 will be available for cooperative agreement awards for state-based capacity building projects in Fiscal Year 1991. Project awards are expected to be made in September 1991 for 12-month budget periods within an established project period.

It is anticipated that approximately nine state-based projects will receive competing continuation awards and approximately 10 to 12 States will receive new competing awards for a total of 19 to 21 States to be funded in Fiscal Year 1991.

For the current state-based projects that are renewed, it is expected that a 3-year project period will be established and that Fiscal Year 1991 funds will average $355,000 per project for the first budget year.

For new state-based projects, it is expected that a 5-year project period will be established and that awards for the first budget year will range from $170,000 to $230,000. Subject to the availability of future appropriations. CDC believes that grant awards in future years to these new states will average about the same dollar level of the awards currently made to states with similar years of experience.

Projects funded under this announcement should be designed to prevent two targeted groups of disabilities and their related secondary conditions/disabilities: Developmental disabilities, and head and spinal cord injuries.

This Announcement recognizes that, within the lifetime risk for disability, adult chronic conditions must be included in any prevention plan. In order to initiate state capacity building in this area, CDC plans to make awards to two of the current states that receive competitive renewals under this Announcement to develop a prevention capacity for disabilities due to adult chronic conditions. The application content section and evaluation criteria in the Program Announcement will be also used to evaluate the adult chronic condition application component of current states electing to request funds for that activity. That component of those applications will be separately evaluated in order to determine which two states will be awarded additional funds. It is expected that approximately $100,000 in additional funds will be available for each of the two states awarded this expansion.

Use of Funds

The awarded funds may be used for personnel services, supplies, equipment, travel (anticipate two meetings at CDC for project staff), subcontracts, and services directly related to project activities. Project funds may not be used to supplant state or local funds available for disabilities prevention, for construction costs, to lease or purchase facilities or space, or for patient care. Continuation awards beyond the first budget year will be based on the availability of funds and on the satisfactory progress of recipients in achieving project goals and objectives.

Purpose

The purpose of these cooperative agreements is to develop state capacity to reduce the incidence and severity of primary and secondary disabilities These awards are being made to develop and maintain state leadership and a coordination focus for the prevention of disabilities. This coordination and collaboration must include appropriate state and community agencies, appropriate Federally funded service and prevention programs, advocacy organizations, schools of public health, and other academic institutions including minority institutions. Projects must provide technical assistance and increase the knowledge base necessary to design, implement, and evaluate interventions that prevent disabilities. All state-based projects should become model disability prevention programs capable of replication and transfer of technology and process to other states.

These awards will support eligible states to:

1. Establish an office of disability prevention and a state based advisory body.
2. Develop a state strategic plan for the prevention of all disabilities.
3. Conduct surveillance for the targeted disability groups.
4. Establish community intervention projects with input from the advisory body and key people at the community level.

New states are expected to initiate surveillance in both targeted disability groups by the end of the first year and present that plan in their applications. The application should also announce the schedule for commencing community intervention projects. It is recognized that new states may be in a position to commence community projects in only one targeted disability group by the end of the first year. Applications from new states should present the schedule for initiating community projects including identifying and providing details as to the time frames and proposed targeted disability group(s) for initial community activities.

Currently funded states are expected to continue and expand surveillance and community intervention project activities in both targeted disability groups in the first year.

Targeted Disability Groups

A. *Developmental Disabilities (DD)*—States must establish and conduct prevention activities including state-level technical assistance, surveillance, and the implementation and evaluation of community projects.

1. For current established state-based projects, existing DD prevention activities must be outlined with a description of plans for their continuation and expansion. Expansion activities must include direction into at least one of the concentration areas noted below for the new states.

2. New states must direct prevention activities into one of the following two primary disability concentration areas (select a or b):

a. Fetal alcohol syndrome and other congenital alcohol disorders, including fetal alcohol effects; or

b. Mental retardation (MR) associated with socioeconomic risk factors (e.g. poverty, disordered nurturing environments, high risk populations).

and

into one of the following three secondary disability/condition concentration areas: secondary disabilities/conditions associated with (select 1, 2, or 3):

1. Cerebral palsy; or
2. Spina bifida; or
3. Sickle cell anemia; i.e. MR and other neurological conditions.

Developmental disabilities prevention activities in states should be designed to include, but not be limited to, the areas of concentration listed above.

B. *Head and Spinal Cord Injuries*—States must establish activities in technical assistance, surveillance, and community projects. Both current state-based projects and new state-based applicants must present their plan to conduct both head and spinal cord injury prevention activities such as promoting hospital E–Code (external cause of injury) reporting, and developing trauma databases and mechanisms such as registries to report and monitor head and spinal cord injuries. This focus must also include community intervention projects. These can include activities to prevent head and spinal cord injuries from motor vehicle crashes, including seat belt use and prevention of alcohol use and abuse; attention to high-risk groups; recreational safety; child safety belt and

bicycle helmet use promotion; safe transportation for children; and prevention of intentional head and spinal cord injuries due to violence, etc. Projects should address the prevention of secondary disabilities/conditions related to head and spinal cord injuries such as: subsequent trauma, psychosocial, cardiovascular, genitourinary and bowel, neuromusuloskeletal, and skin-related. Applicants who are CDC Injury Control Surveillance or Capacity Building grantees must describe the relationship of those grants to this program and how they have been and will continue to be complementary activities.

c. *Adult Chronic Conditions*—For the current state projects applying for this expansion component, a major emphasis for the prevention of disabilities due to adult chronic conditions through surveillance of selected adult chronic conditions, technical assistance. and community intervention programs must be established. Priority attention must be given to the prevention of at least one of the following conditions: arthritis, osteoporosis, or urinary incontinence.

The prevention of secondary conditons and subsequent disabilities are essential elements of these targeted disability groups. Applicants should address this issue in their project plan by describing such anticipated secondary disability/condition prevention activities.

State-based projects must have theinfrastructure necessary to address all program requirements. Projects are required to include:

- A full-time manager/coordinator who has the resonsibility and authority to carry out the requirements of the program, and the staff commitment for the coordination of activities related to all project operations;
- Effective and well-defined working relationships within the application agency and with other health, advocacy, consumer, education, and social service agencies and jurisdictions in the state;
- Demonstrated experience and expertise in conducting surveillance; and collecting, analyzing, and disseminating data;
- Demonstrated experience and expertise in monitoring and evaluating the effectiveness of prevention programs at the state and community levels;
- Directed disability prevention activities toward minorities and low socioeconomic populations; and
- A demonstrated capacity to communicate program findings to state and local public health officials, policy and decision makers, and other professionals and citizens seeking to strengthen and prioritize prevention efforts.

This program has no statutory matching requirement; however, applicants should demonstrate their capacity to support a portion of first-year costs and announce increasing cost-sharing potential for subsequent budget years. To ensure that state-based preveneion activities will be continued regardless of the availability of Federal financial assistance, applicants for state-based projects should present a plan toward becoming self-sustaining. In the proposed budget and application narrative, appplicants should emphasize the efforts of their state toward becoming self-sustaining for at least major components of this program. One key cost-sharing objective for applicants during the project period is to help support the development and growth of community project activities so that the future cooperative agreement funds can be directed toward assisting state-based functions, including the advisory body and the nucleus of the Office of Disabilities Prevention.

Applicants must prepare specific budget and cost projections (identifying both Federal and non-Federal sources), objectives, and timelines for project activities in the first budget year. An overall outline of subsequent budget and costs, and long-term objectives and timelines for each year of the project period should also be included.

Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop a high-profile, state-based program for the prevention of primary and secondary disabilities;
2. Establish and operate a state-based office of disabilities prevention and advisory body, establish coordination with other disability prevention-related agencies, develop project objectives and time frames, and provide technical assistance throughout the state;
3. Develop and implement a state strategic plan and community-specific project plans for preventive interventions;
4. Determine and develop disability prevention programs in the targeted disability groups, and conduct surveillance; and
5. Promote prevention planning in communities, conduct intervention activities, and evaluate their effectiveness.

B. CDC Activities

1. Provide on-site technical assistance in the planning, operation, and evaluation of program activities;
2. Assist in improving program performance through medical, epidemiologic, and management consultation based on prevention knowledge, national program information, and project services in other states;
3. Support project staff by conducting training programs, conferences, and workshops to enhance their skills and knowledge;
4. Provide a reference point for sharing surveillance data at the regional and/or national levels; and
5. Assist in research and help study the effectiveness of specific prevention and intervention strategies.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (Total 100 Points):

A. Evidence of the Need and Understanding of the Problem: 10 Points

Evaluation will be based on the applicant's description and understanding of the disabilities problem in the state as evidenced by estimates of incidence and/or prevalence, scope of disabilities and their severity, and costs associated with specific disabilities. Evaluation of this criteria will also include applicants' description of current prevention activities within the state and their effectiveness, resources available, demographic indicators, populations-at-risk, gaps in knowledge, and accounts that address and recognize the systems that are necessary to develop or expand a program for the prevention of primary and secondary disabilities. This criteria includes the applicant's presentation and strategy for conducting activities in the targeted disability groups noted in this Announcement.

B. Technical Approach to the Conduct of the Project: 30 Points

Evaluation will be based on:

1. The quality of the proposed plan and approach to establish an office of disabilities prevention to ensure its capability to function as a coordinating focus and to provide technical assistance throughout the state;
2. The quality of the plan to establish the advisory body, including its organizational composition and impact on policy, planning, and oversight for prevention activities;
3. The quality of the approach to develop and/or utilize the state strategic

plan for the prevention of all targeted disability groups;

4. The overall quality, reasonableness, feasibility, and logic of the designed project objectives, including the overall workplan and timetable for accomplishment.

5. The strength of the proposed evaluation plan to measure the effectiveness of all project components, incorporating both process and outcome measures.

6. The quality of the strategy that illustrates how disabilities prevention activities will be promoted and communicated; and how effective working relationships with other groups throughout the state will be coordinated;

7. The quality of described preventive services for low income and minority populations; and how access for persons with disabilities to services, opportunities, and project facilities will be achieved.

C. Surveillance Systems: 25 Points

Evaluation will be based on the plans, approaches, and access capacity to develop and conduct surveillance for the targeted disability groups. This must include a listing of disabilities of primary concern. This includes the methods to be used in the design, conduct, and analysis of the proposed surveillance systems.

D. Community Projects: 25 Points

Evaluation will be based on the quality of the applicant's description of planning efforts and methods to design and conduct community intervention projects. This must also include community selection criteria, approaches to coalition-building within communities, identification of cooperating agencies and entities in the planning and delivery of intervention programs, and plans for epidemiologically sound evaluation of the effectiveness of interventions.

E. Plans To Become Self-Sustaining: 10 Points

The applicant should describe the plan to provide initial cost sharing for project activities and for the continuation of program services after financial assistance has been terminated. This plan should include financial commitments already obtained and efforts being made to obtain further partial financial or in-kind cost-sharing to help underwrite program costs. The plan also must include evidence of the applicant's intentions and early commitment toward becoming self-sustaining, at least in major components of project operations; thus demonstrating the public health priority of disabilities prevention in the state.

F. Budget Justification and Adequacy of Facilities: Not Scored

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of cooperative agreement funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting project activities.

FOR CURRENT STATE-BASED PROJECTS APPLYING FOR ADULT CHRONIC CONDITIONS COMPONENT ONLY:

QUALITY OF THE PLAN TO FOCUS ON THE PREVENTION OF ADULT CHRONIC CONDITIONS: 15 POINTS

Evaluation will be based on a separate review of the above six criteria as applied to the prevention of the selected adult chronic condition—arthritis, osteopororosis, or urinary incontinence. Eligible states electing to include this component in their applications should not prepare a separate section in their applications for this purpose. However, they should describe this expansion, demonstrate how it will complement other capacity building activities and show how its development will be integrated into the total program plan contained in the application.

Other Requirements

• Applicants must submit a separate typed abstract/summary of their proposal as a cover to their applications, consisting no more than two single-spaced pages.

Paperwork Reduction Act

• The projects to be funded through this cooperative agreement that involve the collection of information from ten or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects and Confidentiality

• Individual state projects may include research on human subjects, including access to personal identifiers to link revelant data sets. Therefore, applicants must consider appropriate compliance with Public Law 93–148 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Executive Order 12372

Applications are subject to the Intergovernmental review of Federal Programs as Governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305 no later than 60 days after the deadline date for new and competing wards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date. The following states have elected not to participate in the "Intergovernmental Review of Federal Programs": Alaska, Idaho, Kansas, Minnesota, Nebraska, Virginia, American Samoa, the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Catalog of Federal Domestic Assistance (CFDA)

The Catalog of Federal Domestic Assistance number is 93.184.

Application Submission and Deadline

The original and two copies of the application must be submitted on PHS Form 5161–1 and should carefully adhere to directions in the instruction sheet and other information provided. Applications must be submitted to Mr. Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 225 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305 on or before July 30, 1991.

1. Deadline.

Applications will be considered to have met the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

2. Applications that do not meet the criteria in 1.A. or 1.B. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305; Telephone—(404) 842–6630 or FTS 236–6630.

Programmatic Technical Assistance may be obtained form Joseph B. Smith, Disabilities Prevention Program, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., (Mailstop F–41), Atlanta, Georgia 30333; Telephone—(404) 488–4905 or FTS 236–4905.

Please refer to Announcement No. 151 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone (202) 783–3238).

Dated: July 9, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–16719 Filed 7–12–91; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, (202) 633–7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS on September 26, 1990. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "**FOR FURTHER INFORMATION CONTACT**"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8–05, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Jane Pederson
   Hayward, Wisconsin
   Claims Court Number 90–1429 V
2. Debby Rohrbough on behalf of
   Tyressa Rohrbough
   Weston, West Virginia
   Claims Court Number 90–1430 V

3. Perry and Mary Wagner on behalf of Richard A. Wagner
Long Beach, New York
Claims Court Number 90–1431 V

4. Richard A. Velting on behalf of Rory M. Velting
Grand Rapids, Michigan
Claims Court Number 90–1432

5. Donald and Shelia Perchalski on behalf of Sarah Perchalski
Palm Bay, Florida
Claims Court Number 90–1433 V

6 Lauren Dillon on behalf of Justin Dillon
Scarsdale, New York
Claims Court Number 90–1434 V

7. Doris M. Ahern
Lynnfield, Massachusetts
Claims Court Number 90–1435 V

8. Karyn Kellerman on behalf of Corinne Kellerman
Erie, Pennsylvania
Claims Court Number 90–1436 V

9. Samuel Harbolt
San Bernardino County, Illinois
Claims Court Number 90–1437 V

10. Majorie Williams on behalf of Ashlee Rae Williams
Tulsa, Oklahoma
Claims Court Number 90–1438 V

11. Patricia L. Collins on behalf of Heather Collins
Worchester, Massachusetts
Claims Court Number 90–1439 V

12. Smadar Hoffman on behalf of Adam Hoffman
Haverton, Pennyslvania
Claims Court Number 90–1440 V

13. Linda Wolford on behalf of Kara Wolford
Charleston, West Virginia
Claims Court Number 90–1441 V

14. Bonnie Rosenboom on behalf of Michael R. Rosenboom
Lincoln, Nebraska
Claims Court Number 90–1442

15. Kristine Quinn on behalf of Savannah Quinn, Deceased
Sacramento, California
Claims Court Number 90–1443

16. Ilene Van Houter on behalf of Jacob Van Houter
Old Bethpage, New York
Claims Court Number 90–1444 V

17. Donald and Simuna Horner on behalf of Donald Horner Jr.
Niles, Michigan
Claims Court Number 90–1445 V

18. Michael and Elaine Spaulding on behalf of Michael Spaulding Jr.
Monroe, Michigan
Claims Court Number 90–1446 V

19. Del and Cynthia Sterling on behalf of Joshua Sterling
Muskegon, Michigan
Claims Court Number 90–1447 V

20. Janet I. Walters on behalf of Robert Hoogendyk
Hanover, New Hampshire
Claims Court Number 90–1448 V

21. Linda D. Clifford on behalf of Denise M. Clifford
Garden City, Michigan
Claims Court Number 90–1449 V

22. Susan Centmehaiey on behalf of Michael J. Emmons, Deceased
Greenwich, Connecticut
Claims Court Number 90–1450 V

23. Bernard J. Seringer
Locust Valley, New York
Claims Court Number 90–1451 V

24. Frank Palumbo on behalf of Tessa Palumbo
Cumberland, Maryland
Claims Court Number 90–1452 V

25. Jo Anne Brennan
New York City, New York
Claims Court Number 90–1453 V

26. Linda S. Ware on behalf of Amy L. Ware
Cleburne, Texas
Claims Court Number 90–1454 V

27. Ernestine Taylor on behalf of Phillip Taylor
San Antonio, Texas
Claims Court Number 90–1455 V

28. John and Laurie Leary on behalf of Sean Leary, Deceased
Novato, California
Claims Court Number 90–1456 V

29. Susan Beale
Hopewell, Virginia
Claims Court Number 90–1457 V

30. Louise Wilson on behalf of Michael L. Wilson
Blanchester, Ohio
Claims Court Number 90–1458 V

31. Paul D. Newell on behalf of Adam P. Newell, Deceased
Gainesville, Florida
Claims Court Number 90–1459

32. Steven and Linda Cades on behalf of Aaron Cades
Chestertown, Maryland
Claims Court Number 90–1460 V

33. Connie and Thelma Jolly on behalf of Daniel A. Jolly
Papillion, Nebraska
Claims Court Number 90–1461 V

34. Veneda Trout on behalf of Melody M. Serres
Torrington, Wyoming
Claims Court Number 90–1462 V

35. Alma Dominguez on behalf of Danielle Dominguez
Salinas, California
Claims Court Number 90–1463 V

36. Steven Musick
San Francisco, California
Claims Court Number 90–1465 V

37. Nancy Gherardi
Clark AFB, Philippines
Claims Court Number 90–1466 V

38. John and Shirley Laughlin on behalf of Stephen B. Laughlin
Kingsport, Tennessee
Claims Court Number 90–1467 V

39. Alan W. Bishop
Tuscon, Arizona
Claims Court Number 90–1468 V

40. David Burt on behalf of Katelyn Burt
Cuyahoga, Ohio
Claims Court Number 90–1469 V

41. Millard and Isabell Armstrong on behalf of Michael Armstrong, Deceased
Detroit, Michigan
Claims Court Number 90–1470

42. Barbara Greenberg on behalf of Christine Rogers
Canadaigua, New York
Claims Court Number 90–1471 V

43. Pat Dresbach on behalf of David Dresbach, Deceased
Provo, Utah
Claims Court Number 90–1472 V

44. Cynthia Wells on behalf of Brandon Wells
Sacramento, California
Claims Court Number 90–1473

45. Dorothy Rath on behalf of David Rath, Deceased
Jordan, Montana
Claims Court Number 90–1474

46. Shelia J. Lain
Charleston, South Carolina
Claims Court Number 90–1475 V

47. Robert and Patricia Costa on behalf of Stephen Costa
San Diego, California
Claims Court Number 90–1476 V

48. Lee and Sandra Ward on behalf of Christopher Ward
Kingsport, Tennessee
Claims Court Number 90–1477 V

49. Kevin and Carol Prunty on behalf of Mary T. Prunty
Rockford, Illinois
Claims Court Number 90–1478 V

50. Cathy Hargrove on behalf of Catherine Hargrove
Dayton, Ohio
Claims Court Number 90–1479

51. Margaret Haskins on behalf of Tod A. Chaffee, Deceased
Olean, New York
Claims Court Number 90–1480 V

52. Wallace and Karen Weeks on behalf of Brooke Weeks
Shreveport, Louisiana
Claims Court Number 90–1481 V

53. Richard Pouliot on behalf of Steven Pouliot
Laurel, Maryland
Claims Court Number 90–1482 V

54. Carolyn Brown on behalf of James L. Brown
Princeton, West Virginia
Claims Court Number 90–1483 V

55. Russell and Nancy Randall on behalf of James Randall
Brockton, Massachusetts
Claims Court Number 90–1484 V

56. Robin Osiwala on behalf of David Osiwala
Garden, Michigan
Claims Court Number 90–1485 V

57. Charles and Helen Meadows on behalf of Charles B. Meadows
Sandusky, Ohio
Claims Court Number 90–1486 V

58. Worthen Bank on behalf of Dalen Goff
Booneville, Arizona
Claims Court Number 90–1487 V

59. Cynthia B. McKamey on behalf of Duane E. McKamey II
Harrisburg, Pennsylvania
Claims Court Number 90–1488 V

60. James and Katherine Wallace on behalf of Joette A. Wallace
Holliston, Massachusetts
Claims Court Number 90–1489 V

61. Bernice Bates on behalf of George F. Bates
Bristol, Tennessee
Claims Court Number 90–1490

62. Harold and Debhi Sword on behalf of Natalie N. Sword, Deceased
Columbus, Ohio
Claims Court Number 90–1491 V

63. Manuel F. Pineda on behalf of Marcela Pineda
Orange, California
Claims Court Number 90–1492 V

64. Larry and Alice Curtis on behalf of Matthew Curtis
Warrenton, Virginia
Claims Court Number 90–1493 V

65. Frank/Carol DeCaro on behalf of Joanna DeCaro
Upper Darby, Pennsylvania
Claims Court Number 90–1494 V

66. Charles and Joy McCoy on behalf of Joseph McCoy
Broomall, Pennsylvania
Claims Court Number 90–1495 V

67. John and Reba McGee on behalf of David McGee
Philadelphia, Pennsylvania
Claims Court Number 90–1496 V

68. Anthony Farrel on behalf of Jeanette Farrel
Philadelphia, Pennsylvania
Claims Court Number 90–1497 V

69. Eleanor Jordan on behalf of Stephen Jordan
Upper Darby, Pennsylvania
Claims Court Number 90–1498 V

70. Trisha Jay on behalf of Alexis Jay, Deceased
Canton, Ohio
Claims Court Number 90–1499 V

71. Alvin Curtis on behalf of Gina Curtis
Ogden, Utah
Claims Court Number 90–1500 V

72. Conrad and Martha Kay on behalf of Gregory Kay, Deceased
San Jose, California
Claims Court Number 90–1501 V

73. Gloria DeCou on behalf of Jana Jones
Portland, Oregon
Claims Court Number 90–1502 V

74. James and Pamela Burch on behalf of James Burch
Houston, Texas
Claims Court Number 90–1503 V

75. Lavina Jeseritz
Adrian, Minnesota
Claims Court Number 90–1504 V

76. Tammy Christman on behalf of Nathan Christman
Monroe, Washington
Claims Court Number 90–1505 V

77. Robert Gilles on behalf of Donovan Gilles
Provo, Utah
Claims Court Number 90–1506 V

78. Charles Terry
New York City, New York
Claims Court Number 90–1507 V

79. Denese Jeffrey
Richards, Virginia
Claims Court Number 90–1508 V

80. Kenneth and Dyana Wood on behalf of Sarah Wood
Popular Bluff, Missouri
Claims Court Number 90–1509 V

81. Grady and Doris Barnes on behalf of Johnny Barnes
Collierville, Tennessee
Claims Court Number 90–1510 V

82. Roseanne Brown on behalf of Kevin Corcoran
Scranton, Pennsylvania
Claims Court Number 90–1511 V

83. Marc Hockberg on behalf of Jennifer Hockberg
Timonium, Maryland
Claims Court Number 90–1512 V

84. Arthur and Janice Reynolds on behalf of Garett Reynolds
Brockton, Massachusetts
Claims Court Number 90–1513 V

85. Gary and Rebecca Sims on behalf of Ryan Sims
Ottumwa, Iowa
Claims Court Number 90–1514 V

86. Richard Blair on behalf of Michael J. Blair
Grand Rapids, Michigan
Claims Court Number 90–1515 V

87. Francis and Henriette O'Neill on behalf of Eileen O'Neil
Denver, Colorado
Claims Court Number 90–1516 V

88. Harry Scheef on behalf of Shawn Scheef
Ansonia, Connecticut
Claims Court Number 90–1517 V

89. Mary Flanagan on behalf of Catherine Elliot, Deceased
Bremerhaven, Germany
Claims Court Number 90–1518 V

90. David and Kathleen Decker on behalf of Steven Decker
Tempe, Arizona
Claims Court Number 90–1519 V

91. Sandra Lyons on behalf of Benjamin Lyons
Murray, Kentucky
Claims Court Number 90–1520

92. Harold and Lois Snowdon on behalf of Harold Snowdon III
Wilkes-Barre, Pennsylvania
Claims Court Number 90–1521 V

93. Sheryl O'Hara
Livonia, Michigan
Claims Court Number 90–1522 V

94. Gurbach Khalsa on behalf of Jagjit Khalsa
Wappinger Falls, New York
Claims Court Number 90–1523 V

95. Melanie Williams on behalf of Willie Williams
Detroit, Michigan
Claims Court Number 90–1524 V

96. Carol Heyenga on behalf of Heidi Heyenga
Waterloo, Iowa
Claims Court Number 90–1525 V

97. Marjorie Spangler on behalf of Laura Spangler
Lynchburg, Virginia
Claims Court Number 90–1526 V

98. Janet Clay on behalf of Jennifer Clay
Royal Oak, Michigan
Claims Court Number 90–1527

99. David Janze on behalf of Nathan Janze
Anchorage, Alaska
Claims Court Number 90–1528 V

100. Michelle Niles
Big Rapids, Michigan
Claims Court Number 90–1529 V

101. Judith Aaron on behalf of Nadine Aaron
Dearborn, Michigan
Claims Court Number 90–1530 V

102. Cheryl Kent
Tawas, Michigan
Claims Court Number 90–1531 V

103. Walter and Sharmon Meigs on behalf of Stephen W. Meigs
Mobile, Alabama
Claims Court Number 90–1532 V

104. Tina Devlin on behalf of Anarose Devlin
Westland, Michigan
Claims Court Number 90–1533 V

105. Craig and Karen Berry on behalf of Haley Berry
Grapevine, Texas
Claims Court Number 90–1534 V

106. Sally Connaher on behalf of Julie Shick
Menomine, Michigan
Claims Court Number 90–1535 V

107. Ellen Neville on behalf of Donald Reed, Deceased
Henderson, Texas
Claims Court Number 90–1536 V

108. Dorothy Starks on behalf of Scott Starks
Midland, Michigan
Claims Court Number 90–1537 V

109. Cathy Hicks
Wheelwright, Kentucky
Claims Court Number 90–1538 V

110. Paul Young on behalf of Sarah Young
Oklahoma City, Oklahoma
Claims Court Number 90–1539 V

111. John and Lou Stone on behalf of Philip Stone
Wilson County, North Carolina
Claims Court Number 90–1540 V

112. Mary Alfe on behalf of James Alfe, Deceased
Newton Square, Pennsylvania
Claims Court Number 90–1541 V

113. Cleta Trumble
Northport, Michigan
Claims Court Number 90–1542 V

114. Alvin Gentry on behalf of Rita Gentry, Deceased
Indianapolis, Indiana
Claims Court Number 90–1543 V

115. Bonita Young and Carl Wallace on behalf of Shanice Young, Deceased
Buffalo, New York
Claims Court Number 90–1544 V

116. Wilfred Olanna on behalf of Helen Olanna
Shishmaref, Alaska
Claims Court Number 90–1545 V

117. Marvin and Judy Shriver on behalf of Tammy Shriver
Englewood, Colorado
Claims Court Number 90–1546 V

118. Michael and Charlotte Machi on behalf of Kimberly Machi
San Ramon, California
Claims Court Number 90–1547

119. Shannon Lee
Middletown, Ohio
Claims Court Number 90–1548 V

120. Kevin and Virginia McKiernan on behalf of Colin McKiernan
Lexington, Kentucky
Claims Court Number 90–1549 V

121. Thomas and Sally Bear on behalf of Stacey Bear
Metairie, Louisiana
Claims Court Number 90–1550 V

122. Julia DelCol on behalf of Lisa DelCol
Minneapolis, Minnesota
Claims Court Number 90–1551 V

123. Charles G. Dinsmore on behalf of Alexandra Dinsmore
Pensacola, Florida
Claims Court Number 90–1552 V

124. Lyn Vaughn on behalf of Hisako Vaughn
Cincinnati, Ohio
Claims Court Number 90–1553 V

125. Paul Montgomery
Muskegon, Michigan
Claims Court Number 90–1554 V

126. Mary Dean on behalf of Cheri Dean
St. Joseph, Michigan
Claims Court Number 90–1555 V

127. Gloria Henderson on behalf of Marcus D. Henderson
Homer, Louisiana
Claims Court Number 90–1556 V

128. Clifford Patschke on behalf of Ginger Patschke
Taylor, Texas
Claims Court Number 90–1557 V

129. Norman and Florence Ehrlich on behalf of Jane Ehrlich
McPherson, Kansas
Claims Court Number 90–1558 V

130. Priscilla Kimbrough on behalf of Ruth Kimbrough, Deceased
Norfolk, Virginia
Claims Court Number 90–1559 V

131. Joseph Sansonetti on behalf of Joseph Sansonetti Jr.
St. Petersburg, Florida
Claims Court Number 90–1560 V

132. Ramon M. Sigala
Rocky Ford, Colorado
Claims Court Number 90–1561 V

133. Larry and Phyllis Teschel on behalf of Anthony J. Teschel
Jackson, Mississippi
Claims Court Number 90–1562 V

134. Betty Geneviva on behalf of Joseph Geneviva, Deceased
New Castle, Pennsylvania
Claims Court Number 90–1563 V

135. Charles and Doris Janis on behalf of Dawn Janis
Brooklyn, New York
Claims Court Number 90–1564 V

136. Teresa M. Konczal
Rochester, Michigan
Claims Court Number 90–1565 V

137. Judy Fosnes
Winterset, Iowa
Claims Court Number 90–1566 V

138. Paul Mulhauser on behalf of Stephen Mulhauser
New York City, New York
Claims Court Number 90–1567 V

139. John Day on behalf of Thomas Day, Deceased
Champaign-Urbana, Illinois
Claims Court Number 90–1568 V

140. Michael Kurzdorfer
Buffalo, New York
Claims Court Number 90–1569 V

141. John Keninger on behalf of Robert Keninger, Deceased
Sheldon, Iowa
Claims Court Number 90–1570 V

142. Joan Stewart on behalf of Camille Marascolo
Grenada, Mississippi
Claims Court Number 90–1571 V

143. Luella Edinburg on behalf of Tieasha Edinburg
Chicago, Illinois
Claims Court Number 90–1572 V

144. Scotty and Martha Lambert on behalf of Jocelyn R. Lambert
Richards, Virginia
Claims Court Number 90–1573 V

145. Giana L. Valencia
Henderson, Nevada
Claims Court Number 90–1574 V

146. Stephen and Susan Scruton on behalf of Cynthia M. Scruton
San Luis Obispo, California
Claims Court Number 90–1575 V

147. Michael and Juanita Brewer on behalf of Calvin Brewer
Corbin, Kentucky
Claims Court Number 90–1576 V

148. Henrietta Jeter on behalf of John Wade, III
Wright-Patterson AFB, Ohio
Claims Court Number 90–1577 V

149. Frank and Joyce Schiller on behalf of Eric N. Schiller
Yardley, Pennsylvania
Claims Court Number 90–1578 V

150. Esther H. Stinson
Oklahoma City, Oklahoma
Claims Court Number 90–1579 V

151. Larry Shields on behalf of Lance Shields
Abilene, Texas
Claims Court Number 90–1580 V

152. John Doyle on behalf of John Doyle Jr.
Jacksonville, North Carolina
Claims Court Number 90–1581 V

153. Wayne and Silvana Stokely on behalf of Jason Stokely
Reno, Nevada
Claims Court Number 90–1582 V

154. Danny and Kay Tracey on behalf of Douglas Tracey
St. Clair Shores, Michigan
Claims Court Number 90–1583 V

155. Barbara Grandle on behalf of Charles N. Grandle

Arlington, Virginia
Claims Court Number 90–1584 V

156. William Putnam on behalf of Michael Putnam
St. Louis Park, Michigan
Claims Court Number 90–1585 V

157. Peggy Pruitt on behalf of Stephen Pruitt
Carrytown, Tennessee
Claims Court Number 90–1586 V

158. Susan Schilling on behalf of Andrew Schilling
Torrance, California
Claims Court Number 90–1587 V

159. Brenda Carter on behalf of Alyson C. Carter
Acworth, Georgia
Claims Court Number 90–1588 V

160. Hannah Yenter on behalf of Grace Clark, Deceased
Newport News, Virginia
Claims Court Number 90–1589 V

161. Patricia Boyd on behalf of Lacema Boyd
Detroit, Michigan
Claims Court Number 90–1590 V

162. Daniel and Debra Hudson on behalf of Jameson Hudson
Sparks, Nevada
Claims Court Number 90–1591 V

163. Shelia A. Herrington on behalf of Cody E. Freeman
Brookhaven, Mississippi
Claims Court Number 90–1592 V

164. Susan Sudia on behalf of Benjamin Sudia
Sacramento, California
Claims Court Number 90–1593 V

165. Corine Burns on behalf of Gregory Burns
Westford, Massachusetts
Claims Court Number 90–1594 V

166. Patti Spice on behalf of Stephani Mark
South Bend, Indiana
Claims Court Number 90–1595 V

167. Alan Cason on behalf of Lindsey Cason, Deceased
Hammond, Louisiana
Claims Court Number 90–1596 V

168. Raybon Graham on behalf of John Graham
Naples, Italy
Claims Court Number 90–1599 V

169. Jerald and Marie Hayden on behalf of Daniel Hayden, Deceased
Jackson, California
Claims Court Number 90–1600 V

170. Frances Baker on behalf of Thomas G. Baker
Columbia, Tennessee
Claims Court Number 90–1601 V

171. Donald Genasci on behalf of Michael Genasci
Augsburg, West Germany
Claims Court Number 90–1602 V

172. Keith Blankenship on behalf of Erin Blankenship
Weatherford, Texas
Claims Court Number 90–1603 V

173. Andrea Hall on behalf of Edward Hall
Grass Valley, California
Claims Court Number 90–1604 V

174. Stephen Buckert on behalf of Charles Buckert
Houston, Texas
Claims Court Number 90–1605 V

175. James and Betty Jensen on behalf of Jamie Jensen
Albuquerque, New Mexico
Claims Court Number 90–1606 V

176. Sheryl LeBlanc on behalf of Lucas LeBlanc
Shreveport, Louisiana
Claims Court Number 90–1607 V

177. John Buxkemper on behalf of Jason Buxkemper, Deceased
Slaton, Texas
Claims Court Number 90–1608 V

178. Richard Briske on behalf of Adam Briske
Dunedin, Florida
Claims Court Number 90–1609 V

179. Jeannie Phillips on behalf of April Phillips
Mayo, Florida
Claims Court Number 90–1610 V

180. Deborah Call on behalf of Jared Call
Saginaw, Michigan
Claims Court Number 90–1611 V

181. James Costa on behalf of James Costa, Jr.
Atlanta, Georgia
Claims Court Number 90–1612 V

182. Ruth Mack on behalf of Latoya Mack
Holly Hill, South Carolina
Claims Court Number 90–1613 V

183. Keith Kramer on behalf of Aubrey Kramer
Tucson, Arizona
Claims Court Number 90–1614 V

184. Ann Hutto on behalf of Vickie Hutto
Orangeburg, South Carolina
Claims Court Number 90–1615 V

185. Paul Thompson on behalf of Jennifer Thompson
Lander, Wyoming
Claims Court Number 90–1616 V

186. Richard Baudin on behalf of Tina Baudin
Burgettstown, Pennsylvania
Claims Court Number 90–1617 V

Dated: July 8, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–16728 Filed 7–12–91; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 55 FR 20210, May 15, 1990) is amended to reflect the following changes in the Office of Operations and Management:

1. Abolishment of the Division of Management Policy and Systems;

2. Establishment of a new Division of Management Policy; and

3. Establishment of a new Division of Information Resources Management.

Under HB–10, Organization and Functions amend the functional statements for the Office of Operations and Management (HBA4) in the Health Resources and Services Administration (HB) as follows:

1. Delete the Division of Management Policy and Systems (HBA45) in its entirety; and

2. Add the following functional statements immediately after the functional statement for the Division of Fiscal Services (HBA47):

Division of Management Policy (HBA48). Provides Agencywide leadership and direction in the areas of management policies and procedures, and manpower management. Specifically: (1) Provides advice and guidance for the establishment or modification of organizational structures, functions, and delegations of authority; (2) conducts and coordinates the Agency's issuances, records, reports, forms, and mail management programs; (3) negotiates solutions in intra- and interagency management problems; (4) conducts Agencywide management improvement programs; (5) conducts management and information studies and surveys; (6) plans, directs, and coordinates the Agency's manpower management program, including manpower deployment and utilization, work measurement and productivity, and budgeting; (7) coordinates the Agency's participation in the Department's management tracking system; (8) serves as the focal point for activities pertaining to the integrity of the Agency's employees, grantees, contractors, and beneficiaries, and for the review, investigation, and resolution of allegations of impropriety, mismanagement of resources, abuse of

authority, deviations from established managerial and administrative controls, violations of Standards of Conduct, or other forms of wrongdoing or mismanagement; and (9) oversees and coordinates the implementation of legislation, directives, and policies relating to the Privacy Act.

Division of Information Resources Management (HBA49). (1) Provides leadership in the development, review and implementation of policies and procedures to promote improved information resources management capabilities and practices throughout HRSA; (2) develops and coordinates HRSA-wide plans and budgets for the management of information technology and services, including centralized data processing, office automation, and telecommunications; (3) develops and recommends policies and procedures relating to information resources management and support services; (4) identifies and coordinates HRSA-wide information needs and develops or coordinates with others the development of creative answers to these needs; (5) plans, manages, administers and coordinates the HRSA-wide microcomputer network including all required linkages to other networks inside and outside HRSA including mainfram systems; (6) provides information support to the Office of the Administrator; (7) designs, develops, catalogues and manages data bases, information resources, including those data bases developed within the HRSA Bureaus, and the acquisition and use of external bases and information resources that support HRSA needs; (8) manages and coordinates state-of-the-art expertise for information science and technology; (9) provides consultation, technical advice and assistance and coordinates training in the use of ADP resources; (10) develops and coordinates the implementation of information security programs; (11) maintains liaison and coordinates information resources management with the HRSA Bureaus; (12) maintains liaison with HHS, PHS, other Federal agencies, States and professional organizations and associations concerning health information interests allied to the HRSA mission; and (13) reviews all HRSA requests for ADP resources, providing ADP clearance for all appropriately justified requests.

Delegations of Authority. All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

Dated: July 3, 1991.

Robert G. Harmon,

Adminstrator.

[FR Doc. 91–16793 Filed 7–12–91; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(WY–920–08–4120–11); WYW124646]

Invitation for Coal Exploration License; Cheyenne, WY

AGENCY: Bureau of Land Management.

ACTION: Invitation for coal exploration license, WYW124646.

SUMMARY: Antelope Coal Company, a wholly owned subsidiary of NERCO Coal Corp., hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Coverse County, Wyoming:

T. 41 N., R. 70 W., 6th P.M., Wyoming Sec. 30: Lots 17 and 18;
T. 41 N., R. 71 W., 6th P.M., Wyoming Sec. 25: Lots 7, 8, 13 and 14; Sec. 26: Lots 9, 10, 11, 14 and 15.

Containing 449.80 acres.

All of the coal in the above land consists for unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. Part of the above described land affects two (2) expired, but not closed, Federal Coal Exploration Licenses. WYW109154, issued to Antelope Coal Company, expired June 13, 1990, and WYW111732, issued to Powder River Coal Company, expired October 3, 1990. The purpose of the exploration program is to conduct off lease drilling exploration.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the follwing offices (under serial number WYW124646): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: A "Notice of Invitation" will be published in The Douglas Budget of Douglas, Wyoming, once each week for two (2) consecutive weeks. It is expected publication will begin the week of July 22, 1991, to coincide with publication in the **Federal Register.** Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and the Antelope Coal Company no later than thirty (30) days after publication of this invitation in the **Federal Register.** The written notice should be sent to the following addresses: Bureau of Land Management, Wyoming State Office (WSO 925–9), Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003, and Antelope Coal Company, Attn: Mr. Dennis Skog, P.O. Box 66989, St. Louis, Missouri 63166.

The foregoing is published in the **Federal Register** pursuant to title 43, Code of Federal Regulations, § 3410.2–1(c)(1).

Dated: July 5, 1991.

Avis D. Rostron,

Acting State Director.

[FR Doc. 91–16694 Filed 7–12–91; 8:45 am]

BILLING CODE 4310–22–M

[OR–090–00–6310–10: G1–276]

Eugene District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of advisory council meeting.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Friday, August 9, beginning at 9 a.m. at the Eugene District Office, 2890 Chad Drive, Eugene, Oregon.

The agenda of the meeting will include: A review of the past Fiscal Year (FY91) accomplishments, an update on the Resource Management Planning process, and other topics that may be determined later.

The meeting is open to the public. Interested persons may make oral statements to the council at the end of the meeting or file written statements for the council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 2890 Chad Drive, Eugene, Oregon 97401 by the end of the business day on Wednesday, August 7, 1991. A time limit per person may be established by the District Manager.

Summary minutes of the council meeting will be maintained in the

District office and will be available for public inspection and reproduction during regular business hours within 30 days of the meeting.

Dated: July 5, 1991.

Ronald Kaufman,

District Manager.

[FR Doc. 91–16695 Filed 7–12–91; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the office of Management and Budget, Paperwork Reduction Project (1024–0050), Washington, DC 20503, telephone 202–395–7340.

Title: Fire Island national Seashore Federal Zoning Regulations.

Abstract: In order to protect the natural and cultural resources of Fire Island National Seashore, the National Park Service administers regulations which control development on Fire Island. Review of homeowners' development plans ensures that development is consistent with Seashore objectives. Certificates are issued to homeowners whose property complies with Seashore regulations.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Small businesses or organizations.

Estimated Completion Time: 3.2 hours.

Annual Responses: 500.

Annual Burden Hours: 1600.

Bureau Clearance Officer: Terry Tesar 202–523–5262.

Terry Tesar,

Information Collection Clearance Officer.

[FR Doc. 91–16784 Filed 7–12–91; 8:45 am]

BILLING CODE 4310–70–M

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, telephone 202–395–7340.

Title: Backcountry use permit.

Abstract: The National Park Service issues backcountry camping permits to implement a camping management system permitting hazard warnings to campers, assisting with search and rescue efforts in emergencies, and providing resource protection of the backcountry.

Bureau Form Number: 10–404.

Frequency: On Occasion.

Description of Respondents: Individuals.

Annual Response: 206,300.

Annual Burden Hours: 16,500.

Bureau Clearance Officer: Terry Tesar, 202–523–5262.

Terry Tesar,

Information Collection Clearance Officer.

[FR Doc. 91–16785 Filed 7–12–91; 8:45 am]

BILLING CODE 4310–70–M

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission

Notice is hereby given in accordance with the Federal Advisory Committee Act that a joint public meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission and the San Francisco City Planning Commission will be held on Thursday, August 1, 1991 at 6:30 p.m. at the Fort Mason Conference Center, Buiding A, Fort Mason Center, Buchanan St. and Marina Boulevard, San Francisco, California.

The advisory Commission was established by Public Law 92–589 to provide for the free exchange for ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda item at this meeting will be a status report by the National Park Service on subagreements between the U.S. Army and the National Park Service relating to the details of the transition of the Presidio to the National Park Service.

Also on the agenda at this meeting will be a briefing on the provisions of the National Historic Preservation Act of 1966 and the National Historic Landmark designation process.

The meeting will contain a superintendent's Report by GGNRA General Superintendent Brian O'Neill which will include a briefing on a habitat protection project being conducted jointly by the GGNRA and the Presidio garrison.

The meeting is open to the public.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after August 22, 1991. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: July 8, 1991.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 91–16786 Filed 7–12–91; 8:45 am]

BILLING CODE 4310–20–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by

the National Park Service before June 29, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 30, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

San Francisco County

Lower Nob Hill Apartment Hotel District, Roughly, 590—1209 Bush, 680—1156 Sutter 680—1099 Post Sts. and the intersecting cross streets, San Francisco, 91000957

CONNECTICUT

Fairfield County

Norfield Historic District, Roughly, jct. of Weston and Norfield Rds. NE to Hedgerow Common, Weston, 91000955

Sherman Historic District, Roughly, jct. of Old Greenswood Rd. and CT 37 Center NE past jct. of CT 37 E and CT 39 N, and Sammill Rd., Sherman, 91000956

IOWA

Jackson County

Anderson, D. H., House (Maquoketa MPS), 315 E. Locust, Maquoketa, 91000964

Cooper, George, House (Maquoketa MPS), 413 W. Platt St., Maquoketa, 91000963

House at 111 E. Maple Street (Maquoketa MPS), Maquoketa, 91000959

Hurst, A. A., House (Maquoketa MPS), 513 W. Platt St., Maquoketa, 91000960

Johnson, Mrs. Lydia, House (Maquoketa MPS), 209 E. Locust, Maquoketa, 91000966

Lake, John, House (Maquoketa MPS), 601 W. Platt St., Maquoketa, 91000969

Martin, Dr. C. S., House (Maquoketa MPS), 311 S. Second St., Maquoketa, 91000967

Organ, Alexander, House (Maquoketa MPS), 607 W. Summit, Maquoketa, 91000968

Perham House (Maquoketa MPS), 213 E. Pleasant St., Maquoketa, 91000961

Swigert, W. B., House (Maquoketa MPS), 309 N. Main St., Maquoketa, 91000965

Taubman, Henry, House (Maquoketa MPS), 303 E. Pleasant St., Maquoketa, 91000962

West Pleasant Street Historic District (Maquoketa MPS), Pleasant St. between Second and Prospect Sts., Maquoketa, 91000970

OHIO

Erie County

Huron Harbor Lights (Light Stations of Ohio MPS), W breakwater pierhead, at the foot of Main St., Huron, 91000971

Montgomery County

Sachs and Pruden Ale Company Building, 127 Wyandot St., Dayton, 91000973

Sig's General Store, 1400 Valley St., Dayton, 91000974

Tuscarawas County

Rinderknecht, Christian H., House, 602 N. Wooster Ave., Dover, 91000972

PENNSYLVANIA

Bucks County

Gardenville—North Branch Rural Historic District, Roughly bounded by Durham Rd., Pt. Pleasant Pike, Valley Park Rd. and N. Branch Neshaminy Cr., Plumstead Township, Gardenville, 91000954

WISCONSIN

Sauk County

Hulburt Creek Garden Beds, Address Restricted, Delton, 91000958

[FR Doc. 91–16787 Filed 7–12–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 2, 1991. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 30, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Alhambra Hotel, 43 S. Macdonald, Mesa, 91000982

Strauch House, 148 N. Mcdonald, Mesa, 91000983

Santa Cruz County

Canelo School, 18 mi. SE of Sonoita on AZ 93, Canelo vicinity, 91000981

CONNECTICUT

Fairfield County

Brookfield Center Historic District, Long Meadow Hill Rd., Brookfield Center, 91000992

Cosier—Murphy House, 67 CT 39, New Fairfield, 91000994

Litchfield County

Torringford Street Historic District, Torringford St. from Main St. N to W. Hill Rd., Torrington, 91000991

New Haven County

Quaker Farms Historic District, 467–511 Quaker Farms Rd., Oxford, 91000993

Windham County

Nichols, George Pickering, House, 42 Thompson Rd., Thompson, 91000990

FLORIDA

St. Johns County

Lincolnville Historic District, Bounded by Cedar, Riberia, Cerro and Washington Sts. and DeSoto Pl., St. Augustine, 91000979

IDAHO

Elmore County

Mountain Home High School (Public School Buildings in Idaho MPS), 550 E. Jackson, Mountain Home, 91000988

Owyhee County

Noble Horse Barn, Reynolds Cr. 12 mi. SW of Murphy, Murphy vicinity, 91000989

Twin Falls County

Cedar Draw School (Public School Buildings in Idaho MPS), 4300 N. Rd. between 1900 and 2000 E., Buhl vicinity, 91000986

Hollister School (Public School Buildings in Idaho MPS), 2464 Salmon Ave., Hollister, 91000984

Pleasant Valley School (Public School Buildings in Idaho MPS), 3501 E. 3100 N., Kimberly vicinity, 91000985

Pleasant View School (Public School Buildings in Idaho MPS), 2500 E. 3600 N., Twin Falls vicinity, 91000987

MINNESOTA

Anoka County

Avery, Carlos, Game Farm (Federal Relief Construction in Minnesota MPS), 5463 W. Broadway, Columbus Township, Ham Lake vicinity, 91000977

Kandiyohi County

Willmar Auditorium (Federal Relief Construction in Minnesota MPS), 311 6th St. SW., Willmar, 91000976

Otter Tail County

District School No. 182 (Federal Relief Construction in Minnesota MPS), Off Co. Hwy. 35, Sverdrup Township, Underwood vicinity, 91000978

TENNESSEE

Rutherford County

Murray Farm, 9409 Bradyville Rd., Readyville vicinity, 91000980

[FR Doc. 91–16788 Filed 7–12–91; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material

may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0034), Washington, DC 20503, telephone 202–395–7340.

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, 30 CFR 778.

OMB Number: 1029–0034.

Abstract: Section 507(b) of the Surface Mining Control and Reclamation Act of 1977 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property to be affected, their compliance status and history. This information is used to ensure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal Mine Operators.

Annual Responses: 3,941.

Annual Burden Hours: 23,535.

Estimated Completion Time: 6 hours.

Bureau clearance officer: Richard L. Wolfe (202) 343–5143.

Dated: March 19, 1991.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 91–16696 Filed 7–12–91; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0041), Washington, DC 20503, telephone 202–395–7340.

Title: Part 773 Requirements for Permits and Permit Processing.

OMB Number: 1029–0041.

Abstract: Ensures that applicants for permanent program permits or their associates, who are in violation of the Surface Mining Control and Reclamation Act do not receive or maintain Surface Mining permits.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State Regulatory Authorities and Mining Company officials.

Annual Responses: 5,761.

Annual Burden Hours: 14,704.

Estimated Completion Time: 2.5 hours.

Bureau clearance officer: Richard L. Wolfe (202) 343–5143.

Dated: March 19, 1991.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 91–16697 Filed 7–12–91; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31904]

Bucks County Railroad Preservation and Restoration Corp. D/B/A New Hope and Ivyland Rail Road; Acquisition and Operation Exemption—New Hope and Ivyland Railroad Co.; Exemption

Bucks County Railroad Preservation and Restoration Corporation d/b/a New Hope and Ivyland Rail Road (New Hope), a noncarrier, has filed a notice of exemption to acquire and operate 18.6 miles of rail line owned by the New Hope and Ivyland Railroad Company and the Bucks County Industrial Development Corporation. The line extends between milepost 7.3, at Warminster, and milepost 25.9, at New Hope, in Bucks County, PA. The transaction also involves New Hope's assumption of a lease, expiring October 17, 2067, covering a large part of the right-of-way, owned by the Philadelphia Electric Company. New Hope will become a class III rail carrier. The transaction was expected to be consummated on July 1, 1991.

New Hope indicates that Morristown & Erie Railway, Inc. (ME), has operated over most of the line under a grant of local trackage rights pursuant to a notice of exemption in Finance Docket No. 31479, Morristown & Erie Railway, Inc.—Trackage Rights—New Hope and Ivyland Railroad Company, served June 14, 1989, but that ME intended to discontinue operations on June 30, 1991.[1]

Any comments must be filed with the Commission and served on Francis G. McKenna, Anderson & Pendleton, P.O. Box 65891, 1000 Connecticut Ave., NW., Washington, DC 20035.

New Hope shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historical Preservation Act, 16 U.S.C. 470.[2]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. 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 automatically stay the transaction.

Decided: July 9, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–16744 Filed 7–12–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31283 (Sub-No 1)]

Norfolk Southern Railway Co. Trackage Rights, Norfolk and Western Railway Co.; Corrected Notice of Exemption [1]

Norfolk and Western Railway Company (NW) has agreed to grant unrestricted trackage rights to Norfolk Southern Railway Company (NS), formerly known as Southern Railway Company, over a 63-mile line of railroad between milepost H–63, at Front Royal, VA, and milepost H–0, at Hagerstown, MD. NW is a class I railroad controlled through stock ownership by Norfolk Southern Corporation (NSC), a non-carrier holding company. NS and its rail carrier subsidiaries operate a rail system extending throughout the Southeast and Midwest.

NW had previously granted NS overhead trackage rights on this line.

[1] A third-party lessee operating a line being acquired by a noncarrier must obtain Commission approval under 49 U.S.C. 10903, or an exemption under 49 U.S.C. 10505 from prior approval, in order to discontinue service. *See* Finance Docket No. 31482, Mid Michigan Railroad Company, Inc.—Purchase Exemption—The St. Joseph & Grand Island Railroad Company Line Between St. Joseph, MO and Upland, KS (not printed), served October 5, 1989.

[2] Applicant has certified that it complied with the notice requirements of 49 CFR 1105.11 and consulted the Pennsylvania State Historic Preservation Officer regarding sites or structures on the line.

[1] This notice corrects the notice served June 17, 1991, by identifying NW as the wholly owned subsidiary of NS. In the first sentence of the previous notice NS was incorrectly described as the wholly-owned subsidiary of NW.

See Finance Docket No. 31283, Southern Railway Company—Trackage Rights Exemption—Norfolk and Western Railway Company (not printed), served June 16, 1988, and published in the **Federal Register** (53 FR 24155) June 27, 1988. The purpose of this exemption is to remove any restriction on the trackage rights granted to NS. The trackage rights became effective April 23, 1991.

This notice is filed under 49 CFR 1180.2(d) (3) and (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: Nancy S. Fleischman, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

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: July 10, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–16745 Filed 7–12–91; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by August 14, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Application for Indemnification.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Federal agencies or employees; Non-profit institutions.

Use: This form is used by individuals, non-profit, tax-exempt organizations and governmental units in applying to the Federal Council on the Arts and the Humanities (through the National Endowment for the Arts) for indemnification of eligible arts and artifacts, borrowed from abroad for exhibition in the United States, or sent from the United States for exhibition abroad.

Estimated Number of Respondents: 40.

Average Burden Hours per Response: 40.

Total Estimated Burden: 1,600.

Anne C. Doyle,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 91–16732 Filed 7–12–91; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

Iowa Electric Light and Power Co., Central Iowa Power Cooperative, Corn Belt Power Cooperative, Duane Arnold Energy Center; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of appendix R to 10 CFR part 50 to the Iowa Electric Light and Power Company (the licensee), for the Duane Arnold Energy Center, located in Linn County, Iowa.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from a requirement of section III.G.2 of appendix R to 10 CFR part 50, which relates to fire protection features that ensure that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage. The licensee has proposed that the existing fire protection configurations in the drywell expansion gap are adequate to mee the purpose of the rule.

The proposed action is in accordance with the licensee's request for exemption dated August 25, 1987.

The Need for the Proposed Action

As a result of the January 20, 1986 fire in the drywell expansion gap at the Dresden plant, the licensee was requested to address the question of compliance with appendix R for the same area at the Duane Arnold Energy Center. By letter dated August 25, 1987, the licensee submitted the proposed exemption.

The proposed exemption is needed because the features described in the licensee's request regarding the existing fire protection capability at the plant are the most practical method for meeting the intent of appendix R, and literal compliance would not significantly enhance the fire protection capability at Duane Arnold.

Environmental Impacts of the Proposed Action

The Commission's staff has determined that granting the proposed exemption would not significantly increase the risk of fires at Duane Arnold. Consequently, the probatility of fires would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption otherwise affect radiological plant effuents. Therefore, the Commission's staff concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

The proposed exemption does not affect nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility but would result in unjustified costs to the licensee.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to Operation of the Duane Arnold Energy Center," dated March 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated August 25, 1987, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Ceder Rapids Public Library, 500 First St., SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 25th day of June 1991.

For the Nuclear Regulatory Commission.

James R. Hall,

Acting Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–16780 Filed 7–12–91; 8:45 am]

BILLING CODE 7590–01–M

Application for a License to Export Nuclear Material

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications ar on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the applications for a license to export nuclear grade graphite as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning these applications follows.

NRC Export License Applications

Name of applicant, date of application, date received, application No.	Description of Items to be exported	Country of destination
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0366	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Spain.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0367	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Brazil.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0368	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Portugal.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0369	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Mexico.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0370	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Argentina.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0378	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Singapore.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0379	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Korea.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0380	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Korea.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0381	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	India.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0382	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Indonesia.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0383	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Australia.
Penngraph, Inc., 06/13/91, 06/19/91, XMAT0384	35,000.0 kgs of Bulk Nuclear Grade Graphite for use as Electrode Material for Electrical Discharge Machining.	Australia.

Dated this 3rd day of July 1991 at Rockville, Maryland.

For The Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91–16689 Filed 7–12–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on AC/DC Power Systems Reliability; Meeting

The ACRS Subcommittee on AC/DC Power Systems Reliability will hold a meeting on July 30, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, July 30, 1991—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the implementation status of the station

blackout rule for current operating plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meetings when a transcript is being kept, and questions may be asked only be members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised on any changes in schedule, etc., that may have occurred.

Dated: July 8, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–16781 Filed 7–12–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on AC/DC Power Systems Reliability; Meeting

The ACRS Subcommittee on AC/DC Power Systems Reliability will hold a meeting on July 31, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 31, 1991—8:30 a.m. until the conclusion of business

The Subcommittee will discuss adoption of the N+2 concept for electrical systems design for future plants (GE, *W*, CE, and EPRI).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, representatives of General Electric Company, Westinghouse, ABB Combustion Engineering, and Electric Power Research Institute regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised by any changes in schedule, etc., that may have occurred.

Dated: July 8, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–16782 Filed 7–12–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29403; File No. SR–PTC–91–06]

Self-Regulatory Organizations; Participants Trust Company; Order Approving Proposed Rule Change Relating to Amendments to its By-Laws

July 3, 1991.

On April 22, 1991, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal would modify PTC's By-Laws to increase the number of directors on the Board of Directors of PTC ("Board") from ten to twelve. The rule change also makes a technical modification to the By-Laws to clarify that the number of directors may be changed by either the directors or the shareholders. Notice of the proposal was published in the **Federal Register** on May 13, 1991.[2] No comments were received. As discussed below, the Commission is approving PTC's proposal.

I. Description

PTC is a user-owned and user-governed clearing agency, which provides clearing agency services for transactions in mortgage-backed securities. PTC provides its participants with an annual opportunity to participate in the selection of directors, through stock ownership. Each year, there is a reallocation of PTC stock, allowing participants the opportunity to purchase shares, either directly from PTC or from stockholders, who want to sell some or all of their shares. Participants may offer for sale some or all of the shares they hold. Participants are not required to purchase any number of shares of stock at the annual reallocation. At no time may a single stockholder own more than 5% of the total issued and outstanding PTC stock.

Stock ownership is a determinative factor in electing directors to the Board. The stockholders agreement, executed upon the initial purchase of shares by each participant, the PTC By-Laws and the PTC Organization Certificate establish the guidelines for the election of directors to the Board. The stockholders agreement provides for cumulative voting in the election of directors. Under cumulative voting, a shareholder may cast as many votes for one or more candidates as such shareholder owns shares times the number of directors positions to be selected.[3]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 29160 (May 3, 1991), 56 FR 22034.

[3] Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266. Candidates for the director positions are recommended by the nominating committee. The PTC By-Laws provide that the nominating committee shall consist of three persons, each of whom may or may not be a director, designated by a resolution adopted by a majority of the entire Board.

The proposed rule change would amend § 3.2 of PTC's By-Laws, to increase the number of directors on the Board from ten to twelve. The proposal would also authorize the Board to change the number of directors, by a two-thirds affirmative vote of a quorum of the Board.[4] Section 3.2 of the By-Laws is being amended to require the number of directors constituting the Board to continue in effect "[u]nless and until changed in accordance with *these By-laws*" (emphasis added). Under § 8.7 of PTC's By-Laws either the Board or the shareholders may unilaterally amend the By-Laws. This technical change therefore clarifies that the number of directors, determined by § 3.2 of the By-Laws, may be changed by Board action without any corresponding shareholder action.[5]

II. Discussion

Section 17A(b)(3)(C) of the Act [6] requires that the rules of a clearing agency "assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs." The proposal would enlarge the Board from ten to twelve directors and allow either the Board or the shareholders to change the number of directors. The Commission believes the proposed rule change is consistent with the Act, and in particular section 17A(b)(3)(C) of the Act.

The Commission previously found that PTC's rules for selecting its directors on the Board were designed to assure fair representation by permitting each participant to decide how much PTC stock to own, and thereby to decide the size of the role it wishes to play in such selection process. This, coupled with the 5% limitation on stock onwership by any individual participant will restrict the ability of any large participant to control the Board to the detriment of the smaller participants.[7]

As was described above, PTC's By-Laws call for cumulative voting, to provide small participants and those who represent views differing from the majority of shareholders, greater opportunity to participate on the Board and in the administration of PTC's affairs. Thus, the Commission believes that the process of selecting directors provides a fair voice in the selection of directors and in the administration of PTC. The increase in the number of directors, from ten to twelve, will permit the Board to represent the increased market participant base in a fairer way, by permitting greater representation of different interests on the Board.

As was noted above, PTC's market participant base has grown over the past several years.[8] PTC's proposal will allow a fairer representation of PTC's members and participants in the selection of its directors by increasing the number of directors, to reflect the growth in its market participant base. This change, coupled with the cumulative voting feature of PTC's rules, should provide for fair representation from all segments of PTC's market participant base.

Under the proposed amendment to § 3.2 of the By-Laws, either the Board or the shareholders would have the power to change the number of directors, consistent with the By-Laws. Section 8.7, establishes that the By-Laws may be amended or repealed by either a two-thirds affirmative vote of the Board or a two-thirds affirmative vote of shareholders having the power to vote at the time the amendment is sought. Thus, the number of directors may be changed by a two-thirds affirmative vote of either body. If the shareholders dislike this amendment to § 3.2 of the By-Laws, § 8.7 permits the shareholders to amend or repeal any By-Law adopted by Board action alone. Moreover, the shareholders may provide, in amending or repealing any By-Law, that such By-Law not be amended or repealed by the Board. Thus, although the Board may amend § 3.2 in this rule filing, the shareholders still hold the ultimate control of the By-Laws and the number of directors. The Commission believes that the proposal is consistent with section 17A of the Act and in particular with the fair representation requirement of section 17A(b)(3)(C) of the Act.

III. Conclusion

For the reasons discussed in this order, the Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Purusant to section 19(b)(2) of the Act [9] that the proposed rule change (SR–PTC–91–06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–16709 Filed 7–12–91; 8:45 am]

BILLING CODE 8010–01–M

[4] A majority of the directors then in office present at a meeting constitutes a quorum. The number of directors may be changed to as few as 7 or as many as 20.

[5] The prior version of § 3.2 of PTC's By-Laws required the number of directors constituting the Board to continue in effect "[u]nless and until changed in accordance with *this section*" (emphasis added). That prior version of § 3.2 required the vote of shareholders entitled to vote for the election of directors to determine the number of directors on the Board.

[6] 15 U.S.C. 78q–1(b)(3)(C).

[7] See Securities Exchange Act Release No. 26671 (March 28, 1991), 54 FR 13266.

[8] In response to the larger market participant base, the current Board members have been asked to take on more responsibilities with regard to the governance of PTC. A related justification for the increase in Board members is therefore to provide more Board members to assume the increasing responsibilities of the Board. See letter from Leopold S. Rassnick, General Counsel, PTC, to Jack Drogin, Attorney, Division of Market Regulation, Commission, dated June 28, 1991.

[9] 15 U.S.C. 78s(b)(2).

[Release No. IC–18226; File No. 812–7725]

Merrill Lynch Life Variable Annuity Separate Account, et al.

July 5, 1991.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Merrill Lynch Life Variable Annuity Separate Account (the "Account"), Merrill Lynch Life Insurance Company (the "Company"), and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPF&S").

RELEVANT 1940 ACT SECTIONS: Exemptions requested pursuant to section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATIONS: Applicants seek an order to permit the deduction of mortality and expense risk charges and a distribution expense charge from the assets of the Account pursuant to certain variable annuity contracts.

FILING DATE: The application was filed on May 10, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on July 30, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by

writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Account and the Company, 800 Scudders Mill Road, Plainsboro, New Jersey 08536. MLPF&S, One World Financial Center, North Tower, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Attorney, at (202) 272–3045, or Nancy M. Rappa, Senior Attorney, at (202) 272–2622, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Account is a separate account of the Company established for the purpose of funding certain variable annuity contracts (the "Contracts") to be issued by the Company. The Account registered under the 1940 Act as a unit investment trust by filing a notification of registration on Form N–8A.

2. The Company, a stock life insurance company organized under the laws of the State of Washington, is currently authorized to sell variable annuities in 29 States and the District of Columbia. The Company is an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc. At December 31, 1990, the Company had total assets of approximately $4.1 billion and capital and surplus of approximately $290 million.

3. Assets of the Account will be invested in shares of Merrill Lynch Variable Series Funds, Inc. (the "Series Fund"), an open-end management investment company registered under the 1940 Act. The outstanding capital stock of the Series Fund is divided into eight separate classes, one for each of the eight portfolios of the Series Fund. The Account will be initially subdivided into sixteen sub-accounts, two sub-accounts for each class of Series Fund shares.

4. MLPF&S, also a wholly-owned subsidiary of Merrill Lynch & Co. Inc., will be the principal underwriter of the Contracts funded by the Account.

5. The Contracts to be funded initially by the Account are individual deferred variable annuity contracts designed for use in connection with retirement plans ("Qualified Plans") meeting the requirements of sections 401, 403, 404, 408, 457 or any similar provision of the Internal Revenue Code of 1986, as amended (the "Code"), or plans not entitled to special income tax treatment under such or comparable provisions of the Code ("Non-Qualified Plans").

6. Some Contracts, to be issued only to reinsure certain variable annuity contracts previously issued by an affiliate of the Company, provide for the accumulation of values and the payment of annuity benefits on a variable basis only. Other Contracts, to be issued to reinsure contracts issued by such affiliate and possibly also to the general public, provide for the accumulation of values and the payment of annuity benefits on a fixed or variable basis or on a combination fixed and variable basis.

7. A Contract owner may transfer all or part of his or her contract value from one sub-account of the Account to another. However, no transfer may be made within 30 days of the date of issue and all transfers must be at least 30 days apart. Transfers among sub-accounts of the Account will be made in reliance on rule 11a–2 under the 1940 Act.

8. On each contract anniversary on a prior to the commencement of annuity payments, the Company will deduct from the value of each Contract a contract administration charge of $30 for administration of the Contracts and the Account. Administration expenses include expenses associated with issuing the Contracts, maintenance of Contract owner records, accounting, valuation, regulatory compliance and reporting. Even though administration expenses may increase, the amount of the charge will not change. The contract administration charge is designed only to reimburse the Company for administration expenses on a cumulative basis. Any premium taxes will be deducted from the contract value at the annuity date.

9. No sales charges will be deducted from premiums at the time they are paid. However, a distribution expense charge will be deducted from the assets of the Account and a contingent deferred sales charge will be assessed in some circumstances in the event of a full or partial withdrawal of the net contract value.

10. The contingent deferred sales charge will be the lesser of (i) 5% of the sum of the premiums paid within seven years prior to the date of withdrawal, adjusted for any prior withdrawals, or (ii) 5% of the amount withdrawn. No charge will be made for such part of the first withdrawal in a contract year as does not exceed 10% of the sum of the premiums paid prior to the date of withdrawal. No charge will be imposed on any payment made due to the death of the annuitant or Contract owner. Under no circumstances will the cumulative sum of the contingent deferred sales charges ever exceed 5% of total premiums.

11. The contingent deferred sales charge may be reduced when sales of Contracts are made to a trustee, employer or similar party pursuant to a retirement plan or similar arrangement of sales of Contracts to a group of individuals if such program results in a savings of sales expenses. Any such reduction will not be unfairly discriminatory to any Contract owner.

12. The Company will deduct a distribution expense charge from the assets of the Account equal on an annual basis to 0.05% of the daily net asset value of the Account. The Company will monitor the performance of the Account to ensure that with respect to any Contract owner the cumulative sum of the distribution expense charge and the contingent deferred sales charge will not exceed 9% of total premium payments. Because the distribution expense charge is .05%, the aggregate amounts resulting from the charge even over an extended period of time will not be substantial. Accordingly, assurance that the sum of such charges will never exceed 9% of premiums paid can be obtained by monitoring the performance of the Account. Thus, during the seven year period that the contingent deferred sales charge is in effect under a Contract for which a single premium has been paid, the cumulative sum of the contingent deferred sales charge and the distribution expense charge cannot exceed 9% of the premium paid unless the Contract experiences an average annual return durig the seven year period in excess of 69.5%. Monitoring the Account's performance will enable the Company to determine whether a return of the magnitude is achieved during any seven year period. So long as the average annual return during any seven year period is not in exceess of 69.5%, the 9% ceiling will not be exceeded under any Contract as a result of the combined effect of the contingent deferred sales charge and the distribution expense charge, irrespective of the number of premiums paid under that Contract or other factors. Similarly, as to Contracts under which no contingent deferred sales charge is applicable because of the lapse of time, the sum of the distribution expense charges attributable to any premium will never exceed 9% unless the Contracts experience an average annual return in excess of a specified rate for a specified period of year, such as 21% for a 19 year

period or 16% for a 23 year period. By monitoring the performance of the Account, the Company can determine whether the possibility exists that the 9% limit on sales-denominated charges will be exceeded under any Contract. If the performance of the Account should be so favorable so that it is possible that the 9% limite may be reached under any outstanding Contract, the Company will promptly commence monitoring Contracts on an individual basis to make sure that the limit is not exceeded.[1]

13. The Company will also deduct an expense risk charge from the Account for its guarantee that the $30 contract administration charge assessed annually prior to the annuity date will never be increased. For Contracts issued in connection with Non-Qualified Plans, the expense risk charge on an annual basis will equal 0.5% of the daily net asset value of the Account. For Contracts issued in connection with Qualified Plans, the charge will be 0.2% of the daily net asset value of the Account.

14. The Company also will deduct a mortality risk charge equal on an annual basis to 0.75% of the daily net asset value of the Account. This charge compensates the Company for its guarantee that annuity payments will not be affected by the mortality experience of persons receiving such payments or of the general population. The Company assumes this mortality risk by virtue of the annuity rates in the Contract, which cannot be changed.

15. The distribution expense charge and the mortality and expense risk charges will be computed and deducted on a daily basis from each sub-account of the Account. If the amounts deducted from mortality and expense risks are insufficient to cover the actual cost of the risks, the Company will bear the loss. Conversely, if the amounts so deducted prove more than sufficient, the excess will be part of the Company's profit and will be available for any proper corporate purpose including payment of distribution expenses.

16. Applicants submit that the proposed distribution expense charge is an appropriate method to help defray the Company's costs associated with the sale of the Contracts. In the case of Contracts redeemed in whole or in part within seven years of a premium payment, the distribution expense charge will be the only sales-denominated charge received by the Company, and even over an extended period of time the aggregate amounts received will not be substantial.

17. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and that the proposed charges are within the range of industry practice for comparable annuity products. This representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as any contractual right to increase charges above current levels, the existence of other charges, the number of transfers permitted without charge, the nature of the free withdrawal provisions, the provisions relating to annuitization, and the number of annuity options. The Company will maintain at its principal executive offices, available to the Commission or its staff upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

18. Applicants acknowledge that the distribution expense charge and the contingent deferred sales charge to be made under the Contracts may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charges, all or a portion of such profit may be offset by distribution expenses not reimbursed by the distribution expense charge and the contingent deferred sales charge. In such circumstances a portion of the mortality and expense risk charges might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a momorandum which will be maintained by the Company at its principal executive offices and will be available to the Commission or its staff upon request.

19. The Company represents that the Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under rule 12b-1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

20. Applicants assert that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-16710 Filed 7-12-91; 8:45 am]

BILLING CODE 8010-01-M

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[Release No. IC-18227; File No. 812-7726]

Royal Tandem Variable Annuity Separate Account, et al.

July 5, 1991.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Royal Tandem Variable Annuity Separate Account (the "Account"), Royal Tandem Life Insurance Company (the "Company"), and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPF&S").

RELEVANT 1940 ACT SECTIONS: Exemptions requested pursuant to section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of mortality and expense risk charges and a distribution expense charge from the assets of the Account pursuant to certain variable annuity contracts.

FILING DATE: The application was filed on May 10, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on July 30, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personnally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Account and the Company, 800 Scudders Mill Road, Plainsboro, New Jersey 08536. MLPF&S, One World Financial Center, North Tower, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Attorney, at (202) 272–3045, or Nancy M. Rappa, Senior Attorney, at (202) 272–2622, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Account is a separate account of the Company established for the purpose of funding certain variable annuity contracts (the "Contracts") to be issued by the Company. The Account registered under the 1940 Act as a unit investment trust by filing a notification of registration on Form N–8A.

2. The Company, a stock life insurance company organized under the laws of the State of New York, is currently authorized to sell variable annuities in the State of New York. The Company is an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc. At December 31, 1990, the Company had total assets of approximately $777 million and capital and surplus of approximately $67 million.

3. Assets of the Account will be invested in shares of Merrill Lynch Variable Series Funds, Inc. (the "Series Fund"), an open-end management investment company registered under the 1940 Act. The outstanding capital stock of the Series Fund is divided into eight separate classes, one for each of the eight portfolios of the Series Fund. The Account will be initially subdivided into sixteen sub-accounts, two sub-accounts for each class of Series Fund shares.

4. MLPF&S, also a wholly-owned subsidiary of Merrill Lynch & Co. Inc., will be the principal underwriter of the Contracts funded by the Account.

5. The Conctracts to be funded initially by the Account are individual deferred variable annuity contracts designed for use in connection with retirement plans ("Qualified Plans") meeting the requirements of sections 401, 403, 404, 408, 457 or any similar provision of the Internal Revenue Code of 1986, as amended (the "Code"), or plans not entitled to special income tax treatment under such or comparable provisions of the Code ("Non-Qualified Plans").

6. Some Contracts, to be issued only to reinsure certain variable annuity contracts previously issued by an affiliate of the Company, provide for the accumulation of values and the payment of annuity benefits on a variable basis only. Other Contracts, to be issued to reinsure contracts issued by such affiliate and possibly also to the general public, provide for the accumulation of values and the payment of annuity benefits on a fixed or variable basis or on a combination fixed and variable basis.

7. A Contract owner may transfer all or part of his or her contract value from one sub-account of the Account to another. However, no transfer may be made within 30 days of the date of issue and all transfers must be at least 30 days apart. Transfers among sub-accounts of the Account will be made in reliance on rule 11a–2 under the 1940 Act.

8. On each contract anniversary on or prior to the commencement of annuity payments, the Company will deduct from the value of each Contract a contract administration charge of $30 for administration of the Contracts and the Account. Administration expenses include expenses associated with issuing the Contracts, maintenance of Contract owner records, accounting, valuation, regulatory compliance and reporting. Even though administration expenses may increase, the amount of the charge will not change. The contract administration charge is designed only to reimburse the Company for administration expenses on a cumulative basis. Any premium taxes will be deducted from the contract value at the annuity date.

9. No sales charges will be deducted from premiums at the time they are paid. However, a distribution expense charge will be deducted from the assets of the Account and a contingent deferred sales charge will be assessed in some circumstances in the event of a full or partial withdrawal of the net contract value.

10. The contingent deferred sales charge will be the lesser of (i) 5% of the sum of the premiums paid within seven years prior to the date of withdrawal, adjusted for any prior withdrawals, or (ii) 5% of the amount withdrawn. No charge will be made for such part of the first withdrawal in a contract year as does not exceed 10% of the sum of the premiums paid prior to the date of withdrawal. No charge will be imposed on any payment made due to the death of the annuitant or Contract owner. Under no circumstances will the cumulative sum of the contingent deferred sales charges ever exceed 5% of total premiums.

11. The contingent deferred sales charge may be reduced when sales of Contracts are made to a trustee, employer or similar party pursuant to a retirement plan or similar arrangement for sales of Contracts to a group of individuals if such program results in a savings of sales expenses. Any such reduction will not be unfairly discriminatory to any Contract owner.

12. The Company will deduct a distribution expense charge from the assets of the Account equal on an annual basis to 0.05% of the daily net asset value of the Account. The Company will monitor the performance of the Account to ensure that with respect to any Contract owner the cumulative sum of the distribution expense charge and the contingent deferred sales charge will not exceed 9% of total premium payments. Because the distribution expense charge is .05%, the aggregate amounts resulting from the charge even over an extended period of time will not be substantial. Accordingly, assurance that the sum of such charges will never exceed 9% of premiums paid can be obtained by monitoring the performance of the Account. Thus, during the seven year period that the contingent deferred sales charge is in effect under a Contract for which a single premium has been paid, the cumulative sum of the contingent deferred sales charge and the distribution expense charge cannot exceed 9% of the premium paid unless the Contract experiences an average annual return during the seven year period in excess of 69.5%. Monitoring the Account's performance will enable the Company to determine whether a return of that magnitude is achieved during any seven year period. So long as the average annual return during any seven year period is not in excess of 69.5%, the 9% ceiling will not be exceeded under any Contract as a result of the combined effect of the contingent deferred sales charge and the distribution expense charge, irrespective of the number of premiums paid under that Contract or other factors. Similarly, as to Contracts under which no contingent deferred sales charge is applicable because of the lapse of time, the sum of the distribution expense charges attributable to any premium will never exceed 9% unless the Contracts experience an average annual return in excess of a specified rate for a specified period of year, such as 21% for a 19 year period or 16% for a 23 year period. By monitoring the performance of the Account, the

Company can determine whether the possibility exists that the 9% limit on sales-denominated charges will be exceeded under any Contract. If the performance of the Account should be so favorable so that it is possible that the 9% limit may be reached under any outstanding Contract, the Company will promptly commence monitoring Contracts on an individual basis to make sure that the limit is not exceeded.[1]

13. The Company will also deduct an expense risk charge from the Account for its guarantee that the $30 contract administration charge assessed annually prior to the annuity date will never be increased. For Contracts issued in connection with Non-Qualified Plans, the expense risk charge on an annual basis will equal 0.5% of the daily net asset value of the Account. For Contracts issued in connection with Qualified Plans, the charge will be 0.2% of the daily net asset value of the Account.

14. The Company also will deduct a mortality risk charge equal on an annual basis to 0.75% of the daily net asset value of the Account. This charge compensates the Company for its guarantee that annuity payments will not be affected by the mortality experience of persons receiving such payments or of the general population. The Company assumes this mortality risk by virtue of the annuity rates in the Contract, which cannot be changed.

15. The distribution expense charge and the mortality and expense risk charges will be computed and deducted on a daily basis from each sub-account of the Account. If the amounts deducted for mortality and expense risks are insufficient to cover the actual cost of the risks, the Company will bear the loss. Conversely, if the amounts so deducted prove more than sufficient, the excess will be part of the Company's profit and will be available for any proper corporate purpose including payment of distribution expenses.

16. Applicants submit that the proposed distribution expense charge is an appropriate method to help defray the Company's costs associated with the sale of the Contracts. In the case of Contracts redeemed in whole or in part within seven years of a premium payment, the distribution expense charge will be the only sales-denominated charge received by the Company, and even over an extended period of time the aggregate amounts received will not be substantial.

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

17. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and that the proposed charges are within the range of industry practice for comparable annuity products. This representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as any contractual right to increase charges above current levels, the existence of other charges, the number of transfers permitted without charge, the nature of the free withdrawal provisions, the provisions relating to annuitization, and the number of annuity options. The Company will maintain at its principal executive offices, available to the Commission or its staff upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

18. Applicants acknowledge that the distribution expense charge and the contingent deferred sales charge to be made under the Contracts may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charges, all or a portion of such profit may be offset by distribution expenses not reimbursed by the distribution expense charge and the contingent deferred sales charge. In such circumstances a portion of the mortality and expense risk charges might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal executive offices and will be available to the Commission or its staff upon request.

19. The Company represents that the Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under rule 12b-1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

20. Applicants assert that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-16711 Filed 7-12-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18225; File No. 812-7724]

Tandem Variable Annuity Separate Account, et al.

July 5, 1991.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Tandem Variable Annuity Separate Account (the "Account"), Tandem Insurance Group, Inc. (the "Company"), and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPF&S").

RELEVANT 1940 ACT SECTIONS: Exemptions requested pursuant to section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of mortality and expense risk charges and a distribution expense charge from the assets of the Account pursuant to certain variable annuity contracts.

FILING DATE: The application was filed on May 10, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on July 30, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Account and the Company, 800

Scudders Mill Road, Plainsboro, New Jersey 08536. MLPF&S, One World Financial Center, North Tower, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Attorney, at (202) 272–3045, or Nancy M. Rappa, Senior Attorney, at (202) 272–2622, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Account is a separate account of the Company established for the purpose of funding certain variable annuity contracts (the "Contracts") to be issued by the Company. The Account registered under the 1940 Act as a unit investment trust by filing a notification of registration on Form N–8A.

2. The Company, a stock life insurance company organized under the laws of the State of Illinois, is currently authorized to sell variable annuities in 29 states. The Company is an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc. At December 31, 1990, the Company had total assets of approximately $4.8 billion and capital and surplus of approximately $360 million.

3. Assets of the Account will be invested in shares of Merrill Lynch Variable Series Funds, Inc. (the "Series Fund"), an open-end management investment company registered under the 1940 Act. The outstanding capital stock of the Series Fund is divided into eight separate classes, one for each of the eight portfolios of the Series Fund. The Account will be initially subdivided into sixteen sub-accounts, two sub-accounts for each class of Series Fund shares.

4. MLPF&S, also a wholly-owned subsidiary of Merrill Lynch & Co. Inc., will be the principal underwriter of the Contracts funded by the Account.

5. The Contracts to be funded initially by the Account are individual deferred variable annuity contracts designed for use in connection with retirement plans ("Qualified Plans") meeting the requirements of sections 401, 403, 404, 408, 457 or any similar provision of the Internal Revenue Code of 1986, as amended (the "Code"), or plans not entitled to special income tax treatment under such or comparable provisions of the Code ("Non-Qualified Plans").

6. Some Contracts, to be issued only to reinsure certain variable annuity contracts previously issued by an affiliate of the Company, provide for the accumulation of values and the payment of annuity benefits on a variable basis only. Other Contracts, to be issued to reinsure contracts issued by such affiliate and possibly also to the general public, provide for the accumulation of values and the payment of annuity benefits on a fixed or variable basis or on a combination fixed and variable basis.

7. A Contract owner may transfer all or part of his or her contract value from one sub-account of the Account to another. However, no transfer may be made within 30 days of the date of issue and all transfers must be at least 30 days apart. Transfers among sub-accounts of the Account will be made in reliance on rule 11a–2 under the 1940 Act.

8. On each contract anniversary on or prior to the commencement of annuity payments, the Company will deduct from the value of each Contract a Contract administration charge of $30 for administration of the Contracts and the Account. Administration expenses include expenses associated with issuing the Contracts, maintenance of contract owner records, accounting, valuation, regulatory compliance and reporting. Even though administration expenses may increase, the amount of the charge will not change. The contract administration charge is designed only to reimburse the Company for administration expenses on a cumulative basis. Any premium taxes will be deducted from the contract value at the annuity date.

9. No sales charges will be deducted from premiums at the time they are paid. However, a distribution expense charge will be deducted from the assets of the Account and a contingent deferred sales charge will be assessed in some circumstances in the event of a full or partial withdrawal of the net contract value.

10. The contingent deferred sales charge will be the lesser of (i) 5% of the sum of the premiums paid within seven years prior to the date of withdrawal, adjusted for any prior withdrawals, or (ii) 5% of the amount withdrawn. No charge will be made for such part of the first withdrawal in a contract year as does not exceed 10% of the sum of the premiums paid prior to the date of withdrawal. No charge will be imposed on any payment made due to the death of the annuitant or Contract owner. Under no circumstances will the cumulative sum of the contingent deferred sales charges ever exceed 5% of total premiums.

11. The contingent deferred sales charge may be reduced when sales of Contracts are made to a trustee, employer or similar party pursuant to a retirement plan or similar arrangement for sales of Contracts to a group of individuals if such program results in a savings of sales expenses. Any such reduction will not be unfairly discriminatory to any Contract owner.

12. The Company will deduct a distribution expense charge from the assets of the Account equal on an annual basis to 0.05% of the daily net asset value of the Account. The Company will monitor the performance of the Account to ensure that with respect to any Contract owner the cumulative sum of the distribution expense charge and the contingent deferred sales charge will not exceed 9% of total premium payments. Because the distribution expense charge is .05%, the aggregate amounts resulting from the charge even over an extended period of time will not be substantial. Accordingly, assurance that the sum of such charges will never exceed 9% of premiums paid can be obtained by monitoring the performance of the Account. Thus, during the seven year period that the contingent deferred sales charge is in effect under a Contract for which a single premium has been paid, the cumulative sum of the contingent deferred sales charge and the distribution expense charge cannot exceed 9% of the premium paid unless the Contract experiences an average annual return during the seven year period in excess of 69.5%. Monitoring the Account's performance will enable the Company to determine whether a return of that magnitude is achieved during any seven year period. So long as the average annual return during any seven year period is not in excess of 69.5%, the 9% ceiling will not be exceeded under any Contract as a result of the combined effect of the contingent deferred sales charge and the distribution expense charge, irrespective of the number of premiums paid under that Contract or other factors. Similarly, as to Contracts under which no contingent deferred sales charge is applicable because of the lapse of time, the sum of the distribution expense charges attributable to any premium will never exceed 9% unless the Contracts experience an average annual return in excess of a specified rate for a specified period of a year, such as 21% for a 19 year period or 16% for a 23 year period. By monitoring the performance of the Account, the Company can determine whether the possibility exists that the 9% limit on sales-denominated charges will be

exceeded under any Contract. If the performance of the Account should be so favorable so that it is possible that the 9% limit may be reached under any outstanding Contract, the Company will promptly commence monitoring Contracts on an individual basis to make sure that the limit is not exceeded.[1]

13. The Company will also deduct an expense risk charge from the Account for its guarantee that the $30 contract administration charge assessed annually prior to the annuity date will never be increased. For Contracts issued in connection with Non-Qualified Plans, the expense risk charge on an annual basis will equal 0.5% of the daily net asset value of the Account. For Contracts issued in connection with Qualified Plans, the charge will be 0.2% of the daily net asset value of the Account.

14. The Company also will deduct a mortality risk charge equal on an annual basis to 0.75% of the daily net asset value of the Account. This charge compensates the Company for its guarantee that annuity payments will not be affected by the mortality experience of persons receiving such payments or of the general population. The Company assumes this mortality risk by virtue of the annuity rates in the Contract, which cannot be changed.

15. The distribution expense charge and the mortality and expense risk charges will be computed and deducted on a daily basis from each sub-account of the Account. If the amounts deducted for mortality and expense risks are insufficient to cover the actual cost of the risks, the Company will bear the loss. Conversely, if the amounts so deducted prove more than sufficient, the excess will be part of the Company's profit and will be available for any proper corporate purpose including payment of distribution expenses.

16. Applicants submit that the proposed distribution expense charge is an appropriate method to help defray the Company's costs associated with the sale of the Contracts. In the case of Contracts redeemed in whole or in part within seven years of a premium payment, the distribution expense charge will be the only sales-denominated charge received by the Company, and even over an extended period of time the aggregate amounts received will not be substantial.

17. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and that the proposed charges are within the range of industry practice for comparable annuity products. This representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as any contractual right to increase charges above current levels, the existence of other charges, the number of transfers permitted without charge, the nature of the free withdrawal provisions, the provisions relating to annuitization, and the number of annuity options. The Company will maintain at its principal executive offices, available to the Commission or its staff upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

18. Applicants acknowledge that the distribution expense charge and the contingent deferred sales charge to be made under the Contracts may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charges, all or a portion of such profit may be offset by distribution expenses not reimbursed by the distribution expense charge and the contingent deferred sales charge. In such circumstances a portion of the mortality and expense risk charges might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal executive offices and will be available to the Commission or its staff upon request.

19. The Company represents that the Account will invest only in an underlying mutual fund which undertakes, in the event it should adlpt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

20. Applicants assert that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–16712 Filed 7–12–91; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1421]

Determination to Waive the Transfer of Foreign Assistance Funds Under the Fishermen's Protective Act

Pursuant to the authority vested in me by Executive Order 11772, I hereby certify that it is in the national interest not to transfer to the account established in the Treasury pursuant to section 7(c) of the Fishermen's Protective Act (22 U.S.C. 1977(c)) or to the Fishermen's Protective Fund established by section 9 of the Fishermen's Protective Act (22 U.S.C. 1979) funds from the Foreign Assistance Act of 1961, as amended, programmed for Colombia or any funds which might be programmed for Colombia, in the amount of $195.73. This amount is the amount of previously unreported payments and certifications made prior to March 31, 1991, which have been reimbursed by the Secretary of State for fishing boat seizures by Colombia in accordance with section 3 of the Fishermen's Protective Act.

This determination, which satisfies the requirements of section 5(b) of the Fishermen's Protective Act (22 U.S.C. 1975(b)), shall be reported to the Congress immediately and shall be published in the **Federal Register.**

Dated: June 27, 1991.

James A. Baker, III,

Secretary of State.

[FR Doc. 91–16698 Filed 7–12–91; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

NHTSA's Priority Plan 1991–1993

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the publication of *NHTSA's Priority Plan (1991–1993)*. The plan was developed to provide a coordinated program for improving highway traffic safety over the next three years. The document outlines the agency's major goals and strategies to achieve improved highway safety by enacting both vehicular and behavioral countermeasures. The priority plan includes proposed rulemaking initiatives for improving motor vehicle safety, planned technical and financial assistance for State highway safety initiatives, and public education and information campaigns to create public awareness of traffic safety issues. The agency plan also identifies cooperative programs with the public and private sectors to materially reduce the risk and severity of motor vehicle crashes.

FOR FURTHER INFORMATION: Interested persons may obtain a copy of the plan free of charge by sending a self-addressed label to the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Attention: NAD–51, Washington, DC 20590.

Issued on July 10, 1991.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 91–16766 Filed 7–12–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 9, 1991.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, 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: 1545–0152.

Form Number: IRS Form 3115, Schedules A, B, C, and D.

Type of Review: Resubmission.

Title: Application for Change in Accounting Method.

Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Responsents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 6,400.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
3115	18 hrs., 25 min.	3 hrs., 26 min.	5 hrs., 6 min.
Sched. A	16 hrs., 7 min.	1 hr., 58 min.	3 hrs., 24 min.
Sched. B	4 hrs., 18 min.	1 hr., 4 min.	2 hrs., 23 min.
Sched. C	26 hrs., 33 min.	3 hrs., 11 min.	3 hrs., 45 min.
Sched. D	13 hrs., 52 min.	2 hrs., 35 min.	2 hrs., 56 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 320,497 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. 91–16734 Filed 7–12–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

July 9, 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.

ACTION: Notice of correction to Internal Revenue Service (IRS) information collection request.

The following corrects public notification of IRS request for OMB review for 1545–1196 (FR Doc. 91–15518 Filed 6–28–91 8:45 a.m.), which incorrectly requested extension of the expiration date for IRS form 8820. Even though this form is cleared under the same OMB docket number, the request for extension should have been for the associated notice of proposed rulemaking, CO–005–90. The correction is as follows:

Internal Revenue Service

OMB Number: 1545–1196.

Form Number: None.

Type of Review: Extension.

Title: Returns Relating to Certain Changes in Corporate Control or Capital Structure (CO–005–90 NPRM).

Description: These proposed regulations concern the reporting requirements of section 6043(c) of the Internal Revenue Code. They require that a coproration file a return on (new) Form 8820, generally, if control of the corporation is acquired by any person or if the corporation has a substantial change in capital structure.

Respondents: Businesses or other for-profit, non-profit institutions.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management

and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports.

[FR Doc. 91–16735 Filed 7–12–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

July 8, 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.

U.S. Customs Service

OMB Number: 1515–0053.

Form Number: CF 3299.

Type of Review: Extension.

Title: Declaration for Free Entry of Unaccompanied Articles.

Description: This form serves as a declaration for residents, non-residents, and military personnel who are attempting to enter their personal and household goods free of duty. This form is also applicable for tools of trade and professional books.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 10,000.

Estimated Burden Hours Per Response/Recordkeeper: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 25,799 hours.

Clearance Officer: Ralph Meyer (202) 566–4019, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–16736 Filed 7–12–91; 8:45 am]

BILLING CODE 4820–02–M

Customs Service

[T.D. 91–59]

Revocation of Individual Broker License No. 5987; Albert Kazangian

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on January 4, 1990, the Secretary of the Treasury, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and § 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the individual broker license no. 5987 issued to Albert Kazangian. The stay of this revocation pursuant to 19 U.S.C. 1641(e)(5), was lifted by the Court of International Trade on June 27, 1991 (Court No. 90–04–00206), and is effective immediately (July 15, 1991). Hence, the temporary reinstatement dated April 26, 1990, (T.D. 90–40) is null and void, and the subject license is revoked.

Dated: July 8, 1991.

William J. Luebkert,

Acting Director, Office of Trade Operations.

[FR Doc. 91–16737 Filed 7–12–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed infomration collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 14, 1991.

Dated: July 9, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant, Secretary for Information Resources Policies and Oversight.

Extension

1. Application for Burial Benefits, VA Form 21–530.

2. The form is used to determine basic eligibility and whether the person who paid the veteran's burial expenses should be paid, or if expenses are unpaid, whether the creditor is to be paid.

3. Individuals or households; businesses or other for-profit.

4. 100,000 hours.

5. 20 minutes.

6. On occasion.

7. 300,000 respondents.

[FR Doc. 91–16720 Filed 7–12–91; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 56, No. 135
Monday, July 15, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 235, 245

Meal Supplements in the National School Lunch Program

Correction

In proposed rule document 91-15647 beginning on page 30339 in the issue of Tuesday, July 2, 1991, make the following corrections:

1. On page 30339, in the third column, in the last paragraph, in the eighth line, "contained" was misspelled.

§ 210.10 [Corrected]

2. On page 20342, in § 210.10:

a. In the first column, in paragraph (j)(2)(iii), in the fourth line, "Juice" was misspelled.

b. In the first table, in the fourth column, in the second entry from the bottom, "3/4 cup." should read "3/4 cup[3]."; and in the last line of the material under the table, "chopped" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-31-NG]

Utrade Gas Co. Application to Export Natural Gas to Mexico

Correction

In notice document 91-14978 beginning on page 28756 in the issue of Monday, June 24, 1991, make the following correction:

On page 28757, in the first column, in the sixth line from the bottom, "June 7, 1991" should read "June 17, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 85N-0331]

Cardiovascular Devices; Effective Date of Requirement for Premarket Approval; Replacement Heart Valve Allograft

Correction

In rule document 91-15216 beginning on page 29177 in the issue of Wednesday, June 26, 1991, make the following corrections:

1. On page 29178, in the second column, in the fourth paragraph, in the fifth line, "value" should read "valve".

2. On page 29179, in the first column, in the fourth line, "§ 812.380" should read "§ 812.30".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-070-7122-09-7410-10; COC-50893]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

Correction

In notice document 91-15885 beginning on page 30762 in the issue of Friday, July 5, 1991, make the following correction:

1. On page 30763, in the first column, in the last paragraph, in the ninth line following "date of" insert "publication of this notice, all persons who wish to submit comments,".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

Correction

In notice document 91-15730 beginning on page 30404 in the issue of Tuesday, July 2, 1991, make the following correction:

1. On page 30404, in the **SUMMARY**, in number 6, in the last line, "40,800,000." should read "4,800,000.".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-454, STN 50-455, STN 50-456, AND STN 50-457]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

Correction

In notice document 91-15093 beginning on page 28934 in the issue of Tuesday, June 25, 1991, in the second column, in the second paragraph, in the first line, "July 25, 1981" should read "July 25, 1991".

BILLING CODE 1505-01-D

federal register

Monday
July 15, 1991

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Immigration Act of 1990; Implementation; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205-AA86

Labor Certification Process for the Permanent Employment of Aliens in the United States; Implementation of Immigration Act of 1990

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor proposes to amend its regulations relating to labor certification for permanent employment of immigrant aliens in the United States. The amendments are necessary because of changes in the immigration laws brought about by the enactment of the Immigration Act of 1990 (Act). The new Act made significant changes in the employment-based preferences and increased the number of employment-based immigrants from 54,000 to 140,000 annually beginning October 1, 1991. The specific changes to the permanent labor certification process made by the Act are: (1) Requiring employers to provide notice to collective bargaining agents and U.S. workers of applications for certification; and (2) providing that third parties may submit information related to the application. Changes to Schedule A as a result of changes to the employment-based preference categories are also included in the proposed rulemaking. The labor market pilot project provided for by the Act is not included in this proposed rule and will be the subject of a separate Notice of Proposed Rulemaking to be published on or about October 1, 1991. Citation changes to the Immigration and Nationality Act are noted as well.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before August 14, 1991.

ADDRESSES: Submit written comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW.; Washington, DC 20210, Attention: Immigration Task Force, room N-4470.

FOR FURTHER INFORMATION: David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue NW.; Washington, DC 20210. Telephone: (202) 535-0174 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1990, the Immigration Act of 1990 (Act), Public Law 101-649, 104 Stat. 4978, was enacted. This new legislation makes major changes to and supplements the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*), including amendments related to the admission of aliens to work in the United States. The Act generally takes effect on October 1, 1991. Public Law 101-649, sec. 161(a); 8 U.S.C. 1101 note.

The Act increases the number of employment-based immigrants from 54,000 to 140,000 annually, beginning October 1, 1991. The Act establishes five preference groups of employment-based immigration: (1) Priority Workers; (2) Professionals with Advanced Degrees and Aliens of Exceptional Ability; (3) Skilled Workers, Professionals and Other Workers; (4) Special Immigrants; and (5) Employment Creation. 8 U.S.C. 1153(b)(1)-(5). The Department of Labor (Department or DOL) has responsibility in two of these categories. They are Preference Groups 2 and 3.

Preference Group 2 includes immigrants who are members of the professions holding advanced degrees or their equivalent or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States and whose services in the sciences, arts, professions or business are sought by an employer in the United States. Up to 40,000 visas may be issued to persons in this category, plus any unused visas from preference Group 1 (Priority Workers). A labor certification from the Secretary of Labor is required unless the Attorney General waives the requirement of a job offer when doing so is deemed in the national interest. 8 U.S.C. 1182(a)(5)(A).

Preference Group 3 includes immigrants who are capable, at the time of petitioning, of performing skilled labor requiring at least 2 years of training or experience, not of a temporary or seasonal nature; professionals who are qualified workers who hold baccalaureate degrees and who are members of the professions; and "other workers" who are qualified aliens who are capable at the time of petitioning of performing unskilled labor. Up to 40,000 visas may be issued to persons in this category, plus any unused visas from Preference Groups 1 and 2. No more than 10,000 visas will be issued to other workers on an annual basis. A labor certification from the Department is required. 8 U.S.C. 1153(b)(3)(C) and 1182(a)(5)(A).

Preference Group 5 includes immigrants who will invest the required amount of $1,000,000 in a new commercial enterprise that will employ at least 10 U.S. workers who are not family members. The Act also provides that the minimum investment can range from one-half to three times the required amount, depending upon certain circumstances. The required level of $1,000,000 may be adjusted by the Attorney General, after consultation with the Secretary of Labor and the Secretary of State. Up to 10,000 visas may be issued to persons in this category. No labor certification is made for Preference Group 5 immigrants. 8 U.S.C. 1153(b)(5); see 8 U.S.C. 1282(a)(5)(A).

Section 122 of the Act makes three changes in the statutory requirements for the permanent labor certification process. Section 122(a) of the Act requires the Department to test the use of labor market and other information as an alternative to the present case-by-case labor certification process under section 212(a)(5)(A) of the INA. See 8 U.S.C. 1182(a)(5)(A). This 3-year pilot program will test the concept and develop procedures for selecting up to ten shortage and/or surplus occupations. The Department is currently working on issues such as: The appropriate methodology to be used; the division (if any) between shortage and surplus occupations; the sources of data which may be used; the degree of occupational specificity to employ; and the impact on Schedule A, Group I, and on Schedule B. See 20 CFR 656.10, 656.11, 656.22, and 656.23; and 56 FR 11709 (March 20, 1991). A separate Notice of Proposed Rulemaking regarding this project will be published on or about October 1, 1991. Section 122(b) supplements the statutory basis for the permanent labor certification program, by requiring an employer to notify the appropriate collective bargaining representative, if one exists, that it filed a labor certification application. If there is no bargaining representative, all employees must be notified through conspicuous posting in the employer's facility. Section 122(b) of the Act also supplements the INA by mandating that DOL accept the submission of documentary evidence by third parties bearing on a permanent labor certification application, such as documentation on the availability of qualified workers for the job(s) in question, wages and working conditions.

and information about the employer's failure to meet terms and conditions of employment with respect to the employment of alien workers and U.S. co-workers.

The Employment and Training Administration's (ETA's) regulations for the certification of permanent employment of immigrant aliens are issued pursuant to section 122 of the Act and section 212(a)(5)(A) of the INA. 8 U.S.C. 1182(a)(5)(A) and 1182 note.

On March 20, 1991, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) summarizing the relevant provisions of the Act and raising issues and questions about which the Department invited public comment. 56 FR 11705. The comments received as a result of the ANPRM were reviewed and considered in developing this proposed rule.

II. Permanent Alien Employment Certification Process

Generally, an individual labor certification from the Department is required for employers to employ an alien under Preference Groups 2 and 3. Before the Department of State (DOS) and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor first must certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of such aliens will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(5)(A).

If the Department determines that there are no able, willing, qualified, and available U.S. workers, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to INS and to the DOS, by issuing a permanent alien labor certification.

If DOL cannot make either of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make either of the two required findings for one or more reasons, including, but not limited to:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps in 20 CFR part 656. These recruitment requirements and procedural steps are designed to test the labor market for available U.S. workers. They include posting of the job opportunity on the employer's premises, placing an advertisement in an appropriate publication, and placing a job order for 30 days with the appropriate local Employment Service office.

(b) The employer has not met its burden of proof under section 291 of the Act (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of attempts to obtain available U.S. workers and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers. With respect to the burden of proof, section 291 of the INA states, in pertinent part, that:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible for such visa or such document, or is not subject to exclusion under any provision of (the INA) * * *.

III. Department of Labor Regulations

The Department has promulgated regulations, at 20 CFR part 656, governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated pursuant to section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

The regulations at 20 CFR part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. They describe the potential of the nationwide system of public employment service offices to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the basis of information for the certification determinations. See also 20 CFR parts 651–658; and the Wagner-Peyser Act (29 U.S.C. chapter 4B).

Part 656 sets forth the responsibility of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service System, and by other specified means. The purpose is to assure an adequate test of the availability of qualified, willing and able U.S. workers to perform the work, and to insure that aliens are not employed under conditions adversely affecting the wages and working conditions of similarly employed U.S. workers.

IV. Advance Notice of Proposed Rulemaking

The ANPRM invited interested parties to submit written comments by April 19, 1991, on the various provisions of the Act that DOL is responsible for administering. These comments were considered in drafting this proposed rule. A variety of comments were received on a number of issues. The Department will consider these comments as well as those received pursuant to this Notice of Proposed Rulemaking (NPRM) in drafting a final rule (on an interim or other basis), scheduled to be published by September 1, 1991.

In the ANPRM, the Department indicated it was considering, in addition to the changes required by the Act, other changes to the regulations governing the issuance of permanent labor certifications at 20 CFR part 656, which may be needed to improve this process or clarify ambiguities. While the Department has decided to limit this proposed rule to implementing the changes made to the permanent labor certification process by the Act and to minor technical changes, it found the comments it received on other issues helpful in gaining insight into the way the public views the permanent labor certification program. These comments will be considered in the Department's deliberations on other needed improvements in the labor certification process.

In the ANPRM, the Department sought comments on the transition provisions of the Act (see sections 161 (a) and (c)(1)(B); 8 U.S.C. 1101 note), especially whether applications initiated under current regulations and filed prior to the effective date of the Act, that are pending at the time the new regulations take effect, should be processed under the current regulations or under the regulations that will be effective on October 1, 1991.

Numerous comments were received on this transition issue. Virtually all took the position that labor certification applications filed before the October 1, 1991, effective date of the Act, should be processed under the current regulations and should be considered valid no matter when a determination on a labor certification is made.

The Department intends to process under the current regulations all

applications for alien employment certification filed with State Employment Security Agencies before October 1, 1991. The Department's current regulations provide, in relevant part at 20 CFR 656.30, that *a labor certification is valid indefinitely* (emphasis supplied). This proposed rule does not affect that regulation.

A related issue of considerable concern to commenters is whether the current method of establishing the alien's "priority date" for getting in line to obtain a visa will be retained. Currently, an alien's priority date is defined in INS regulations as the date an alien's Application for Alien Employment Certification (Form ETA 750) is filed with a local employment service office. See 8 CFR 204.1(d)(3) (1990 ed.). Many commenters were concerned that INS may change this definition in its regulations to the date the visa petition is filed with the appropriate INS office.

It should be noted, however, that the implementation of the transition provisions of the Act and the method of determining an alien's priority date are not issues DOL can resolve. However, as stated in the ANPRM, the Department will continue to work closely with the DOS and the INS in an effort to insure that any new regulations apply only to applications filed after October 1, 1991. It is intended for pre-October 1, 1991, applications that the current method of establishing the alien's "priority date" for getting in line to obtain a visa to immigrate to the United States be retained.

Discussion of other comments received pursuant to the ANPRM which are relevant to this NPRM are included in the discussion of the proposed amendments below.

V. Discussion of Regulatory Proposals

A. Schedule A

1. General

Schedule A is a list of precertified occupations for which the Director, U.S. Employment Service, has previously determined that there are not sufficient United States workers who are able, willing, qualified, and available and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in such occupations. 20 CFR 656.10 and 656.22. Schedule A applications are filed directly with INS or DOS, and those agencies determine whether an individual application falls within the scope of the precertified list of occupations. See, *e.g.*, 8 CFR 204.2(i)(4).

As a result of the Act's changes to the preference categories for employment-based immigrants, the Department is proposing to remove from Schedule A three of the four precertified occupational categories currently on Schedule A. As explained below, it is proposed that Groups II, aliens of exceptional ability in the sciences and arts; III, aliens immigrating to the United States to perform religious occupations or to work for a nonprofit religious organization; and IV, intracompany transferees; be eliminated. Only Group I, physical therapists and nurses, will remain on the precertified list of occupations under this proposal.

The Department's reasons for deleting each of these groups is discussed below.

2. Group II—Aliens of Exceptional Ability in the Sciences and Arts

The Department is proposing to delete Group II, aliens of exceptional ability in the performing arts, from Schedule A. Section 121 of the Act amends the INA, in relevant part, by establishing an employment-based preference category (Preference Group I) at INA section 203(b)(1)(A)(i) for aliens with extraordinary ability in the "sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation * * *." 8 U.S.C. 1153(b)(1)(A)(i). This new preference category, which does not require a labor certification (see 8 U.S.C. 1182(a)(5)(A)), is broader than the current Group II of Schedule A because it includes aliens of national as well as international renown (the former are not now included in Group II). The new statutory preference category also includes performing artists and athletes, occupations not now included in Group II. Therefore, since it appears to have been superseded, the Department believes that no useful purpose would be served in retaining Schedule A, Group II, and is therefore proposing that it be deleted as of October 1, 1991.

Further, it is the Department's understanding that the current criteria DOL uses to establish Group II eligibility at 20 CFR 656.22(d) are being incorporated into INS's proposed regulations for implementing the employment-based preference category for aliens with extraordinary ability. For these reasons, the Department also believes that the removal of Group II from the labor certification regulations is in consonance with Congressional intent.

However, the Department is concerned that it may be possible that certain aliens of exceptional ability that now qualify for Schedule A, Group II, will not be able to qualify as aliens of extraordinary ability. If this is true, as a result of the elimination of Group II, applications filed on behalf of any such aliens would have to be processed under the basic labor certification process at § 656.21 which requires that the labor market be tested for the availability of qualified U.S. workers. Since this is not the intended result of the recommendation to delete Group II, the Department invites comments on whether the elimination of Group II would result in the need to initiate an individual labor certification on behalf of aliens that do not need one under Group II.

3. Group III—Religious Occupations

The proposed regulations would also remove Group III, Religious Occupations, from Schedule A in view of the addition of religious workers by the Act to the special immigrant categories at section 101(a)(27)(C)(ii) (II) and (III) of the INA. 8 U.S.C. 1101(a)(27)(C)(ii) (II) and (III); see Public Law 101–649, secs. 151(a) and 162. Although the new special immigrant categories for religious occupations provided by the Act are not coextensive with Schedule A, Group III, and sunset on October 1, 1994, unless extended by Congress, the Department believes it would be inconsistent with Congressional intent to maintain Group III, in view of the limitation contained in the Act of 5,000 visas a year that may be made available to aliens to enter to work in religious occupations. See 8 U.S.C. 1153(b)(4).

The Department also believes that the impact of the special immigrant categories for religious occupations over the next three years can be better evaluated or tested to determine if they should be extended beyond October 1, 1994, if Group III is eliminated.

4. Group IV—Intracompany Transferees

The proposed regulations remove Group IV, Intracompany Transferees, from Schedule A. The Act has included a section for "certain multinational executives and managers" in the INA's first employment-based preference category (*i.e.*, priority workers) and this section is similar to Group IV of Schedule A. See 8 U.S.C. 1153(b)(1)(C). For the most part, this is a broader category than Schedule A, Group IV. To qualify for the new employment-based preference category established for multinational executives and managers, the alien only has to have worked for the international entity for one out of the

last three years and not the immediately preceding year as now required for Group IV of Schedule A at 20 CFR 656.10(d) of the Department's regulations. The definitions of "managerial capacity" and "executive capacity", added as section 101(a)(44)(A) and (B), respectively, of the INA by section 123 of the Act also effectively broaden the category in 8 U.S.C. 1153(b)(1)(C) for "certain multinational executives and managers" beyond the scope of Group IV. 8 U.S.C. 1101(a)(44)(A) and (B). The new definitions of "managerial capacity" and "executive capacity" are broader than the definitions the INS had been using in administering Schedule A, Group IV.

It is the Department's understanding that the Schedule A, Group IV, criteria used to establish Group IV eligibility at 20 CFR 656.10(f) are being incorporated into INS's proposed regulations to implement the employment-based preference category for "certain multinational executives and managers". Therefore, this preference category, as administered by INS, is likely to be coextensive with the current Schedule A, Group IV.

5. Applications for Schedule A Occupations

The procedures for filing Schedule A applications in 20 CFR 656.22 are revised to reflect the proposed deletion of Groups II, III, and IV from Schedule A; the deletion of the nonpreference category (under which labor certification applications could be filed with a Consular Officer) from the INA by the Act; and the Department's understanding that, under the proposed regulations of the INS, aliens will not be able to file visa petitions on their own behalf under either the second or third employment-based preference.

B. Special Handling Provisions for College and University Teachers and Aliens Represented To Have Exceptional Ability in the Performing Arts

The special handling provisions at 20 CFR 656.21a apply, in relevant part, to applications submitted to employ an alien as a college or university teacher or an alien represented to have exceptional ability in the performing arts. The special handling procedures provide for a more limited test of the labor market than the basic process at 20 CFR 656.21 to successfully apply for a labor certification. These procedures do not require that a job order be placed with the local Employment Service office; nor do they require that an advertisement be placed over the name of the Employment Service; rather, it may be published in the name of the employer. Another major difference between the special handling procedures and the basic process, is that the DOL Certifying Officer must determine (pursuant to 8 U.S.C. 1182(a)(5)(A)(i)(I) and (a)(5)(A)(II)) that the U.S. applicant is at least as qualified (equally qualified) as the alien for the labor certification application before a labor certification can be denied because a U.S. worker is available for the employer's job opportunity. Under the basic labor certification process, which applies to all other occupations for which labor certifications are processed by the Department, the Certifying Officer need find only that the U.S. applicant is qualified (or meets the employer's minimum job requirements) regardless of whether or not the alien is more qualified, to deny a labor certification because qualified U.S. workers are available. See 20 CFR 656.21.

The Act's inclusion of performing artists in the employment-based preference category of "aliens with extraordinary ability" (8 U.S.C. 1153(b)(1)), combined with a review of the regulatory history that led to the development of the special handling provisions for aliens represented to have exceptional ability in the performing arts, has led the Department to conclude that performing artists should be deleted from the special handling provisions. The INS proposed rule implementing the preference category for "aliens with extraordinary ability" is expected to include performing artists. Since a labor certification is not required for a performing artist to be admitted to the U.S. under the first employment-based preference category, which includes "aliens with extraordinary ability", there does not appear to be a need to keep the special handling provisions for aliens of exceptional ability in the performing arts. See 8 U.S.C. 1153(b)(1)(A) and 1182(a)(5)(A)).

With the deletion of Schedule A, Group II (20 CFR 656.10(b) and 656.22(d)), discussed above, and the special handling provisions for performing artists (20 CFR 656.21a(a)(1)(iv)) from the permanent labor certification regulations at 20 CFR part 656, the Department will apply the "equally qualified" provision in section 212(a)(5)(A)(i)(I) of the INA only in cases submitted under the special handling procedures for college and university teachers. 8 U.S.C. 1182(a)(5)(A)(i)(I); see 8 U.S.C. 1182(a)(5)(A)(ii). In all other labor certification cases the U.S. worker will only have to be minimally qualified to be considered for the employer's job opportunity.

However, the Department is concerned that it may be possible that certain aliens of exceptional ability in the performing arts that now qualify for the current special handling procedures will not be able to qualify as aliens of extraordinary ability. If the special handling procedures for aliens represented to have exceptional ability in the performing arts were eliminated, applications filed on behalf of any such aliens would have to be processed under the basic labor certification process at § 656.21 which requires that the labor market be tested for the availability of qualified U.S. workers. Since this is not the intended result of the recommendation to delete the special handling procedures for aliens of exceptional ability in the performing arts, the department invites comments on whether the elimination of these procedures would result in the need to initiate an individual labor certification on behalf of aliens that do not need one under the special handling procedures.

c. Notice Provisions

Section 122(b)(1) of the Act supplements the INA, by requiring that an employer applying for permanent alien labor certification send a notice of the application to its employees' bargaining representatives, or, if no such representative exists, to its employees directly through posting of the notice at conspicuous locations at the worksite in the area of intended employment. 8 U.S.C. 1182 note. This is a slight extension to current practice under the existing rule, which does not mandate notice to a union, but which requires the employer to post a notice of the job opportunity. The current rule does not require such notice to indicate that an application has been filed for alien employment certification. 20 CFR 656.21(b)(3). Section 122(b)(2) of the Act also gives persons the right to submit documentary evidence bearing on the application for certification.

The proposed rule amends the current posting regulation at 20 CFR 656.21(b)(3) to implement the notice requirements of the Act. The amended rule also specifies that the notice required by the Act should be posted in conjunction with the 30-day job order that must be placed with the local Employment Service office in accordance with paragraph (f) of 20 CFR 656.21. In the case of private households, notice is required only if a household employs U.S. one or more workers at the time an application is filed with a local Employment Service office.

The ANPRM published on March 20, 1991, invited comment on whether an employer should be required to submit to DOL documentation of the bargaining representative's receipt of the notice and representative's comments (if any) on such notice. Virtually all comments that addressed this issue were uniform in indicating that the employer should be required to document only that notice was provided to the bargaining representative. By requiring copies of an exchange of correspondence, the bargaining representative would be in a position to delay the processing of the Application for Alien Employment Certification by not responding to the employer's notice or by taking an inordinate amount of time to respond to the notice provided by the employer. The proposed rule is consistent with the posting requirements of the current posting regulations.

A paragraph has been added to the General Filing Instructions at 20 CFR 656.20 to provide that any person may submit documentary evidence bearing on an application for certification filed under 20 CFR 656.21 and 656.21a to the Employment Service local office or the Certifying Officer and that such information will be considered by the Certifying Officer in making the determination. The regulations do not specify any particular form that has to be followed for submission of documentary evidence. It can be submitted, for example, by letter, telegram, or facsimile transmission. The Act, in fact, permits no more than existing DOL practice. Currently, such information is accepted and considered; and will continue to be considered, under the proposed rule. However, DOL interprets the Act as not requiring that any person who submits information be given the right to appeal determinations made on labor certification applications to the Board of Alien Labor Certification Appeals, and the Act does not give so-called "third parties" standing to challenge certifications before the Board or in court.

D. Technical and Clarifying Amendments

The regulations at 20 CFR part 656 have not been amended since December 1980. Therefore, a variety of technical and clarifying amendments are made by these amendments to reflect changes in the immigration laws and procedures that are not of a substantive nature. These include, for example, changes in the alternative forms of documentation required for physicians by 20 CFR 656.209(d), to make them consistent with the 1981 amendments to other exclusionary provisions of the INA (Pub. L. 97–116), and updating regional office addresses. See 8 U.S.C. 1182(a)(32).

Regulatory Impact

This rule affects only those employers seeking immigrant workers for permanent employment in the United States. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR 1981 Comp., p. 127, 5 U.S.C. 601 note.

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This document contains no paperwork requirements which mandate clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance at Number 17.203, "Certification for Immigrant Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Employment and Training Administration, Fraud, Labor, Unemployment, and Wages.

Proposed Rule

Accordingly, it is proposed to amend part 656 of chapter V of title 20, Code of Federal Regulations, as follows:

Authority

1. The Authority citation for part 656 is revised to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A); 29 U.S.C. 49 *et seq.;* section 122, Pub. L. 101–649, 109 Stat. 4978.

§ 656.1 [Amended]

2. Section 656.1 is amended as follows:

a. In the introductory text of paragraph (a), the phrase "section 212(a)(14) of the Immigration and Nationality Act (Act) (8 U.S.C. 1182(a)(14))" is removed and the phrase "section 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A))" is added in lieu thereof.

b. In paragraph (c), the phrase "Division of Labor Certifications, United States Employment Service, 601 D Street NW., Washington, DC 20213" is removed and the phrase "Division of Foreign Labor Certifications, United States Employment Service, Department of Labor, Washington, DC 20210." is added in lieu thereof.

3. Section 656.2 is revised to read as follows:

§ 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

(a)(1) *Description of the Act.* The Immigration and Nationality Act (Act) (8 U.S.C. 111 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

(2) The Immigration and Naturalization Service (INS) performs most of the Attorney General's functions under the Act. See 8 CFR 2.1.

(3) The consular offices of the Department of State throughout the world are generally the initial contact for aliens in foreign countries who wish to come to the United States. These offices obtain visa eligibility documentation, and issue visas.

(b) *Burden of Proof under the Act.* Section 291 of the Act (8 U.S.C. 1361) states in pertinent part, that:

> Whenever any person makes application for a visa or any other documentation required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such documentation, or is not subject to exclusion under any provision of this Act * * *.

(c) *Role of the Department of Labor.* (1) The role of the Department of Labor under the Act derives from section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)), which provides that any alien who seeks admission or status as an immigrant for the purpose of employment under paragraph (2) or (3) of section 203(b) of the Act shall be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(i) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(ii) The employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) The certification is referred to in this part as a "labor certification".

(3) The Department of Labor issues labor certifications in two instances: for

the permanent employment of aliens; and for temporary employment of aliens in the United States classified under 8 U.S.C. 1101(a)(15)(H)(ii) pursuant to regulations of the Immigration and Naturalization Service at 8 CFR 214.2(h)(4) and sections 101(a)(15)(H)(ii), 214, and 218 of the Act. See 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188. The Department also administers attestation programs relating to the admission and/or work authorization of the following nonimmigrants: Registered nurses (H–1A visas), professionals (H–1B visas), crewmembers performing longshore work (D visas), and students (F–1 visas), classified under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1101(a)(15)(H)(i)(b), 1101(a)(15)(D), and 1101(a)(15)(F), respectively. See also 8 U.S.C. 1184 (c), (m) and (n), and 1288; and Public Law 101–649 section 221, 8 U.S.C. 1184 note. The regulations under this part apply only to labor certifications for permanent employment.

§ 656.10 [Amended]

4. Section 656.10 is amended as follows:

a. In the introductory text of § 656.10, the phrase "Administrator, United States Employment Service (Administrator)," is removed and the phrase "Director, United States Employment Service (Director)" is added in lieu thereof;

b. Paragraphs (b), (c), and (d) of schedule A are removed and reserved.

§ 656.11 [Amended]

5. Section 656.11 is amended as follows:

a. In the introductory text of § 656.11, the word "Administrator" is removed and the word "Director" is added in lieu thereof.

§ 656.20 [Amended]

6. Section 656.20 is amended as follows:

a. In paragraph (d)(1)(i), the phrase "Visa Qualifying Examination (VQE)" is removed and the phrase "Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS)" is added in lieu thereof.

b. In paragraph (d)(1)(ii)(A), the year "1977" is removed and the year "1988" is added in lieu thereof.

c. Paragraph (d)(1)(ii)(B) is removed and paragraph (d)(1)(ii)(C) is redesignated as new paragraph (d)(1)(ii)(B).

d. A new paragraph (g) is added to read as follows:

§ 656.20 General filing instructions.

* * * * *

(g) Any person may submit documentary evidence to the local employment service office or to the Certifying Officer bearing on the Application for Alien Employment Certification, such as information on available workers, information on wages and working conditions, and information on the employer's failure to meet terms and conditions with respect to the employment of alien workers and co-workers.

§ 656.21 [Amended]

7. Section 656.21 is amended as follows:

a. In the introductory text of paragraph (b)(1), the phrase "Job Service System" is removed and the phrase "Employment Service System" is added in lieu thereof.

b. In paragraph (c), the phrase "local job service office" is removed and the phrase "local office" is added in lieu thereof.

c. In paragraph (e), the phrase "local Job Service office" is removed and the phrase "local office" is added in lieu thereof.

d. In paragraph (f) introductory text, the phrase "local Job Service office" is removed and the phrase "local office" is added in lieu thereof; and the phrase "a Job Service job order:" is removed and the phrase "an Employment Service job order:" is added in lieu thereof.

e. In paragraph (f)(1), the phrase "regular Job Service recruitment system." is removed and the phrase "regular Employment Service recruitment system." is added in lieu thereof.

f. In paragraph (f)(2), the phrase "Job Service (JS) Regulations (as defined at § 651.7 of this chapter)" is removed and the phrase "Employment Service (ES) Regulations (20 CFR parts 651–658)" is added in lieu thereof.

g. In paragraph (j)(2), the word "Job" is removed and the word "Employment" is added in lieu thereof.

h. In paragraph (k), the word "Job" is removed and the word "Employment" is added in lieu thereof.

i. Paragraph (b)(3) is revised to read as follows:

§ 656.21 Basic labor certification process.

* * * * *

(b) * * *

(3) The employer shall provide notice of the filing of the Application for Alien Employment Certification:

(i) To the bargaining representative (if any) of the employer's employees in the occupational classification and area in which the alien is sought; or

(ii) If there is no such bargaining representative, to employees employed at the facility through posting in conspicuous locations for at least 10 consecutive days and shall contain the information required for advertisements by paragraph (g)(3) through (g)(8) of this section. The notice shall be clearly visible and unobstructed while posted and shall be posted in conspicuous places where the employer's U.S. workers readily can read the posted notice on their way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include, but are not limited to, locations in the immediate vicinity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 20 CFR 1903.2(a).

(iii) In the case of private households, notice is required only if a household employs one or more U.S. workers at the time the application for labor certification is filed with a local Employment Service office.

Notice of the job opportunity required by this paragraph (b)(3) shall be provided in conjunction with the recruitment required under paragraph (f) of this section and shall contain the information required for advertisements by paragraphs (g)(3) through (g)(8) of this section, except that such notice shall state that applicants should report to the employer, not to the local Employment Service office, and shall state that the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity.

§ 656.21a [Amended]

8. Section 656.21a is amended as follows:

a. In the introductory text of paragraph (a) the phrase "or an alien represented to be of exceptional ability in the performing arts" is removed; and also in the introductory text of paragraph (a) the word "Job" is removed and the word "Employment" is added in lieu thereof.

b. In paragraph (a)(1)(ii), the phrase "The employer shall submit a full description" is removed; and the phrase "A full description" is added in lieu thereof.

c. In paragraph (a)(1)(iii)(E), the phrase "which are filed after December 31, 1981," and the comma between the word "teachers" and the phrase "shall be filed" are removed;

d. Paragraph (a)(1)(iv) is removed.

e. In paragraph (a)(2), the phrase "local Job Service office" is removed and the phrase "local office" is added in lieu thereof; and the phrase "teacher or an alien represented to have exceptional ability in the performing arts," is

removed and the word "teacher" is added in lieu thereof.

f. In paragraph (a)(3), the phrase "local Job Service office" is removed and the phrase "local office" is added in lieu thereof.

g. In paragraph (b)(1), the phrase "Job Service" is removed and the phrase "Employment Service" is added in lieu thereof.

h. In paragraph (b)(2)(ii), the word "Administrator" is removed from the second sentence and the word "Director" is added in lieu thereof; and the phrase "of this part" is added between the citation "§ 656.30" and the phrase "for the significance".

i. In paragraph (c), the phrase ", an alien represented to be of exceptional ability in the performing arts," is removed.

9. Section 656.22 is revised to read as follows:

§ 656.22 Applications for labor certification for Schedule A occupations.

(a) An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification with the appropriate Immigration and Naturalization Service Office, not with the Department of Labor or a State employment service office.

(b) The Application for Alien Employment Certification form shall show evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form. There is, however, no need for the employer to provide the other documentation required under this part for non-Schedule A occupations.

(c) An alien seeking labor certification under Group I of Schedule A shall file as part of his or her labor certification application documentary evidence of the following:

(1) An alien seeking Schedule A labor certification as a physical therapist (§ 656.10(a)(1) of this part) shall file as part of his or her labor certification application a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment, stating that the alien is qualified to take that State's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only pursuant to this § 656.22 and not pursuant to §§ 656.21, 656.21a, or § 656.23 of this part.

(2) An alien seeking Schedule A labor certification as a professional nurse (§ 656.10(a)(2) of this part) shall file as part of his or her labor certification application, documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination; or that the alien holds a full and unrestricted license to practice nursing in the State of intended employment. Application for certification of employment as a professional nurse may be made only pursuant to this § 656.22(a)(2), and not pursuant to §§ 656.21, 656.21a, or § 656.23 of this part.

(d) An Immigration Officer shall determine whether the alien has met the applicable requirements of this section and of Schedule A (§ 656.10 of this part), shall review the application and shall determine whether or not the alien is qualified for and intends to pursue the Schedule A occupation.

(1) The Immigration Officer may request an advisory opinion as to whether the alien is qualified for the Schedule A occupation from the Division of Foreign Labor Certifications, United States Employment Service, Washington, DC 20210.

(2) The Schedule A determination of the INS shall be conclusive and final. The employer, therefore, may not make use of the review procedures at § 656.26 of this part.

(e) If the alien qualifies for the occupation, the Immigration Officer shall indicate the occupation on the Application for Alien Employment Certification form. The Immigration Officer then shall promptly forward a copy of the Application for Alien Employment Certification form, without attachments, to the Director, indicating thereon the occupation, the Immigration or Consular office which made the Schedule A determination and the date of the determination (see § 656.30 of this part for the significance of this date).

§ 656.23 [Amended]

10. Section 656.23 is amended as follows:

a. In paragraph (a), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

b. In paragraph (b), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

c. In paragraph (c) the word "Administrator" is removed and the word "Director" is added in lieu thereof.

d. In the introductory text to paragraph (d), the phrase "local Job Service office" is removed and the phrase "local Employment Service office" is added in lieu thereof; and the phrase "the following documentation:" is removed and the phrase "the following:" is added in lieu thereof.

§ 656.24 [Amended]

11. Section 656.24 is amended as follows:

a. In paragraph (a), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

b. In paragraph (b)(2)(i), the phrase "job service office's" is removed and the phrase "Employment Service office's" is added in lieu thereof.

c. In paragraph (b)(2)(iii), the parenthetical phrase "(the "Job Service")" is removed and the parenthetical phrase "(the "Employment Service")" is added in lieu thereof.

§ 656.26 [Amended]

12. Section 656.26 is amended by removing from paragraph (c)(5) the word "Administrator" and adding in lieu thereof the word "Director".

§ 656.30 [Amended]

13. Section 656.30 is amended by removing from paragraph (b)(1) the phrase "local job service office date stamped" and adding in lieu thereof "local employment service office date-stamped".

§ 656.50 [Amended]

14. Section 656.50 is amended as follows:

a. The definition of "Administrator" is removed.

b. In the definition of "Area of Intended Employment", the phrase "Standard Metropolitan Statistical Area (SMSA), any place within the SMSA" is removed from the second sentence and the phrase "Metropolitan Statistical Area (MSA), any place within the MSA" is added in lieu thereof.

c. In the definition of "Certifying Officer", paragraph (2) is removed and paragraphs (3) and (4) are redesignated as paragraphs (2) and (3), respectively.

d. In the definition of "Local Job Service Office", the phrase "Job Service" is removed the four times it appears therein and the phrase "Employment Service" is added in lieu thereof in each instance; and the parenthetical phrase "(also known as a State employment service)" is removed and the parenthetical phrase "(also known as a State Employment Security Agency (SESA))" is added in lieu thereof.

e. In the definition of "Schedule A," the word "Administrator" is removed and the word "Director" is added in lieu thereof.

f. In the definition of "Schedule B," the word "Administrator" is removed and the word "Director" is added in lieu thereof.

g. The definition of "HHS" is removed.

h. In the definition of "United States Employment Service (USES)" the phrase "of 1933" is removed; and the parenthetical phrase "(the Job Service (JS)" is removed and the parenthetical phrase "(the Employment Service (ES) System)" is added in lieu thereof.

i. A definition of "Director" is added in alphabetical order to read as follows:

§ 656.50 Definition, for the purposes of this part, of terms used in this part.

* * * * *

Director means the chief official of the United States Employment Service or the Director's designee.

* * * *

§ 656.50 [Redesignated as § 656.3]

15. Section 656.50 is redesignated as § 656.3 of Subpart A.

Subpart E [Removed]

16. Subpart E is removed and reserved.

§ 656.60 [Amended]

17. Section 656.60 is amended as follows:

a. In the address of Region II, the phrase "and Puerto Rico): Room 3713, 1515 Broadway, New York, NY 10036." is removed and the phrase "Puerto Rico, and the Virgin Islands): 201 Varick Street, room 775, New York, NY 10014." is added in lieu thereof.

b. In the address of Region VI, the number "555" is removed and the number "525" is added in lieu thereof.

c. In the address of Region IX, the phrase "Box 36084, Federal Office Building, 450 Golden Gate Avenue, San Francisco, CA 94102" is removed and the phrase "71 Stevenson Street, Room 830, San Franc sco, CA 94119" is added in lieu thereof.

Signed at Washington, DC this 8th day of July, 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91–16583 Filed 7–12–91; 8:45 am]

BILLING CODE 4510–30–M

federal register

Monday
July 15, 1991

Part III

Department of Labor

Wage and Hour Division

29 CFR Part 870
Restriction on Garnishment; Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 870

RIN 1215-AA63

Restriction on Garnishment

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The enactment of the Fair Labor Standards Amendments of 1989 increased the statutory minimum wage from $3.35 per hour to $3.80 per hour effective April 1, 1990, and to $4.25 per hour effective April 1, 1991. The Federal Wage Garnishment Law restricts the amount of an individual's disposable earnings which can be garnished in any workweek. The largest amount which can be garnished in any workweek may not exceed the lesser of either: (1) 25 percent of an individual's disposable earnings for that workweek or, (2) the amount by which an individual's disposable earnings for that workweek exceed thirty times the statutory minimum wage prescribed by section 6(a)(1) of the Fair Labor Standards Act (FLSA), in effect at the time the earnings are payable. Accordingly, 29 CFR part 870 needs to be updated so that the garnishment restrictions in the regulations will reflect the minimum wage increases resulting from the 1989 Amendments.

EFFECTIVE DATE: This rule is effective July 15, 1991.

FOR FURTHER INFORMATION CONTACT: John R. Fraser, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, room S–3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Wage Garnishment Law, 15 U.S.C. 1671, *et seq.*, section 303(a) of title III of the Consumer Credit Protection Act (CCPA), limits the amount of an individual's disposable earnings which can be garnished in any workweek. The maximum amount which can be garnished in any workweek may not exceed the lesser of either: (1) 25 percent of an individual's disposable earnings for that workweek, or (2) the amount by which an individual's disposable earnings for that workweek exceed thirty times the statutory minimum wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, that is in effect at the time the earnings are payable.

On November 17, 1989, the 1989 Amendments to FLSA (Pub. Law 101–157) were enacted. These Amendments provide, in part, that the statutory minimum wage required under section 6(a)(1) of the FLSA increases from $3.35 per hour to $3.80 per hour effective April 1, 1990, and to $4.25 per hour effective April 1, 1991. Accordingly, 29 CFR part 870, Restriction on Garnishment, is revised to reflect the minimum wage increases resulting from the 1989 Amendments.

II. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

III. Summary of Rule

As a result of the enactment of the 1989 Amendments to the FLSA which increased the statutory minimum wage, the amounts listed in § 870.10(b), (c), and (d), are increased to reflect the $3.80 an hour minimum wage for the period beginning April 1, 1990, and to reflect the $4.25 an hour minimum wage effective April 1, 1991.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1165, 5 U.S.C. 601 et seq., pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

The Secretary has determined that the public interest requires the immediate issuance of these regulations in final form without prior notice-and-comment in order to reflect the 1989 Amendments as these Amendments relate to the garnishment of an individual's earnings under Regulations, 29 CFR part 870. The changes to the existing regulations are minor clarifying revisions needed to reflect statutory increases in the federal minimum wage.

Accordingly, the Secretary, for good cause, finds pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impracticable and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule cannot be published 30 days before its effective date.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 870

Wages, Minimum wages, Garnishment of wages.

For the reasons set forth above, 29 CFR part 870 is amended as set forth below.

Signed at Washington, DC, on this 8th day of July, 1991.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

Accordingly, title 29 chapter V, subchapter D, of the Code of Federal Regulations is amended as follows:

PART 870—RESTRICTION ON GARNISHMENT

1. The authority citation for part 870 continues to read as follows:

Authority: Secs. 303, 305, 306, 82 Stat. 163, 164; 15 U.S.C. 1673, 1675, 1676, unless otherwise noted.

2. Section 870.10, paragraphs (b), (c) (2) through (5) and (d) are revised to read as follows:

§ 870.10 Maximum part of disposable earnings subject to garnishment.

* * * * *

(b) Weekly pay period. The statutory exemption formula applies directly to the aggregate disposable earnings paid or payable for a pay period of 1 workweek, or a lesser period. Its intent is to protect from garnishment and save to an individual earner the specified amount of compensation for his personal services rendered in the workweek, or a lesser period. Thus:

(1) The amount of an individual's disposable earnings for a workweek or lesser period which may not be garnished is 30 times the Fair Labor Standards Act minimum wage. If an individual's disposable earnings for

such a period are equal to or less than 30 times the minimum wage, the individual's earnings may not be garnished in any amount. (When the minimum wage increases, the proportionate amount of earnings which may not be garnished also increases.) On April 1, 1991, the minimum wage increased to $4.25. Accordingly, the amount of disposable weekly earnings which may not be garnished is $127.50 effective April 1, 1991. (For the period April 1, 1990 through March 31, 1991, the amount that may not be garnished is $114 (30×$3.80).)

(2) For earnings payable on or after April 1, 1991, if an individual's disposable earnings for a workweek or lesser period are more than $127.50, but less than $170.00, only the amount above $127.50 is subject to garnishment. (For earnings payable during the period April 1, 1990, through March 31, 1991, when the Fair Labor Standards Act minimum wage was $3.80, this range computes to more than $114.00, but less than $152.00.)

(3) For earnings payable on or after April 1, 1991, if an individual's disposable earnings for a workweek or lesser period are $170.00 or more, 25 percent of his/her disposable earnings is subject to garnishment. (The weekly figure was $152.00 (40×$3.80) for the period April 1, 1990 through March 31, 1991.)

(c) * * *

(1) * * *

(2) The following formula should be used to calculate the dollar amount of disposable earnings which would not be subject to garnishment: The number of workweeks, or fractions thereof, should be multiplied times the applicable Federal minimum wage and that amount should be multiplied by 30. For example, for the period April 1, 1990 through March 31, 1991 when the Federal minimum wage was $3.80 per hour, the formula should be calculated based on a minimum wage of $3.80 ($3.80 multiplied by 30 equals $114; $114 multiplied by the number of workweeks (or fractions thereof) equals the amount that cannot be garnished). As of April 1, 1991, the $4.25 Federal minimum wage replaces $3.80 in the formula (and the amount which cannot be garnished would then be $127.50 multiplied by the number of workweeks (or fractions thereof)). For purposes of this formula, a calendar month is considered to consist of 4⅓ workweeks. Thus, during the period April 1, 1990 through March 31, 1991 when the Federal minimum hourly wage was $3.80 an hour, the amount of disposable earnings for a 2-week period is $228.00 (2×30×$3.80); for a monthly period, $494.00 (4⅓×30×$3.80). Effective April 1, 1991, such amounts increased as follows: for a two-week period, $255.00 (2×30×$4.25); for a monthly period, $552.50 (4⅓×30×$4.25). The amount of disposable earnings for any other pay period longer than 1 week shall be computed in a manner consistent with section 303(a) of the act and with this paragraph.

(3) Absent any changes to the rate set forth in section 6(a)(1) of the Fair Labor Standards Act, disposable earnings for individuals paid weekly, biweekly, semimonthly, and monthly may not be garnished unless they are in excess of the following amounts:

Date	Minimum amount	Weekly amount	Biweekly amount	Semi-monthly amount	Monthly rate
Jan. 1, 1981	$3.35	$100.50	$201.00	$217.75	$435.50
Apr. 1, 1990	3.80	114.00	228.00	247.00	494.00
Apr. 1, 1991	4.25	127.50	255.00	276.25	552.50

(4) Absent any changes to the rate set forth in section 6(a)(1) of the Fair Labor Standards Act, if the disposable earnings are less than the following figures, only the difference between the appropriate figures set forth in paragraph (c)(3) of this section and the individual's disposable earnings may be garnished.

Date	Minimum amount	Weekly amount	Biweekly amount	Semi-monthly amount	Monthly rate
Jan. 1, 1981	$3.35	$134.00	$268.00	$290.33	$4580.67
Apr. 1, 1990	3.80	152.00	304.00	329.33	658.67
Apr. 1, 1991	4.25	170.00	340.00	368.33	736.67

For example, in April of 1990, if an individual's disposable earnings for a biweekly pay period are $274.00, the difference between $228.00 and $274.00 (i.e., $46.00) may be garnished.

(5) If disposable earnings are in excess of the figures stated in paragraph (c)(4) of this section, 25% of the disposable earnings may be garnished.

(d) Date wages paid or payable controlling. The date that disposable earnings are paid or payable, and not the date the Court issues the garnishment order, is controlling in determining the amount of disposable earnings that may be garnished. Thus, a garnishment order in November 1990, providing for withholding from wages over a period of time, based on exemptions computed at the $3.80 per hour minimum wage then in effect, would be modified by operation of the change in the law so that wages paid after April 1, 1991, are subject to garnishment to the extent described in paragraphs (b) and (c) of this section on the basis of a minimum rate of $4.25 per hour. This principle is applicable at the time of the enactment of any further increase in the minimum wage.

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federal register

Monday
July 15, 1991

Part IV

Department of Labor

Wage and Hour Division

41 CFR Part 50-202

Minimum Wage Determinations to Reflect the Fair Labor Standards Amendments of 1989; Rule

DEPARTMENT OF LABOR

41 CFR Part 50–202

RIN: 1215–AA58

Adjustment to Walsh-Healey Public Contracts Act Minimum Wage Determinations to Reflect the Fair Labor Standards Amendments of 1989

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule; wage determination under the Walsh-Healey Public Contracts Act.

SUMMARY: The Walsh-Healey Public Contracts Act (PCA) requires payment of minimum wages on Federal and District of Columbia contracts over $10,000 which call for the manufacturing or furnishing of materials, supplies, articles, or equipment. Wage determinations historically issued under the PCA have required payment of not less than the minimum wage prescribed by the Fair Labor Standards Act of 1938, as amended (FLSA). The Fair Labor Standards Amendments of 1989 increased the minimum wage required to be paid under the FLSA. The Department, therefore, is increasing the minimum wage required to be paid under PCA to correspond to the FLSA minimum wage requirements contained in the 1989 FLSA Amendments.

EFFECTIVE DATE: This final rule is effective on August 14, 1991.

FOR FURTHER INFORMATION CONTACT: John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523–8305 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Effective April 1, 1990, the Fair Labor Standards Amendments of 1989 (Pub. L. 101–157; 103 Stat. 938) provided for the payment of a minimum wage of not less than $3.80 per hour, except as otherwise provided, to each employee who is engaged in commerce or in the production of goods for commerce (as these terms are defined in the FLSA), or who is employed in certain enterprises so engaged, and who does not come within the terms of one of the FLSA's exemptions from the minimum wage requirements. The 1989 FLSA Amendments further increased the minimum wage to $4.25 per hour beginning on April 1, 1991.

The Department published a proposed rule in the **Federal Register** on October 12, 1990 (55 FR 41555), proposing to find, under section 7(d) of the Administrative Procedure Act, that the level of prevailing minimum wages payable in any of the industries operating in any locality in which materials, supplies, articles, or equipment are to be manufactured or furnished under any contracts subject to the PCA be raised to $3.80 per hour (the FLSA section 6(a)(1) minimum wage effective on April 1, 1990), and be further raised to $4.25 effective on April 1, 1991. It was proposed that a final prevailing minimum wage determination be made under section 1(b) of the PCA (41 U.S.C. 35(b)), which would be codified at 41 CFR 50–202.2, to reflect the foregoing statutory increases in the FLSA minimum wage prescribed by the 1989 FLSA Amendments.

In accordance with section 10(b) of the PCA (41 U.S.C. 43a(b)), any person adversely affected or aggrieved by the adoption of this proposal (deemed to include any manufacturer of, or regular dealer in, materials, supplies, articles, or equipment purchased or to be purchased by the Government from any source, who is in any industry to which the proposal was applicable, and any employee or representative of employees of any such person) was given an opportunity to request a hearing and make a showing contrary to the facts officially noticed therein as provided in section 7(d) of the Administrative Procedure Act (5 U.S.C. 556(d)), upon the submission of a timely request for a hearing filed with the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, by no later than November 13, 1990. No such requests were received. Accordingly, the proposed rule is finalized as set forth below.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

This rule will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

Document Preparation

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

For the reasons set forth in the preamble above, the wage determination in § 50–202.2 of title 41 is revised to read as set forth below.

List of Subjects in 41 CFR Part 50–202

Government contracts, Minimum wages, Wages.

Signed at Washington, DC, on this 8th day of July, 1991.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

PART 50–202—MINIMUM WAGE DETERMINATIONS

1. The authority citation for part 50–202 is revised to read as follows:

Authority: Secs. 1, 4, and 6, 49 Stat. 2036, 2038; 41 U.S.C. 35, 38, 40. Sec. 10, 66 Stat. 308; 41 U.S.C. 43a.

2. Section 50–202.2 is revised to read as follows:

§ 50–202.2 Minimum wage in all industries.

In all industries, the minimum wage applicable to employees described in section 50–201.102 of this chapter shall be not less than $3.35 per hour commencing January 1, 1981, $3.80 per hour commencing April 1, 1990, and $4.25 per hour commencing April 1, 1991.

Subpart C—[Removed and Reserved]

3. Subpart C, consisting of § 50–202.16, is removed and reserved.

[FR Doc. 91–16584 Filed 7–12–91 8:45 am]

BILLING CODE 4510–27–M

federal register

Monday
July 15, 1991

Part V

Department of the Interior

Fish and Wildlife Service

Division of Law Enforcement; Endangered Species Convention, Foreign Law Notification, Thailand; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service Division of Law Enforcement; Endangered Species Convention Foreign Law Notification, Thailand

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 22.

SUBJECT: Thailand—ban on C.I.T.E.S. wildlife.

THIS IS A SCHEDULE III NOTICE: Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States. Violators may also be subject to criminal or civil prosecution.

SOURCE OF FOREIGN LAW INFORMATION: On April 12, 1991, the Standing Committee of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) recommended to the 110 Member Nations of the Treaty that they prohibit trade with Thailand, in fauna and flora species listed in appendix I, II and III of the Convention. On April 22, 1991, the Secretariat issued NOTIFICATION TO THE PARTIES No. 636 urging the Parties to prohibit trade with Thailand in any specimen of species included in the CITES Appendices.

Thailand became a member of CITES in 1983 and has shown some progress in the implementation of the Convention. The basic legislation of the Royal Forest Department of Thiland is the 1960 Wild Animals Reservation and Protection Act. While this domestic legislation does apply to some of the domestic species of wild animals found in Thailand, it does not include all the species listed in the Convention. Thailand presently exercises very little control over imports of non-native species or the re-export of these CITES-listed species. This domestic legislation provides only rudimentary implementation of CITES.

Due in part to the lack of adequate and effective legislation, Thailand has become the center of illegal trade in Indochina. In 1989, the World Wide Fund for NATURE(WWF) issued a report on the implementation of CITES in which it recorded numerous examples of illegal wildlife trade in and through Thailand. In 1990, the 18th session of the International Union For Conservation of Nature and Natural Resources (IUCN) General Assembly passed resolution 18.42 which expressed concern that Thailand had not yet enacted legislation to protect exotic wildlife in conformity with the provisions of CITES. The IUCN General Assembly appealed to the government of Thailand to enact legislation to fully implement CITES. In April 1991, the Secretariat for CITES provided the Standing Committee a report showing almost one hundred infractions of the Convention by Thailand since 1988.

Since 1988, the Fish and Wildlife Service (Service) has refused to clear for legal import more than 16 per cent of all inspected wildlife shipments that declared Thailand as the country of origin or re-export. This is almost three times as great as the average refusal rate for all inspected shipments entering the United States. Service computer files reveal a sizeable illegal trade in live cheetahs, tigers, bears, orangutans, gibbons, and siamangs either orignating in or re-exported from Thailand. In 1990, the Service seized ivory jewelry, sea turtle products, leopard and tiger parts and products, and a large variety of reptile products that were imported illegally into the United States from Thailand.

In a letter to the CITES SECRETARIAT dated April 9, 1991, the Director of the Wildlife Conservation Division of the Royal Forest Department of Thailand transmitted a report on the status of CITES implementation in Thailand which stated that the illegal smuggling of endangered wildlife still persists in Thailand. The Director asked the Secretariat to assist in the prevention of smuggling of endangered species.

During the past few years, Thailand has been working toward approving domestic legislation to include all species listed in CITES. Thailand has prepared draft legislation to implement CITES. This legislation has been submitted to the Thailand Department of Foreign Trade along with a complete list of all the species covered by CITES. In his letter of April 9, 1991, the Director of Wildlife Conservation for Thailand stated that within six months, a law will be passed to directly control the trafficking of all species listed in the CITES Convention.

On May 5, 1991, the Fish and Wildlife Service asked the Government of Thailand to provide additional information regarding its implementation of CITES. The Thailand Government responded on May 20, 1991. The response indicated that Thailand has not satisfactorily implemented CITES. Thailand does not have legislation that applies to all CITES species; only native species are protected. While new legislation appears to have been drafted, it has not been introduced in the Thailand Parliament. Even if it is introduced shortly, it would not become law until the end of this year. It is critical that any such legal authority be accompanied by strong enforcement as well as a commitment to its implementation. According to its Department of Foreign Trade, Thailand does not presently have any import, export, or reexport controls that apply to non-indigenous CITES species. Thailand presently does not submit CITES annual reports as required by the Convention to help assess the extent to which the Convention is implemented. Thailand has not notified the CITES Secretariat that it has designated a Scientific Authority as required to advise its Government, prior to the issuance of permits, that trade in specimens will not be detrimental to the survival of the species. The Thailand response also stated that it has no legal authority to "stop trade in non-Thai species."

ACTION BY THE FISH AND WILDLIFE SERVICE: Based on information received, Thailand has not satisfactorily implemented the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This poses a serious risk to many threatened and endangered species. Even though it has been a Party to CITES since 1983, Thailand has not yet approved domestic legislation that applies to all CITES species. Thailand has become a hub of illegal smuggling activity for species of wildlife from throughout Southeast Asia, due in part to this lack of legislation. The Fish and Wildlife Service has difficulty determining whether wildlife from Thailand is legally obtained and legally exported or re-exported.

Therefore, in accordance with the responsibility of the United States under CITES and other international wildlife conservation agreements, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of wildlife or fish or their products which are listed in appendix I, II or III of C.I.T.E.S. may be imported into the United States, directly or indirectly, from Thailand or any of its territories or dependencies. This restriction applies only to wildlife or fish or their products that require clearance by the Service (See 50 CFR part 14) and are listed on the CITES appendices. Shipments of such listed wildlife, fish, or wildlife products for which Thailand is the country of origin or the country of re-export may not be imported into the United States.

Furthermore, the Fish and Wildlife Service will not clear or approve for export or reexport from the United States, any C.I.T.E.S. listed wildlife or fish, alive or dead, or their parts or products that require clearance by the

Service and are being exported or reexported directly or indirectly to Thailand.

EFFECTIVE DATE: July 30, 1991.

EXPIRATION DATE: Until revoked.

FOR FURTHER INFORMATION CONTACT: Jerome S. Smith, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Va. 22203–3507, Telephone: 703–358–1949.

Dated: June 25, 1991.

Richard M. Smith,

Acting Director.

[FR Doc. 91–16716 Filed 7–12–91; 8:45 am]

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federal register

Monday
July 15, 1991

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early Season Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed Frameworks for Early Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1991–92 early-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks or outer limits for dates and times when hunting may occur and the number of birds that may be taken and possessed in early seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for proposed early-season frameworks will end on July 25, 1991; and for late-season proposals on August 26, 1991. A public hearing on late-season regulations will be held on August 2, 1991, starting at 9 a.m.

ADDRESSES: The August 2 public hearing will be held in the Auditorium of the Department of the Interior Building, 1849 C Street NW., Washington, DC. Written comments on the proposals and notice of intention to participate in this hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which generally may open before October 1, and late seasons are those which may open about October 1 or later. Regulations are developed independently for early and late seasons. The early-seasons regulations cover doves and pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; early (September) waterfowl seasons; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and extended falconry seasons. Late seasons include the general waterfowl seasons and coots; and, in the Pacific Flyway, moorhens and gallinules.

Regulations Schedule for 1990

On March 6, 1991, the Service published for public comment in the **Federal Register** (56 FR 9462) a proposal to amend 50 CFR part 20, with comment periods ending as noted earlier. On May 31, 1991, the Service published for public comment a second document (56 FR 24984) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 20, 1991, a public hearing was held in Washington, DC, as announced in the March 6 and May 31 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

This document is the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for early-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1991—92 season. All pertinent comments on the March 6 proposals received through June 20, 1991, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES.** Final regulatory frameworks for migratory game bird hunting seasons for early seasons are scheduled for publication in the **Federal Register** on or about August 16, 1991.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published in the March 6, **Federal Register.** The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available about the status of waterfowl populations and habitat conditions on the breeding grounds.

Presentations at Public Hearing

A number of reports were given on the status of various migratory bird species for which early hunting seasons are being proposed. These reports are briefly reviewed as a matter of public information. Unless otherwise noted, persons making the presentations are Service employees.

Mr. Ashley Straw, Woodcock Specialist, reported on the 1991 status of American woodcock. The report included harvest information gathered over the last 25 years and breeding population information (singing-ground survey) collected over the last 23 years. The two surveys are cooperatively run by the U.S. Fish and Wildlife Service, Canadian Wildlife Service, and 39 State and Provincial wildlife agencies. Between 1989 and 1990 the recruitment index in the Eastern Region increased 28.9 percent from 1.4 to 1.8 immatures per adult female. The Central-Region recruitment index increased from 1.6 to 1.7 immatures per adult female. Eastern-Region daily and season success indices decreased by 5.5 percent and 17.9 percent, respectively, between 1989 and 1990. The Central-Region daily and seasonal success indices declined 2.2 percent and 5.4 percent, respectively, between 1989 and 1990. The Eastern-Region breeding population index trends indicate that, since 1968, the population has declined at the rate of 1.6 percent per year, while the Central-Region breeding population index has declined at the rate of 0.8 percent per year. There were no significant changes in the breeding population indices for either region between 1990 and 1991. A comparison of recent (1985–91) versus historical (1968–1984) trends in the breeding population index indicates that woodcock populations may have been relatively stable in both the Central and Eastern regions during the past 7 years.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the 1991 mourning dove population. The report included information gathered over the last 26 years. Trends were calculated for the most recent 2- and 10-year intervals and for the entire 26-year period. Between 1990 and 1991, the average number of doves heard per call-count route increased significantly in the Western Management Unit and decreased significantly in the Eastern Unit, while no significant change occurred in the Central Unit. Analyses indicated significant downward trends in the Western Unit for the 10- and 26-year periods. No significant trends were found in the Eastern and Central Units for either time frame. Trends for doves

seen at the unit level over the 10- and 26-year periods agreed with trends for doves heard.

Mr. Ronnie R. George, Texas Parks and Wildlife Department, presented information on the status of white-winged and white-tipped doves in Texas. Results of the 1991 whitewing call-count survey indicate a nesting population of 338,000 birds in the Lower Rio Grande Valley. This represents a 12 percent increase from last year, but the population is still 20 percent below the long-term average. Approximately 9,000 whitewings (3 percent) were nesting in citrus habitat. This represents a 70 percent decline from 30,000 nesting birds in 1990. The surveys indicate that nesting birds increased 22 percent in native brush habitat but declined by 70 percent in citrus habitat. In the Upper South Texas region, 424,000 whitewings were nesting throughout a 16 county area in 1991, a 9 percent increase from 1990. Nesting densities at San Antonio, Lake Corpus Christi, Medina Lake, and Del Rio now exceed populations in the Lower Rio Grande Valley. In West Texas, whitewing populations were estimated to be 37,000 birds in 1991, approximately the same as last year. For white-tipped doves in the Lower Rio Grande Valley, surveys indicate a 10 percent decline between 1990 and 1991 and a 40 percent decline from the peak year of 1986.

Mr. Roy Tomlinson, Southwest Dove Coordinator, discussed the status of band-tailed pigeons. Although population data are lacking, indications are that the Four-Corners Population—that breeds in mountainous conifer habitat of Arizona, Colorado, New Mexico, and Utah—has remained stable for the past 20–25 years. The Pacific Coast Population—distributed throughout British Columbia, Washington, Oregon, Nevada, and California—is experiencing a severe population decline of unknown origin. Population surveys in Oregon indicate a 15–20 percent decline between 1989 and 1990. Surveys in 1991 have not yet been completed. Harvest remains low.

Mr. David Sharp, Central Flyway Representative, reported on the population status and harvests of sandhill cranes. The Mid-Continent Population appears to have stabilized following increases in the early 1980's. In fact, the preliminary estimate for 1991, uncorrected for visibility, indicated a spring population of about 300,000, which was 27 percent lower than in 1990 and 25 percent below the 1982–90 average. All Central Flyway States except Kansas and Nebraska elected to allow crane hunting in a portion of their respective States in 1990–91; about 22,720 permits were issued and approximately 7,631 permittees hunted one or more times. Compared to 1989–90 seasons, the number of permittees increased about 30 percent and active hunters increased 33 percent. An estimated 18,401 cranes were harvested, which reflects a 32 percent increase over the 1989 level and a record high for the 1975–90 period. Mid-continent cranes are also hunted in Alaska, Canada, and Mexico. The estimated retrieved harvest in Canada in 1990–91 was 4,840. Data for Alaska and Mexico are not available but are believed to be, collectively, less than 4,000. Rangewide harvests exceed guidelines established in the Mid-Continent Population Sandhill Crane Management Plan by 27 percent.

Annual appraisals of the Rocky Mountain Population (RMP) staging in the San Luis Valley of Colorado in March, suggest that the population has been relatively stable since 1984. The 1990 index of 20,868 cranes was within objective levels of 18,000 – 22,000; and while the 1991 index has not yet been adjusted for presence of lesser sandhill cranes and observer visibility, the unadjusted count of 20,676 indicates no change from last year. Limited special seasons were held during 1990 in portions of Arizona, New Mexico, Utah, and Wyoming resulting in harvests estimated at 181 RMP cranes. This compares to about 701 taken from this population in 1989.

Mr. Brad Bortner, Branch of Operations, reported briefly on habitat conditions observed during the May breeding waterfowl survey. Overall, the weather during the fall and winter of 1990 was extremely dry across the northcentral United States and the Canadian prairies. At the beginning of the survey, habitat conditions in much of the prairie region of the United States and Canada were only fair to poor. Scarce fall rains, and parched subsoil conditions from extended drought left the remaining wetland basins with critically low water levels. The precipitation that fell during the winter was rapidly absorbed or evaporated during a series thaws. The winter of 1990–91 was the sixth driest winter ever recorded.

Little usable habitat was available for early-arriving waterfowl. Most of North Dakota, eastern Montana, and southern portions of the prairie provinces were classified by long-term drought indices as being in extreme or severe drought.

However, this outlook changed almost immediately during the first week of the survey. During late April and most of May, a series of slow moving fronts stalled over this region. These storms brought much needed snowfall and rain. The moisture from these storms mostly contributed to decreasing soil moisture deficits and promoting vegetative growth, but in some areas, wetland basins have been partially refilled. Overall, May pond numbers increased 13 percent in South Dakota over last year, and minor increases were noted in eastern Montana and southern Saskatchewan. Pond numbers decreased in North Dakota, southern Manitoba, and southern Alberta. Pond numbers in all prairie survey units were well below their long-term averages.

Since the survey, many areas have continued to receive rainfall. Most of this precipitation has fallen as the result of isolated thunderstorms, however, in some locations significant amounts of rain has fallen. It is difficult to determine the cumulative significance of this change in weather patterns, but it is hoped that rain will continue to fall on the prairies. It is believed that grassland areas will not show much improvement from these rains, but parkland areas may be in better shape for breeding waterfowl. Areas outside of the traditional survey area such as Iowa, Nebraska, Minnesota, and Wyoming have received ample amounts of rain, but it is not clear how the ducks will respond to these conditions this late in the breeding season.

In northern regions, water conditions varied widely in northern Alberta and southern portions of the Northwest Territories. Conditions in northern portions of the Northwest Territories were rapidly improving due to recent rains. Water conditions in northern Manitoba and northern Saskatchewan appear to be adequate with the prospects for production being good. Interior Alaska had an early spring that resulted in significant flooding in some portions of the State. Coastal Alaska had about average conditions this spring.

Overall, climatic conditions late this spring have resulted in increased water on the landscape and improved habitat conditions in some areas. This should somewhat benefit waterfowl production this year, however, these improvements took place after the bulk of the early migrating ducks had already passed through.

Despite this tone of cautious optimism, the realism of the impacts of intensified land use in the 1980's was also apparent during the survey. Little residual nesting cover was present. In areas where pond numbers increased, these ponds were little more than water-filled depressions with little to no

emergent vegetation or associated upland nesting cover. Low water levels and late snows during the nesting season likely discouraged early-nesting species. The strength of this year's reproductive effort will be in areas that carried water over from last year and in areas that continue to receive rainfall.

Comments Received at Public Hearing

Five oral statements were presented at the public hearing on proposed early-season regulations and one written statement was submitted for inclusion as part of the hearing transcript. These comments are summarized below.

Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, recommended:

1. Reinstatement of the September teal season at a reduced level to include a 3-day season and a 4-bird daily bag limit during the first half of September, and that the special season be regarded as an integral part of the full fall duck season. Suspension of the early teal season in 1988–1990 resulted in reduced hunter interest in waterfowl hunting, reduced private land waterfowl habitat enhancement programs, increased disease problems for wintering waterfowl, and no measurable increase in teal numbers that could be attributed to the closed season. Resumption of the September teal season in 1991 with appropriate restrictions would help maintain enhancement of the Rice Prairie and Gulf Coast of the Central and Mississippi Flyways and better serve blue-winged teal and pintails in these areas.

2. Continuation of the experimental sandhill crane hunts in Utah and southwestern New Mexico.

3. Zoning of Oklahoma west of Interstate 35 to permit optimum management of both migrating and wintering cranes in the State.

4. Reinstatement of the full 4-day special white-winged dove hunting season in Texas. Although the white-wing population in the Lower Rio Grande Valley is below the long-term average, habitat conditions are improving and white-wing populations elsewhere in Texas are increasing significantly. Continuation of the special season provides strong incentive for continued white-winged dove preservation and management on private and public land. Furthermore, it is recommended that the number of mourning doves permitted in the 10-bird aggregate daily bag during Texas' special white-winged dove season southeast of Del Rio be increased from 5 to 10 as currently allowed northwest of Del Rio, and that the number of white-winged doves permitted in the 12-bird aggregate daily bag during Texas' regular mourning dove season be increased from 2 to 6 statewide.

5. Adoption of the proposed basic regulations for webless and waterfowl species not addressed above, including the proposed change in woodcock framework dates which eliminates February woodcock hunting.

In closing, Mr. George stated that the Central Flyway Council supports the concept of a nationwide permit for all migratory game bird hunting and will continue to work with the Service on this issue.

Mr. John M. Anderson representing the National Audubon Society supported continuation of last year's regular hunting season for mourning doves, but indicated concern over the long-term gradual declines in the Western Management Unit and several states in the eastern tier of States in the Central Management Unit (CMU). He strongly supported the ongoing cooperative study in Missouri that will help identify factors responsible for the CMU decline and may help resource managers better understand the overall role of hunting in annual mourning dove population dynamics. He supported the Texas Parks and Wildlife Department's proposal for an increase from 5 to 10 mourning doves in the aggregate daily bag limit of the special white-winged dove season. He indicated that caution should be taken for the proposed increase of 2 to 6 white-winged doves in the 12-dove aggregate bag limit during the regular mourning dove season. This action could adversely affect white-winged doves in the Lower Rio Grande Valley where populations have experienced a decline in recent years. Mr. Anderson recommended that the Service work with the Central Flyway Council to ensure that the harvest of mid-continent sandhill cranes does not continue to exceed the established harvest objective of 25,000. He also commented that the Rocky Mountain Population of greater sandhill cranes is within population objectives and that harvest could be increased according to the approved management plan guidelines. He supported a January 31 closure for woodcock populations in the Mississippi Flyway, but emphasized the importance of habitat efforts. In addition, he indicated that he did not oppose a limited 3-day September teal season because of increases in this year's breeding population. He also advocated the establishment of the National Migratory Bird Survey Program.

Mr. Eric Frasier, representing the Wetland Habitat Alliance of Texas, contended that suspension of the September teal season, among other things, had adversely affected wetland protection programs in Texas. Habitats normally dry in September remain dry because there is no longer the incentive to flood these areas for September hunting. At least a 4-day season would be needed to justify costs of pumping water into most areas. He indicated that there had been one or more major disease incidents in Texas each September since suspension of the teal season, and suggested that the wetlands flooded with a reinstated season would alleviate those disease problems. He supported the recommendations presented by Mr. Ronnie George, who spoke on behalf of the Texas Department of Parks and Wildlife and the Central Flyway Council.

Ms. Kirsten Burger, representing the Humane Society of the United States, called on the Service to close the hunting seasons on all migratory birds in light of the low population status of many species due to the drought conditions. She suggested that hunting has caused added pressure on many species. However, if hunting is allowed to continue, she urged that hunting of doves in September and hunting of waterfowl in Puerto Rico during January be eliminated. She also requested that the waterfowl hunting season in Puerto Rico should be shortened. In addition, she asked that early seasons on wood ducks and teal be prohibited because of the impact on populations and recruitment.

Mr. Charles Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, expressed support for September mourning dove hunting, citing a large-scale cooperative study several years ago which indicated that the loss of nesting mourning doves due to hunting in September is insignificant. He also expressed support for the regulations proposals presented at the public hearing.

The Michigan Department of Natural Resources submitted a written statement to be included as part of the hearing record. Their remarks were confined to the September Canada goose season. They requested that the 1991 season include the expanded Upper Peninsula area from the vicinity of Escanaba and Marquette, east to the tip of Chippewa County. They remarked that the Michigan season for resident geese violates the harvest criteria (no more than 10 percent migrant geese) to a lesser extent than culmen and other measurements have suggested. They further stated that the harvest of migratory geese is most likely from the

Mississippi Valley Population, which is in excellent shape and considered by some experts to be nearly beyond control by hunting.

Written Comments Received

The preliminary proposed rulemaking which appeared in the **Federal Register** dated March 6, 1991, (56 FR 9462), opened the public comment period for early-season migratory game bird hunting regulations. As of June 20, 1991, the Service had received 17 comments; 12 of these specifically addressed early-season issues. These early-season comments are summarized below and numbered in the order used in the March 6, 1991, **Federal Register**. Only the numbered items pertaining to early seasons for which written comments were received are included.

General

Council Recommendations: The Central Flyway Council supported the proposed regulations that were not specifically addressed by their other recommendations.

Written Comments: A local organization from Massachusetts requested that shooting hours remain at one-half hour before sunrise to sunset for all species.

1. Ducks.

G. Special/Species Management

ii. September Duck Seasons

In the March 6, 1991, **Federal Register** (56 FR 9462), the Service stated that the Flyway Councils and the three States involved (Florida, Kentucky, and Tennessee) are continuing efforts to evaluate these seasons and no adverse impacts on wood duck populations are apparent. Continuation of these seasons beyond 1991 will be contingent upon the ability of the Flyway Councils and States to demonstrate significant progress in developing regional wood duck monitoring plans and evaluation and decision criteria for these seasons.

In the same document, the Service stated that the three States involved will be allowed to continue presunrise shooting hours during their September seasons under the condition that they conduct studies or provide information that demonstrate a negligible impact on species other than the wood duck. The States of Kentucky and Tennessee have submitted a proposal to study the impact on nontarget species; while Florida has submitted information that demonstrates that the impacts on nontarget species are insignificant. Based on information provided, the Service proposes to allow presunrise shooting hours to continue during the Florida special season, without the need for further evaluation. In Kentucky and Tennessee, continuation of presunrise shooting hours is contingent upon the satisfactory completion of studies which demonstrate a negligible impact upon nontarget duck species during the one-half hour prior to sunrise.

Council Recommendations: The Lower Region Regulations Committee of the Mississippi Flyway Council recommended that the States of Kentucky and Tennessee be allowed to continue the 5-day September seasons to harvest wood ducks.

iii. September Teal Seasons

The Service reiterates that implementation criteria and provisions for future review of September teal seasons should be developed cooperatively between the Service and Flyway Councils. The Service believes that implementation criteria for September teal seasons are necessary prior to lifting the suspension.

Council Recommendation: The Lower Region Regulations Committee of the Mississippi Flyway Council recommended a 3-day September teal season with a bag limit of 3 birds per day.

The Central Flyway Council recommended reinstatement of the September teal season at some reduced level of harvest pressure, but withheld specific recommendations as to bag limit and season length until a later date pending receipt of data about this year's population level. The Council remarked that the September teal season has been suspended since 1988 because of drought conditions on the breeding grounds and declining breeding populations of blue-winged teal. The Council believes that a reversal of this situation would warrant a return to a limited teal season.

Written Comments: A Congressman from Texas remarked that the suspension of the September teal season has contributed to a significant reduction in the amount of available habitat for early waterfowl migrants, annual disease problems, and a declining number of private landowners who are willing to supply sufficient water for these migratory waterfowl. The Wyoming Game and Fish Department believes the September teal season should be restored if the population status were to improve.

2. Sea Ducks

Written Comments: A local organization from Massachusetts requested continuation of the 107-day sea duck season. They requested that the Service consider an increase in the bag limit of these birds, and to especially consider including mergansers in the sea duck season. They remarked that mergansers are included in the Alaska sea duck limit, and indicated that mergansers are an under-harvested resource and are causing adverse impacts on the fishing industry and feeding grounds for other waterfowl.

4. Canada Geese

A. *Earty-September Seasons:* In the March 6, 1991, **Federal Register** (56 FR 9462), the Service reaffirmed and endorsed the concept of special Canada goose seasons and announced its intention to expand the criteria for special early seasons to include criteria for special late seasons. The Service believes that most Canada goose harvests can be addressed through the regular Canada goose hunting season frameworks in accordance with flyway management plans. However, the Service recognizes the need for special seasons in certain circumstances to control local breeding and/or nuisance populations of Canada geese. These seasons are to be directed only at Canada goose populations that nest primarily in the conterminous United States. The Service has previously addressed the criteria to include special early seasons (June 7, 1988, at 53 FR 20877) and now is proposing to modify these criteria to include special late seasons. The proposed criteria are:

1. A State may hold a special Canada goose season, in addition to its regular season, for the purpose of controlling local breeding populations or nuisance geese. The special season must target a specific population of Canada geese. The harvest of nontarget Canada geese must not exceed 10 percent of the special-season harvest during early seasons or 20 percent during late seasons. More restrictive proportions may apply in instances where a nontarget Canada goose population of special concern is involved.

2. Early seasons may be no more than 10 consecutive days between September 1 and September 10 in the Atlantic and Mississippi Flyways, where seasons are focused primarily on local breeding populations of giant Canada geese. In the Central and Pacific Flyways, seasons may be held for no more than 30 consecutive days between September 1 and September 30 and must be directed at local breeding populations or nuisance situations that cannot be addressed through the regular-season frameworks.

3. Late seasons must be held prior to February 15.

4. The daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

5. The area(s) open to hunting will be described in State regulations.

6. All seasons will be conducted under a specific Memorandum of Agreement. Provisions for discontinuing, extending, or modifying the season will be included in the Agreement.

7. All seasons initially will be considered experimental. The evaluation required of the State will be incorporated into the Memorandum of Agreement and will include at least the following:

A. Conduct neck-collar observations and/or population surveys beginning a year prior to the requested season and continuing during the experiment.

B. Determine derivation of neck-collar codes and/or leg-band recoveries from observations and harvested geese.

C. Collect morphological information from harvested geese, where possible, to ascertain probable source population(s) of harvest.

D. Analyze relevant band-recovery data.

E. Estimate hunter activity and harvest.

F. Prepare annual and final reports of the experiment.

8. If the results of the evaluation warrant continuation of the season beyond the experimental period, the State will continue to estimate hunter activity and harvest and report these to the Service annually for all years the season is offered.

9. The season will be subject to periodic re-evaluations when circumstances or special situations warrant.

Council Recommendations: The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that the Service grant operational status to the experimental early-September Canada goose seasons in Illinois, Michigan, and Minnesota. Several modifications were recommended for the Michigan season, including another 3-year experimental season to include the eastern portion of the Upper Peninsula and several areas of the Lower Peninsula. The Committee also recommended that new experimental early-September Canada goose seasons be allowed in the northeast portions of Indiana and Ohio. Nuisance goose problems continue to grow in these areas and neck-collar observations and other data indicate that greater than 90 percent of the harvest will be composed of resident Canada geese.

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended that the Service fully analyze data from existing special or experimental seasons before expanding seasons that might cause cumulative harvest on Southern James Bay Population Canada geese. Current special seasons should adhere to present criteria designated by the Service.

The Pacific Flyway Council recommended modification of the early September Canada goose seasons in Wyoming and Utah. In Wyoming, the modifications included reinstatement of the Eden-Farson Irrigation Project Area in Sweetwater and Sublette Counties and an increase from 115 to 150 permits. In Utah, the Council recommended that the framework dates be September 1 through September 15. The framework closing date previously was September 9. The Council added that early goose seasons have been successful in alleviating depredation problems and providing hunter opportunity.

Written Comments: The Wisconsin Department of Natural Resources commented that the criteria established for special early September Canada goose seasons need review based on the experience of the various States that have implemented the early seasons. They question the appropriateness of the dates of the season and the restrictions and controls required for this season.

9. Sandhill Cranes

The Service notes that the 1990–91 harvest of mid-continent sandhill cranes exceeded the guidelines in the management plan. The Service recognizes that the management plan has served as a useful guide in regulating harvest, and also that it may require updating. However, the Flyway Councils and States should take action during the next year to reduce the harvest of mid-continent sandhill cranes to levels that comply with the current management plan. If the harvest is not reduced sufficiently, the Service will propose measures to ensure that future harvests are in compliance with the management plan.

Council Recommendations: The Central Flyway Council recommended that Oklahoma be allowed to divide that portion of the State currently open to sandhill crane hunting, west of Interstate Highway 35, into separate north and south zones. The current 93-day hunting season cannot encompass the time period when sandhill cranes are present and provide hunting opportunity in both the northwest and southwest portions of the State. The Central Flyway Council also recommended continuation of the experimental sandhill crane seasons in southwestern New Mexico and Utah, and supported 30-day season lengths for special seasons throughout the range of the Rocky Mountain Population.

The Central and Pacific Flyway Councils recommended that the framework dates for the Rocky Mountain Population of sandhill cranes be expanded to include September 1 through January 31. Currently, the closing framework date is November 30, except in the Hatch-Deming Area in New Mexico where the closing date is January 31.

14. Woodcock

In the August 14, 1990, Federal Register (55 FR 33266), the Service stated its intent to work with the Flyway Councils to develop background materials on hunting of woodcock in February. However, the Service stated that unless sufficient justification was developed to continue February hunting, the Service would propose a change in framework dates. On March 6, 1991 (56 FR 9462), the Service proposed a framework closing date of January 31 pending any new proposals or information that may be provided. No new biological information was presented that indicated there was a more appropriate date than January 31, thus this proposal is continued.

Council Recommendations: The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that the framework dates be modified to September 1 through February 9.

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended frameworks of September 1 through February 14, and stated that, if the Service proposal is an effort to bring harvest in line with population indices, elimination of February woodcock hunting falls far short of achieving a significant and equitable harvest reduction. They recommended that a February 14 closing date would be sufficient to significantly reduce the chances of breeding or nesting hens being harvested.

The Central Flyway Council expressed support for the preliminary proposal of a January 31 closing date and recommended that February hunting of woodcock be eliminated.

Written Comments: The Wisconsin Department of Natural Resources indicated that they do not oppose the proposed January 31 closing date, but suggested that the Service consider the recommendation of the Upper Region Regulations Committee of the Mississippi Flyway Council for a

February 9 framework closing date for woodcock.

15. Band-tailed Pigeons

The Service remains concerned about the decline of the Coastal Population of band-tailed pigeons and encourages cooperative investigations into factors causing the decline.

16. Mourning Doves

The Service recognizes the interest of the Pacific Flyway Council to cooperatively investigate the cause of the long-term decline in the Western Management Unit. The Service remains concerned about this population and is supportive of the cooperative investigations.

Council Recommendations: The Central Flyway Council recommended that the number of mourning doves permitted in the aggregate daily bag during the Texas special white-winged dove season be increased from 5 to 10 birds. Texas noted that in 1984, concern about late-nesting mourning doves in South Texas led to restrictions in the daily bag limit. These restrictions were somewhat alleviated during 1989 and 1990 under the provision that Texas would monitor the effects of this change. The recommendation to increase the number of mourning doves allowed in the aggregate bag during the special white-winged dove season is based upon the results of those studies.

Written Comments: The Texas Parks and Wildlife Department requested that the Service permit Texas to split the mourning dove season into not more than 3 segments under the 3-zone option. Texas remarked that the purpose of this proposal would be to permit greater flexibility in establishing hunting seasons consistent with anticipated migration patterns and population levels. This proposed change would also allow Texas to establish additional "opening days" and thereby create additional interest in dove hunting among Texas sportsmen.

A total of six letters (212 signatures) were received from individuals in South Carolina who believe that mourning dove hunting in September should be discontinued. Several of these individuals requested that the season be delayed until October 15 and reduced to 30 days. A few of these individuals also requested that the season be discontinued entirely, or that no hunting be allowed on Sundays.

17. White-winged and White-tipped Doves

Council Recommendations: The Central Flyway Council recommended that the number of white-winged doves permitted in the aggregate daily bag during the Texas mourning dove season be increased from 2 to 6 birds. In recent years, whitewings have expanded their range into other areas of the State. Texas believes that the 2-whitewing limit is overly restrictive, particularly in those local areas where whitewings now outnumber mourning doves.

18. Alaska

The Service is proposing a closed season on Steller's and spectacled eiders due to declines in population indices. The Service recognizes that sport harvest has been exceedingly small and is not likely the cause of this decline.

Council Recommendations: The Pacific Flyway Council recommended that the experimental tundra swan season on Seward Peninsula be granted operational status.

20. Puerto Rico and Virgin Islands

Written Comments: Puerto Rico requested that they be allowed to reopen Vieques Island to dove and pigeon hunting. Last year, they requested that this area be closed due to concern about the effects of Hurricane Hugo.

22. Other

Written Comments: A local organization from Massachusetts requested that the Service initiate hunting seasons for cormorants.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634–Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

The Division of Endangered Species is completing a biological opinion on the proposed action. As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. The Service's biological opinions resulting from consultation under section 7 are considered public documents and are available for inspection in the Division

of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 6, 1991 (56 FR 9462), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634–Arlington Square, Department of the Interior, Washington, DC 20240. As noted in the above **Federal Register** reference, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Authorship

The primary author of this proposed rulemaking is Robert J. Blohm, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1991–92 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (16 U.S.C. 701–711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712).

Dated: July 5, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

PROPOSED REGULATIONS FRAMEWORKS FOR 1991–92 EARLY HUNTING SEASONS ON CERTAIN MIGRATORY GAME BIRDS

Pursuant to the Migratory Bird Treaty Act, and delegated authorities, the Director approved proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds.

Notice

Any State desiring its early hunting seasons to open in September must make its selection no later than August 7, 1991. States desiring these seasons to open after September 30 may make their selections at the time they select regular waterfowl seasons. Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must also make their selections no later than August 7, 1991.

All outside dates noted below are inclusive and all shooting hours are between one-half hour before sunrise and sunset daily for all species except as noted. These hours also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1991, and January 15, 1992, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit (All States East of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively, *or* Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Zoning

Alabama, Georgia, Louisiana, and Mississippi, may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston, and Henry Counties. North Zone: Remainder of the State.

Georgia—North Zone: That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line. South Zone: Remainder of the State.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slide11 to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of *Alabama, Georgia, Louisiana,* and *Mississippi* may commence no earlier than September 20, 1991.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively, *or*

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning—As an alternative to the basic frameworks, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones. Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 2-consecutive-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1991 and January 25, 1992; the South zone between September 20, 1991 and January 25, 1992.

C. Each zone may have an aggregate daily bag limit of 12 doves (or 15 under the alternative), no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, with the following exceptions:

1. During the special 2-consecutive-day white-winged dove season in the South Zone (see white-winged dove frameworks).

2. In an area of the Lower Rio Grande Valley to be designated. This area may have an aggregate daily bag limit of 12 doves, no more than 2 of which may be white-winged doves and 2 of which may be white-tipped doves.

The possession limit is twice the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons, and Daily Bag and Possession Limits: Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days. Bag and possession limits, 10/20 mourning doves (in Nevada, the daily bag and possession limits of mourning and white-winged dove may not exceed 10/20, respectively, singly or in the aggregate).

Arizona and California—Not more than 60 days to be split between two periods, September 1-15, 1991, and November 1, 1991–January 15, 1992. Bag and possession limits: in Arizona the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit is twice the daily bag limit. In California the bag and possession limits for mourning and white-winged doves are 10 and 20, singly or in the aggregate.

White-Winged Doves

*Outside Dates:*Arizona, California, Nevada, New Mexico, and Texas (except as shown below) may select hunting seasons between September 1 and December 31, 1991. Florida may select its hunting season between September 1, 1991 and January 15, 1992.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves. The possession limit is twice the daily bag limit.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1991, and January 15, 1992, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected), respectively; however, for either option, the aggregate bag and possession limits include no more than 4 and 8 white-winged doves, respectively.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, and the season will be concurrent with the season on mourning doves.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours will conform with those for mourning doves.

Texas may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1991, and January 25, 1992, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 6 may be white-winged doves and not more than 2 may be white-tipped doves, except in an area of the lower Rio Grande Valley to be designated. In the designated area, the aggregate daily bag limit may include no more than 2 white-winged doves and 2 white-tipped doves. The possession limit is twice the daily bag.

And

In addition, Texas may also select a hunting season of not more than 2 consecutive days for the special white-winged dove area of the South Zone. In that portion of the special area north and west of Del Rio, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 4 may be white-tipped doves. In that portion of the special area south and east of Del

Rio, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 10 may be mourning doves and 4 may be white-tipped doves.

Band-Tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada Counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral, and Storey

Outside Dates: Between September 15, 1991, and January 1, 1992.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 16 consecutive days, with bag and possession limits of 2 and 2, respectively.

Zoning: California may select hunting seasons of 16 consecutive days in each of the following two zones:

1. *North Zone*—In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

2. *South Zone*—The remainder of the State.

The season in the north zone of California must close by October 7.

Four-Corners States: Arizona, Colorado, New Mexico and Utah

Outside Dates: Between September 1 and November 30, 1991.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 6 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1991, in the North Zone and October 1 and November 30, 1991, in the South Zone.

Rails

Outside Dates: States included herein may select seasons between September 1, 1991, and January 20, 1992, on clapper, king, sora, and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits: In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10 and 20 respectively, singly or in the aggregate of these two species.

In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi and Central Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1991, and January 31, 1992. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1991, and January 31, 1992.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with daily bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with daily bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1991, and February 28, 1992. In Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland and Virginia the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days and may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1991, through January 20, 1992, in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway may select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no proposals are provided in this document concerning common moorhens or purple gallinules in the Pacific Flyway.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into two segments. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively.

Sandhill Cranes

Regular Seasons in the Central Flyway

Seasons not to exceed 58 days between September 1, 1991, and February 28, 1992, may be selected in the following States: Colorado (the Central Flyway portion except the San Luis Valley); Kansas; Montana (the Central Flyway portion except that area south of 1–90 and west of the Bighorn River); North Dakota (west of U.S. 281); South Dakota; and Wyoming (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1991, and February 28, 1992, may be selected in the following States: New Mexico (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay, and Roosevelt); Oklahoma (that portion west of I–35); and (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to I–35 at Austin; I–35 to I–35W; I–35W to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill crane seasons must obtain and have in his possession, while hunting, a valid Federal sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1982 (revised March 1991), by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1, 1991—January 31, 1992.

2. Season(s) in any State or zone may not exceed 30 days.

3. Daily bag limits may not exceed 3 and season limits may not exceed 9.

4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.

5. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

6. All hunts except those in Arizona, New Mexico (Middle Rio Grande Valley), and Wyoming will be experimental.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1991, and January 20, 1992.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may select, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season daily bag and possession limits.

Special September Wood Duck Seasons

Florida: An experimental 5-consecutive-day wood duck season may be selected in September. The daily bag limit is 3 wood ducks and the possession limit is 6.

Tennessee and Kentucky: Experimental 5-consecutive-day wood duck seasons may be selected in September. The daily bag limit is 2 wood ducks and the possession limit is 4.

Special Early-September Canada Goose Seasons

Atlantic and Mississippi Flyways

Canada goose seasons of up to 10 consecutive days in September may be selected by Illinois, Indiana, Massachusetts, Michigan, Minnesota, New York, North Carolina, Ohio, and Wisconsin. The seasons in Massachusetts; Illinois; Indiana; New York; North Carolina; Ohio; Wisconsin; that portion of Michigan's Lower Peninsula including Oceana, Newaygo, Mecosta, Isabella, Midland and Bay Counties and all counties north thereof, and the Fergus Falls/Alexandria and Southwest Border zones in Minnesota are experimental. All seasons are subject to the following conditions:

1. Outside dates for the season are September 1–10, 1991.

2. The daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

3. Areas open to the hunting of Canada geese are as follows:

Massachusetts: Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Michigan: Lower Peninsula—All areas except Huron, Saginaw, and Tuscola Counties and the Allegan State Game Area in Allegan County.

Illinois: McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will, and Kankakee Counties.

Indiana: Adams, Allen, DeKalb, Elkhart, Huntington, Kosciusko, LaGrange, Noble, Steuben, Wabash, Wells, and Whitley Counties.

Minnesota: Twin Cities Metropolitan Zone—All or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties.

Fergus Falls/Alexandria Zone—All or portions of Pope, Douglas, Otter Tail, Wilkin, and Grant Counties.

Southwest Border Zone—All or portions of Martin and Jackson Counties.

New York: St. Lawrence County—All or portions of St. Lawrence County; see State hunting regulations for area descriptions.

North Carolina: That portion of the State west of Interstate 95; see State hunting regulations for area descriptions.

Ohio: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.

Wisconsin: Early Goose Hunt Subzone—That area bounded by a line beginning at Lake Michigan in Port Washington and extending west along Highway 33 to Highway 175, south along Highway 175 to Highway 83, south along Highway 83 to Highway 36, southwest along Highway 36 to Highway 120, south along Highway 120 to Highway 12, then southeast along Highway 12 to the Illinois State line.

4. Areas open to hunting must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

Wyoming may select a September season on Canada geese subject to the following conditions:

1. The season must be concurrent with the September portion of the sandhill crane season.

2. Outside dates for the season(s) are September 1–22, 1991.

3. Hunting will be by State permit.

4. No more than 150 permits, in total, may be issued for the Salt River (Star Valley) and Bear River Areas in Lincoln County, and the Eden-Farson Irrigation Project Area in Sweetwater and Sublette Counties.

5. Each permittee may take no more than 2 geese per season.

Utah may select an experimental special season on Canada geese in Cache County subject to the following conditions:

1. A season not to exceed 4 days during September 1–15, 1991.

2. Hunting will be by State permit.

3. Not more than 200 permits may be issued.

4. Each permittee may take 2 Canada geese per season.

Oregon and Washington may select an experimental season on Canada geese subject to the following conditions:

1. The seasons in and Washington must be concurrent.

2. The seasons must not exceed 10 days during September 1–10, 1991.

3. Areas open to hunting Canada geese are:

Oregon—Starting in Portland at the Interstate Highway 5 bridge, south on I–5 to U.S. Highway 30, west on U.S. Highway 30 to the Astoria-Megler bridge, from the Astoria-Megler bridge

along the Oregon-Washington State line to the point of beginning.

Washington—Starting in Vancouver at the Interstate Highway 5 bridge north on I–5 to Kelso, west on State Highway 4 from Kelso to State Highway 401, south and west on State Highway 401 to the Astoria-Megler bridge, from the Astoria-Megler bridge along the Washington-Oregon State line to the point of beginning.

4. Hunting will be by State permit.

5. Each permittee may take 2 Canada geese per day and have 4 in possession.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1991–1992

Outside Dates: Between September 1, 1991, and January 26, 1992, Alaska may select seasons on waterfowl, snipe, cranes, and tundra swans subject to the following limitations:

Hunting seasons: Ducks, geese and brant—107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exceptions: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, cackling Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Snipe and sandhill cranes—An open season should be concurrent with the duck season.

Daily Bag and Possession Limits: Ducks—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits include no more than 2 pintails daily and 6 pintails in possession, and 2 canvasback daily and 6 canvasback in possession. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Tundra swans—In Game Management Unit 22 an open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.

2. The season must be concurrent with the duck season.

3. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1, 1992.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1991–1992

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1991, and January 15, 1992, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture on 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Areas—consisting of all of Cidra Municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Moorhens, Gallinules and Snipe

Outside Dates: Between October 1, 1991, and January 31, 1992, Puerto Rico may select hunting seasons as follows:

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag and Possession Limits: Ducks—Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Common moorhens—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Coots—There is no open season on coots, i.e. common coots (*Fulica american*) and Caribbean coots (*Fulica caribaea*).

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1991–1992

Doves and Pigeons

Outside Dates: The *Virgin Islands* may select hunting seasons between September 1, 1991, and January 15, 1992, as follows:

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain birds:

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground dove (*Columba passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

Ducks

Outside Dates: Between December 1, 1991, and January 31, 1992, the Virgin Islands may select a duck hunting season as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1991 and March 10, 1992.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Note: Total season length for all hunting methods combined shall not exceed 107 days for any species or group of species in one geographical area. The extension of this framework to include the period from September 1 to March 10, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative, and may be evaluated, in cooperation with States offering such extensions, after a period of several years.

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50 CFR Part 20

RIN 1018–AA24

Annual Waterfowl Status Meeting and Meetings of the U.S. Fish and Wildlife Service Migratory Bird Regulations Committee

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service, Office of Migratory Bird Management, will conduct an open meeting on July 25 to review the status of waterfowl populations and the 1991 fall flight forecast for ducks. The Service Migratory Bird Regulations Committee will meet on July 31 and August 1 to develop 1991–92 waterfowl hunting regulations recommendations for presentation at the August 2 public hearing to be held in Washington, DC, and will meet after the public hearing to review the public comments presented at the hearing and develop proposed 1991–92 waterfowl hunting regulations frameworks.

DATES: Waterfowl Status Meeting, July 25, 1991; Service Regulations Committee Meetings, July 31, August 1 and 2, 1991.

ADDRESSES: The Waterfowl Status Meeting will be held at the Denver Sheraton-Airport Hotel, 3535 Quebec Street, in Denver, Colorado. Meetings of the Service Regulations Committee will be held in the Board Room of the American Institute of Architects Building, 1735 New York Avenue (at the corner of 18th and E Streets NW.), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634-Arlington Square, Department of the Interior, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: On July 25 at 8:30 a.m. at the Denver Sheraton-Airport Hotel in Denver, Colorado, the U.S. Fish and Wildlife Service, Office of Migratory Bird Management will review for State and Federal officials and any other interested parties or individuals results of the various field investigations and data analyses that are used annually to determine the status of waterfowl populations and the fall flight forecast for ducks. The information presented will have a bearing on regulations and the regulatory proposals; however, the meeting is not a regulations meeting. Public comment will be limited to that which supplements the status information presented.

The Migratory Bird Regulations Committee of the U.S. Fish and Wildlife Service, including Flyway Council Consultants to the Committee, will meet on July 31 at 8 a.m. to review discussions that occurred at the Flyway Council meetings and to discuss and develop recommendations for 1991–92 waterfowl hunting regulations to be presented at the public hearing. The meeting on August 1 at 8 a.m. is to assure that the Service's regulations proposals presented at the public hearing reflect the Director's position with the benefit of full consultation on the issues. The public hearing will be held on August 2 at 9 a.m. in Washington, DC. After the hearing, the Service Regulations Committee will meet with the Director to review the public comments presented at the hearing and to determine on the basis of those comments whether any modifications need to be made to the regulations recommendations presented at the hearing. The Service Regulations Committee will then meet with the Consultants to announce any changes in the proposals.

In accordance with Departmental policy regarding meetings of the Service

Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Dated: July 5, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-16570 Filed 7-12-91; 8:45 am]

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federal register

Monday
July 15, 1991

Part VII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 151

Off Reservation Land Acquisitions for Indian Tribes; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076-AC51

Off Reservation Land Acquisitions for Indian Tribes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: On July 19, 1990, the Secretary of the Interior announced a new policy for the placement of lands in trust status for Indian tribes when such lands are located outside of and noncontiguous to a tribe's existing reservation boundaries. The proposed regulations will modify an existing section within Part 151 (Land Acquisitions) and create a new section which will contain additional criteria and requirements to be used by the Secretary in evaluating requests for the acquisition of tribal lands in trust when such lands are located outside of and noncontiguous to the tribes' existing reservation boundaries.

DATES: Comments must be received on or before September 13, 1991.

ADDRESSES: Written comments should be directed to the Chief, Branch of Technical Services, Division of Real Estate Services, Bureau of Indian Affairs, 1849 C Street, NW., MS–4522 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Alice A. Harwood, Acting Chief, Branch of Technical Services, Division of Real Estate Services, Bureau of Indian Affairs, Room 4522, Main Interior Building, 1849 C Street, NW., Washington, DC; Telephone No. (202) 208–4861; or by mail at the address listed above.

SUPPLEMENTARY INFORMATION: This proposed amendment to a rule is published in exercise of the authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary—Indian Affairs by 209 DM 8.

On July 19, 1990, the Secretary announced a new policy for the placement of land in trust status for an Indian tribe when such land is located outside of and noncontiguous to the tribe's existing reservation boundaries. The Secretary is vested by statute with broad discretionary authority to accept land in trust status for individual Indians and Indian tribes, within or outside existing Indian reservation boundaries. To assist in making these discretionary decisions, the Secretary promulgated the current land acquisition regulations (25 CFR part 120a, now 151) and associated Implementation Instructions which set forth a very generalized policy and set of procedures. Since each tribe's circumstances are different, all such acquisition requests have been reviewed on a case by case basis using the following factors found in 25 CFR 151.10: Statutory authority, need, purpose, amount of trust land currently owned, impact of removing land from local government tax rolls, potential land use and zoning conflicts, and the impact on Bureau of Indian Affairs services.

In recent years, the Bureau has witnessed a number of requests by tribes for the acquisition of land, in trust, located outside of and noncontiguous to the reservation, for purposes of economic development projects and, in particular, gaming establishments. These enterprises, which are often located in urbanized areas, are sought by tribes as a stated means of achieving economic and financial self-sufficiency. Such acquisitions have in many cases become highly visible and controversial due to their possible impact on local governments. The loss of regulatory control and removal of the property from the tax rolls are the objections most often voiced by local governments to the acquisition of noncontiguous, off-reservation land in trust status.

The Secretary has announced the aforementioned policy and rule change in order to ensure that requests for the placement of off-reservation, noncontiguous lands in trust will be reviewed in a consistent manner and, if possible, reduce or eliminate adverse impacts on surrounding local governments, while supporting tribal sovereignty and self determination.

The proposed rules, which incorporate the Departmental policy, add new criteria and requirements to be used in evaluating tribal off-reservation and noncontiguous acquisitions, in trust, differentiating between lands acquired for gaming and for nongaming purposes.

Section 151.10 will be modified to clarify that listed criteria presently found in this section pertain only to requests for the acquisition of tribal and individual lands in trust when such lands are located within or contiguous to the tribe's reservation.

Section 151.10(d) will be modified to be all inclusive in terms of gender.

Section 151.10(h) is added to incorporate the Department's concern that proposed trust property be free of hazardous and toxic substances before title is accepted by the Secretary.

The original § 151.11 will be renumbered as § 151.13. The new § 151.11 will establish several criteria and requirements, in addition to applicable criteria found in § 151.10, to assist the Secretary in reviewing requests for the acquisition of tribal lands in trust when such lands are located outside of and noncontiguous to the tribe's reservation. The new section provides that the property to be acquired in trust be free of hazardous substances (consistent with existing acquisition policy), and that the land should be located within the same state(s) where other tribal trust land for that tribe currently exists. This requirement will be relaxed for tribes with no existing reservation land base, or tribes which have reservations near state borders. However, the Secretary will give greater weight to the concerns of state and local governments for such "out of state" land acquisition requests. The tribe must provide an economic plan with an in depth analysis of the costs and benefits of such plan. The analysis must demonstrate the economic feasibility of the plan and must list any factor, economic, legal or political, which may jeopardize the development plan or expose tribal assets to risk of loss. As distance from the reservation land base increases, particularly towards or into urbanized areas, the value of reasonable alternative uses of the land must be examined and a relatively stronger justification for trust status will be required. As warranted and relevant to the proposal under consideration, the justification could address such factors as the cost and ability to administer the land to be acquired in trust. A documented effort by the tribe must be made in order to resolve various differences or objections from local governments, as well as to adopt standards similar to local ordinances pertaining to health, safety, building construction and zoning.

The new § 151.12 will also establish several additional criteria and requirements to assist the Secretary in reviewing requests for the acquisition of tribal lands in trust when such lands, located outside of and noncontiguous to the tribe's reservation, are for gaming purposes. Such requests must be in compliance with the Indian Gaming Regulatory Act, Public Law 100–497, and reviewed (when applicable) by the National Gaming Commission and the Secretary of the Interior. The tribes request must also include a feasibility study and an economic analysis of possible non-gaming alternative enterprises which would provide equivalent economic benefits from said property.

The primary author of this document is Alice A. Harwood, Acting Chief, Branch of Technical Services, Division of Real Estate Services.

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit their written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble.

The information collections requirements contained in §§ 151.09 through 151.15 have been approved by the Office of Management and Budget and assigned approval number 1076–0100. The information collected in this part is being collected to meet the requirements in this regulation and will be used to evaluate off-reservation acquisition requests. In response to this requirement it is necessary to obtain an estimate of its benefit in accordance with 5 U.S.C. 601. Public reporting burden for this requirement is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data and completing and reviewing this submission. Direct comments regarding the burden estimate for any other aspect of this requirement should be directed to Gail Sheridan (telephone number 202–208–2685) at the Bureau of Indian Affairs, Department of the Interior, and Department of the Interior Desk Officer, Office of Management and Budget, room 3108, NEOB Washington, DC 20503.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 because it simply identifies a limited number of criteria and requirements to be considered in the exercise of the Secretary's discretion to place lands in trust for tribes when such lands are located outside of and noncontiguous to Indian reservations. Historically, the annual number of tribal requests to place such lands in trust has been small. In terms of additional expense incurred by the requesting tribes in providing studies and information to the Secretary, the overall effect of this rule will be negligible. The rule will not have any significant effects on the economy or result in increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because of the limited applicability as stated above.

This proposed rulemaking is categorically excluded from the National Environmental Policy Act of 1969 because it is of an administrative, financial, legal, technical, and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is warranted.

List of Subjects in 25 CFR Part 151

Indians—lands, Reporting and recordkeeping requirements.

Accordingly, it is proposed that part 151 of subchapter H of chapter I of the Code of Federal Regulations be amended as follows:

PART 151—LAND ACQUISITIONS

1. The authority citation for part 151 continues to read as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended; 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended; 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 409a, 450h 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, and 1495, and other authorizing acts.

2. Section 151.10 is amended by revising the introductory text of the section and adding new paragraph (h) to read as follows:

§ 151.10 Factors to be considered in evaluating requests.

The Secretary shall consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation:

* * * * *

(h) The property must be free of all hazardous and toxic material as required by 602 DM 2 Land Acquisitions: Hazardous Substances Determinations (for copies write to the Office Management Improvement, 1849 C Street NW., room 2252, Washington, DC 20240).

§§ 151.11–151.14 [Redesignated as §§ 151.13–151.16]

3. Sections 151.11, 151.12, 151.13 and 151.14 will be redesignated as 151.13, 151.14, 151.15, and 151.16, respectively.

4. A new § 151.11 will be added to read as follows:

§ 151.11 Considerations in evaluating requests when the land is located outside of and noncontiguous to an Indian reservation.

The Secretary shall consider the following criteria and requirements in evaluating requests for the acquisition of tribal land in trust status, when the land is located outside of and noncontiguous to the tribe's reservation:

(a) Criteria presented in paragraphs (a) through (c) and (e) through (h) of § 151.10;

(b) The land to be acquired in trust should, in general, be located within the state(s) in which the tribe's reservation or trust lands are currently located. Exception to this requirement may be made for tribes which have lands in one state but are located near the border of another state, or tribes which have no trust lands. In situations where the land to be acquired is in a state in which the tribe is not located, the Secretary will give greater weight to the considerations concerning the effect of the land acquisition on state and local governments. However, all other things being equal, the greater the distance of the land proposed to be taken in trust from the tribe's current or former reservation or trust land, the greater the justification required to take the land in trust. As warranted and relevant to the proposal under consideration, the justification could address such factors as the cost and ability to administer the land to be acquired in trust. In addition, applications for trust land located within an urbanized, and primarily non-Indian community must demonstrate that trust status is essential for the planned use of the property and the economic benefits to be realized from said property.

(c) The tribe shall provide an economic development plan specifying the proposed uses for the trust land with an in-depth analysis of the costs and benefits of such plan. The cost/benefit analysis should contain, at a minimum, start up costs, anticipated operating costs, the anticipated employment opportunities for tribal members, the anticipated net revenue to the tribes and any economic, legal or political factor which could jeopardize the development plan or expose tribal assets to risk of loss.

(d) The tribe will adopt standards and safeguards comparable to all local ordinances including, but not limited to, fire safety, building codes, health codes, and zoning requirements.

(e) Upon receipt of the tribe's formal written request to have the Secretary take lands in trust, the Assistant Secretary—Indian Affairs shall notify

the affected state and local governments of the proposal and shall inform them that they shall be given 30 days to provide written comment to the Assistant Secretary—Indian Affairs. If the acquisition is formally opposed by the state or local governments, or if the state and local governments raise concerns, then the tribe must consult with them and attempt to resolve any conflicts including, but not limited to, issues concerning taxation, zoning and jurisdiction. After the 30 day comment period for state and local governments has expired, and, if necessary, after the tribe has consulted with the state and local governments, the tribe may submit a written request statement describing its discussions with the state and local governments and requesting that the Assistant Secretary—Indian Affairs issue a final decision. The Assistant Secretary—Indian Affairs is then authorized to issue a final decision.

5. A new § 151.12 will be added to read as follows:

§ 151.12 Considerations in evaluating requests when the land is located outside of and noncontiguous to an Indian reservation and will be used for gaming purposes.

The Secretary shall consider the following criteria and requirements in evaluating requests for the acquisition of tribal land in trust status, when the land is located outside of and noncontiguous to the tribe's reservation:

(a) Criteria presented in paragraphs (a) through (c) and (e) through (h) of § 151.10;

(b) Criteria presented in paragraphs (a) through (e) of § 151.11;

(c) The request must be in compliance with section 20 of the Indian Gaming Regulatory Act (Pub. L. 100–497);

(d) When appropriate, the request must be reviewed by the National Indian Gaming Commission;

(e) The request must include an analysis by the tribe showing that it explored the feasibility of all reasonable alternatives (other than gaming) which would provide equivalent economic benefits from said property; and

(f) The request must provide that the tribe, in any gaming activities on the lands to be acquired, will withhold the appropriate portion of individual winnings from gaming activities for Federal taxes pursuant to Federal tax laws and the amount assessed by the National Indian Gaming Commission pursuant to Section 18 of the Indian Gaming Regulatory Act.

6. Newly redesignated Section 151.16 is amended by revising the first sentence to read as follows:

§ 151.16 Information collection.

The information collection requirements contained in §§ 151.9 through 151.15 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076–0100.

* * * * *

Dated: July 8, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

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Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310 and 357

Exocrine Pancreatic Insufficiency Drug Products for Over-the-Counter Human Use; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 357

[Docket No. 79N-0379]

RIN 0905-AA06

Exocrine Pancreatic Insufficiency Drug Products for Over-the-Counter Human Use; Proposed Rulemaking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would establish that over-the-counter (OTC) exocrine pancreatic insufficiency drug products (drug products used to treat pancreatic enzyme deficiency) are not generally recognized as safe and effective and are misbranded. The agency is also withdrawing the proposed rule (see the **Federal Register** of November 8, 1985; 50 FR 46594), which was issued in the form of a tentative final monograph, that would have established conditions under which OTC exocrine pancreatic insufficiency drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this notice after considering public comments on the agency's proposed rule of November 8, 1985 and all new data and information on exocrine pancreatic insufficiency drug products that have come to the agency's attention. This proposal is part of the ongoing review of OTC drug products conducted by FDA. Further, FDA is declaring that it considers all exocrine pancreatic insufficiency drug products, whether currently marketed on a prescription or OTC basis, to be new drugs requiring an approved new drug application (NDA) for continued marketing.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by November 12, 1991. Because this notice is significantly different from the previously-proposed rule, the agency is allowing a period of 120 days for comments and objections instead of the normal 60 days. Written comments on the agency's economic impact determination by November 12, 1991. The date of withdrawal of the November 8, 1985 proposed rule is July 15, 1991.

ADDRESSES: Written comments, objections, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 21, 1979 (44 FR 75666), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC exocrine pancreatic insufficiency drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 21, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by May 21, 1980.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on display in the Dockets Management Branch (address above) after deletion of a small amount of trade secret information. Only five comments were submitted in response to the publication of the advance notice of proposed rulemaking.

In the **Federal Register** of November 8, 1985 (50 FR 46594), the agency published a notice of proposed rulemaking to establish a monograph for OTC exocrine pancreatic insufficiency drug products based on the recommendations of the Miscellaneous Internal Panel and the agency's response to comments submitted following the publication of the advance notice of proposed rulemaking. That proposal constituted FDA's tentative adoption of the Panel's conclusions and recommendations on OTC exocrine pancreatic insufficiency drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report and information available at that time. In that document, the agency accepted the Panel's recommendation that exocrine pancreatic insufficiency drug products be available as OTC drug products and proposed the conditions under which these drug products would be generally recognized as safe and effective and not misbranded. Interested persons were invited to file by January 7, 1986, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by March 10, 1986. New data could have been submitted until November 10, 1986, and comments on the new data until January 8, 1987.

In response to the publication of the tentative final monograph on OTC exocrine pancreatic insufficiency drug products, 2 drug manufacturers, 2 foundations, 39 health-care professionals, 2 health departments, 2 Congressmen, 2 advocacy groups, and 147 individuals submitted comments. Copies of the comments received and any additional information that has come to the agency's attention since publication of the tentative final monograph are also on public display in the Dockets Management Branch.

New information submitted in response to the tentative final monograph has caused the agency to reconsider the approach proposed in that document. FDA is now proposing a rule that would classify OTC drug products to treat exocrine pancreatic insufficiency as not generally recognized as safe and effective, as being misbranded, and as new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The proposed rule would amend part 310, subpart E by adding new § 310.543 (21 CFR 310.543). Accordingly, the proposed monograph published in the **Federal Register** of November 8, 1985 (50 FR 46594) which would have amended part 357 (21 CFR part 357) by adding new subpart E is being withdrawn on July 15, 1991.

The legal status of this document is that of a proposed rule. Final agency action occurs with the publication at a future date of a final rule relating to these drug products.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final rule stage, but will use instead the terms "monograph

conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This proposal retains the concepts of Categories I, II, and III at the tentative final rule stage.

The Miscellaneous Internal Panel stated in its report (44 FR 75666 at 75667 to 75668) that under normal circumstances the pancreas secretes a sufficient amount of enzymes (i.e., lipase for fat digestion, protease for protein digestion, and amylase for starch digestion) into the intestine to aid in the digestion process. When the pancreas is not functioning properly or is partially removed surgically, lesser amounts of pancreatic digestive enzymes are released into the intestine. Because the pancreas has a large functional reserve capacity, malabsorption, due to insufficient digestion, does not occur until the pancreatic enzyme output level is reduced by more than 90 percent. When this level of reduction occurs, the pancreatic insufficiency can usually be suggested by the increased fat content in the stools, and treatment with pancreatic enzymes taken by mouth may be necessary.

The agency recognizes that pancreatic extract drug products have been marketed for a number of years. When properly formulated, these products are effective for the treatment of exocrine pancreatic insufficiency. Some pancreatic enzymes have been marketed as OTC drug products. However, a number of products currently in use, e.g., all encapsulated enteric coated microsphere dosage forms, have been and are being marketed as prescription drug products without an approved NDA. In this document, the agency is proposing that all exocrine pancreatic insufficiency drug products (whether currently marketed on an OTC or prescription basis) are new drugs for which approved applications would be required for marketing.

The Miscellaneous Internal Panel concluded that pancreatic digestive enzymes (i.e., lipase, protease, and amylase) have been safely used to treat the condition of exocrine pancreatic insufficiency for many years. Based on the Panel's recommendation that pancreatic enzymes are generally recognized as safe, and the marketing history and well-established use of these enzymes, the agency concludes that such products are safe for the treatment of exocrine pancreatic insufficiency when properly formulated. Therefore, in most cases, applications for such drugs would not need to include preclinical data but, instead, could refer to the Panel's report as a basis for the safety of the enzymes. However, because of the variation in the formulation and dosage form of some currently available pancreatic extract drugs, e.g., encapsulated enteric coated microsphere dosage forms, preclinical and clinical data to establish the safety of the final formulation may be needed in some cases.

The Department of Health and Human Services has published the "10th Edition of Approved Drug Products with Therapeutic Equivalence Evaluations," commonly called the "Orange Book," which identifies currently marketed products approved by FDA on the basis of safety and effectiveness data. The main criterion for the inclusion of any product in the "Orange Book" is that the product is the subject of an approved application that has not been withdrawn for safety or effectiveness reasons. For a product for which there is no previously approved listed drug in the "Orange Book," an abbreviated new drug application may not be submitted and a new drug application which includes adequate and well-controlled clinical studies of the effectiveness of the specific formulation of the drug must be submitted. There are no pancreatic extract drug products currently listed in the "Orange Book." Therefore, an application for a pancreatic extract drug product must include adequate and well-controlled clinical studies of the product's effectiveness, i.e., the application should contain evidence of human bioactivity in normal volunteers or patients to demonstrate that the enzymes are active in vivo on ingested fats, proteins, and carbohydrates. The bioactivity must be shown to correlate with the stated potency of each proposed product. The studies need to comply with the requirements of 21 CFR part 314. An application would also have to include information on the drug product's formulation, manufacture, and quality control procedures to ensure that the applicant has the ability to manufacture a proper, bioactive formulation. FDA encourages manufacturers to consult with the agency as soon as possible concerning the content of these applications. Inquiries should be directed to the Division of Gastrointestinal and Coagulation Drug Products (HFD–180), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–0479.

Because no applications for pancreatic enzyme drug products are currently approved, an abbreviated application cannot be submitted. However, when one or more applications have been approved, manufacturers should consult with the Office of Generic Drugs (HFD–600), Center of Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, 301–295–8340 to determine the procedures for obtaining approval of abbreviated new drug applications.

In the advance notice of proposed rulemaking for OTC exocrine pancreatic insufficiency drug products, the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the data of publication of the final monograph in the **Federal Register**. The agency also suggested that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use (44 FR 75666).

If this proposal is adopted as a final rule, the agency advises that the conditions under which the drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions) will be effective 6 months after the date of publication of the final rule in the **Federal Register**. On or after that date, no OTC drug product that is subject to the rule may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the proposed rule at the earliest possible date. Regulatory policy for products containing nonmonograph ingredients is set forth in the **Federal Register** of May 13, 1980 (see 45 FR 31422 at 31424 to 31425).

The agency is aware that drug products containing these ingredients are a daily requirement for sufferers of exocrine pancreatic insufficiency. Most cystic fibrosis patients depend on these products from infancy to digest food properly. Therefore, the agency recognizes a need for consumers with cystic fibrosis to continue to have access to these products and to avoid a disruption of the marketplace. Because the final rule for this class of OTC drug products will be effective 6 months after

its publication in the **Federal Register**, FDA strongly recommends that manufacturers of pancreatic enzyme drug products consult with the agency as soon as possible concerning the content of these applications. Inquiries should be directed to the Division of Gastrointestinal and Coagulation Drug Products (HFD–180), (address above).

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments and Objections

1. All of the comments submitted in response to the tentative final monograph objected to OTC availability of exocrine pancreatic insufficiency drug products and requested that they be available by prescription only. A number of comments raised the same points that the agency addressed in the tentative final monograph (50 FR 46594 at 46595 to 46597). However, many comments, including those from the health care community involved in the treatment of cystic fibrosis, raised new issues concerning the OTC use of pancreatic extracts.

Many comments contended that pancreatic extracts should be restricted to prescription status because the diseases requiring the use of these drug products require a physician's diagnosis and continuous monitoring of the patients. These comments also stated that a physician's interaction/counseling is necessary because the dosage of these drug products must be individualized and because side effects can become significant at higher doses. The comments asserted that the dosage for moderate and severe pancreatic insufficiency will often exceed the daily dosage recommended for OTC marketing and that side effects at these higher doses may become significant.

Several comments stated that pancreatic extracts should be restricted to prescription status because the drugs should not be readily available to the general population. Noting that the general population has no need for pancreatic extracts, these comments pointed out that pancreatic enzymes should only be used by patients with conditions that require a physician's diagnosis. Some of the comments feared that consumers with adequate pancreatic enzyme output would be harmed by misusing the extracts for other conditions, such as indigestion or gallbladder problems. Two other comments maintained that OTC status will lead to abuse, such as use in a diet plan. These comments feared the potential hazards and side effects that might be experienced by uninformed consumers who use the extracts for other than exocrine pancreatic insufficiency.

One comment contended that adequate labeling for the OTC use of pancreatic extracts is impossible and, therefore, objected to the OTC availability of these drugs. Referring to the discussion in comments 3 and 4 of the tentative final monograph (50 FR 46594 at 46596 and 46597), the comment disagreed with the agency's position that added warnings in the labeling will adequately protect the patient or caregiver from ulceration of the mouth, lips, and tongue as well as hypersensitivity reactions that have been reported with pancreatic extracts. Some comments also pointed out that the clinical, dietary, and other considerations which are necessary to select the appropriate product and dosage are too complex for consumers. The comments stated that pancreatin and pancrelipase products do not have comparable enzyme activity and the available dosage forms (tablets, powders, capsules, and enteric coated microspheres in capsules) are not interchangeable on a one-to-one unit basis. These comments feared that lack of computational skills necessary to convert the required dosage from one product to another might lead to underdosing or overdosing with pancreatic extracts. These comments argued that restricting the products to prescription availability would minimize these difficulties and maximize patient care and survival.

Most comments objected to the OTC availability of pancreatic enzymes on the basis that many third party reimbursers do not reimburse for OTC medication. These comments maintained that OTC availability would impose a considerable financial burden on the patients who require these drugs and on their families.

Noting that many manufacturers are phasing out the production of capsules because of concerns about product tampering, many comments stated that pancreatic insufficiency drug products should be restricted to prescription availability to assure that the capsule dosage form of these drug products remains available. Several comments stated that the most useful dosage form for pancreatic enzymes is enteric-coated microspheres in capsules. The enteric coating is designed to dissolve once the microspheres of enzymes are past the stomach and are in the intestine. The comments explained that the enteric coating protects the enzymes from the destructive influence of the stomach acids, and digestion is more complete and efficient, enabling patients to take less medication. One comment felt that before this dosage form became available, the variety of foods that exocrine pancreatic insufficiency sufferers were permitted to eat was extremely restricted and, as a result, babies and children did not grow properly because of a lack of nutrients. Pointing out that the capsules can be opened and the enteric coated microspheres can be safely sprinkled over soft food for infants and toddlers who are otherwise unable to swallow the capsules and can experience damage to the mucosa of the mouth and lips from uncoated enzymes, three comments feared that the removal of this dosage form from the marketplace would adversely affect children suffering from exocrine pancreatic insufficiency. Several comments stated that this dosage form has brought about great improvement in the efficacy of pancreatic enzymes for most patients with cystic fibrosis. These comments expressed concern that if pancreatic enzymes were marketed OTC, the capsule dosage form would no longer be available.

Many comments referred to the use of pancreatic enzymes by patients with cystic fibrosis. Physicians who treat the disease pointed out that cystic fibrosis is the most common fatal genetic disease, estimated to occur in 1 in 2,000 newborns in the U.S. It is a progressive disease which involves changes in multiple organ systems, but whose primary pathophysiology involves the respiratory system and the gastrointestinal tract. In treating cystic fibrosis, replacement pancreatic extracts are used to control the consequences of exocrine pancreatic insufficiency, namely maldigestion and malabsorption and resulting nutritional deficiencies. The physicians estimated that at least 85 percent of cystic fibrosis patients exhibit pancreatic insufficiency, which can result in deficiencies in the intake and absorption of calories, proteins, vitamins, minerals, etc., which, in turn, may lead to nutritional deficiencies and failure to thrive. Some comments noted that the nutritional management of this disease has changed in a manner that promotes the use of higher doses of pancreatic enzymes than are proposed for OTC use. Instead of the historical

practice of prescribing a low fat diet, the current medical approach to the diet of cystic fibrosis patients is to encourage the consumption of a diet of normal to high fat content. Noting that this change in diet for cystic fibrosis patients has necessitated the use of much higher doses of pancreatic enzymes to digest the higher fat diet, the comments maintained that hyperuricosuria (excess uric acid in the urine) and hyperuricosemia (excess uric acid in the blood) have been associated with the consumption of high doses of pancreatic extracts. Therefore, the comments requested that pancreatic enzymes be available by prescription only, under the supervision of a physician, to ensure patient safety with adequate control of the disease.

Many physicians who treat cystic fibrosis patients expressed the opinion that if the status of pancreatic extracts were changed from prescription to OTC, it would impact negatively on the medical course for these patients. Noting that the life expectancy of cystic fibrosis patients has increased from approximately 5 years in the early 1950's to about 21 years in the 1980's, the comments maintained that the increase in survival rates has resulted from improvement in the overall medical management of the disease and could be correlated to frequent and continuing professional care. The physicians stated that maintenance of adequate nutrition in these patients requires frequent monitoring of their enzyme supplementation requirements which vary dramatically from patient to patient, and from time-to-time (depending on diet and activity) for the same patient. In addition, the physicians reported that too little supplementation may result in impeded growth for these patients. As a result of too little or too much enzyme supplementation, patients suffer from abdominal discomfort ranging from mild symptoms to overt intestinal obstruction, which requires immediate medical and, on occasion, surgical intervention. The physicians also noted that there are indications that nutritional status may affect pulmonary function and the progress of lung disease in these patients. The comments from physicians treating cystic fibrosis patients all requested that exocrine pancreatic extracts be restricted to prescription availability to ensure that the progress being made in the treatment of the disease will continue.

In the tentative final monograph, the agency addressed many of the same objections to the OTC marketing of exocrine pancreatic drug products as have been raised by the above comments (50 FR 46594 at 46595 to 46597). The agency reiterates its position that the requirement for a physician's diagnosis of a condition does not, by itself, necessitate prescription status of a drug as long as the patient can self-monitor the drug's effectiveness and adequate OTC labeling can be developed for the product's safe and effective use. Further, financial considerations (e.g., third party reimbursement) are not among the statutory criteria for limiting a drug product to prescription status.

Also, the agency disagrees with the comments which stated that OTC availability of exocrine pancreatic insufficiency drug products would lead to abuse or cause harm to individuals not suffering from exocrine pancreatic insufficiency who might use the products by mistake or for some other (nonlabeled) use. Many products containing these types of ingredients have been available OTC for decades with no report of abuse or accidental injury to the general public.

The agency shares the comments' concerns about OTC capsule dosage forms and has taken steps to ensure the safety of the two-piece hard gelatin capsule dosage form and its continued availabity in the OTC marketplace. As part of the agency's efforts to improve consumer protection from the threat of product tampering, FDA amended its tamper-resistant packaging regulations for OTC human drug products in 21 CFR 211.132. The original regulation in § 211.132 provided for "an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred." FDA later strengthened this regulation by requiring that manufacturers and packagers who market two-piece hard gelatin capsules utilize packaging that provides a minimum of two tamper-resistant packaging features. Alternatively, tamper-resistant technology, such as gelatin banding, can be used in the manufacturing process to seal capsules. The revised, tamper-resistant packaging requirements were finalized in the Federal Register of February 2, 1989 (54 FR 5227) and became effective on February 2, 1990.

However, the information submitted in response to the tentative final monograph and other available information has prompted the agency to reconsider its position on these drug products and to now propose that all pancreatic extract drug products be required to obtain an approved application for marketing. The agency is very concerned with the effects that a pancreatic extract drug product's formulation and dosage form will have on the drug's safe and effective use. These concerns cannot be adequately addressed under the OTC drug monograph system. However, under an approved application, formulation and dosage form issues can be resolved prior to marketing.

This reproposal would also require that all pancreatic extract drug products be marketed by prescription. Based on the numerous comments from physicians that continuous physician monitoring of patients appears to be one of several important factors in the increased survival rates for exocrine pancreatic insufficiency patients, the agency concludes that such collateral measures necessary to the use of these drug products require that these drug products be available by prescription only, as required by section 503(b)(1)(B) of the act (21 U.S.C. 353(b)(1)(B)). The agency also recognizes that some frequently used pancreatic extract drug products are being marketed as prescription drugs, but without approved applications. Some of these products provide higher levels of enzyme than stated in their labeling (Ref. 1). This results in the daily dose being higher than the recommended OTC daily dose of pancreatic enzymes. Also, as stated above, many health professionals involved in the use of these products are concerned about the consequences of exclusive OTC marketing for all pancreatic extract drug products (including the encapsulated enteric-coated microsphere dosage form products which have always been marketed by prescription). Therefore, based upon this new information, the agency has concluded that the previous proposal (50 FR 46594), which would have required all exocrine pancreatic extract drug products to be marketed OTC in compliance with an OTC drug monograph, should be revoked.

The agency's proposed requirement for an approved application is based primarily on the nature of these drug products. Pancreatic extract drug products are composed of three types of digestive enzymes: Amylase, trypsin (protease), and lipase (Ref. 2). Their effectiveness in treating exocrine pancreatic insufficiency is dependent on the specific formulation, the dosage form, and the procedures employed in the manufacture of each product, e.g., the integrity of the enteric coating. Successful use of these drugs as enzyme replacement therapy in exocrine pancreatic insufficiency relieves the symptoms of steatorrhea (diarrhea, abdominal fullness or bloating, and

cramps) and prevents further weight loss or produces a gain in weight (Ref. 3). The success of replacement enzyme therapy with pancreatic extract drug products is proportional to the amount of bioactive enzymes that reach the duodenum of the patient (Ref. 4). It has been shown experimentally that trypsin is inactivated by gastric juices and that lipase is inactivated by pH less than 4 (Ref. 5). In patients with exocrine pancreatic insufficiency, as little as 22 percent of the trypsin and 8 percent of the lipase ingested in pancreatin may survive the gastric environment of the stomach and reach the duodenum (Ref. 6).

The survival of the enzymes in the body is dependent on the dosage form of the drug product. Pancreatic extracts were originally marketed as powders, powders in capsules, and tablets. Because of inactivation of the enzymes by stomach juices, some pancreatic extracts have been manufactured in tablets with enteric coatings and as encapsulated enteric-coated microspheres. The enteric coating should, theoretically, allow the enzymes to pass through the acid environment of the stomach without being denatured and be delivered to the alkaline environment of the small intestine, where the enteric coating should dissolve (Ref. 7). It has been shown that some patients with pancreatic insufficiency have a lower than normal pH in the upper small intestine (Refs. 8 and 9). Because of this, the pH at which the enteric coating dissolves and the preparations release their enzymes becomes critical to the product's effectiveness. The enzymes should not be released at a pH that is too low, i.e., in the stomach where deactivation of enzymes can occur, or too high, in which case the coating may not dissolve in the small intestine and the enzymes would not be released. To fit these requirements, the enzymes should ideally be released between pH 5.5 and pH 6.0 (Ref. 10). Therefore, the character of the enteric coating of tablets and microspheres of pancreatic extracts becomes extremely important in protecting and delivering the drug product to its site of activity.

In vivo and in vitro studies have demonstrated the variations among pancreatic extract drug products (Refs. 1, 4, 7, and 10 through 15).

An early study compared 16 available preparations in vitro and revealed a wide range of enzyme activities, e.g., from 10 to 3,600 United States Pharmacopeia (U.S.P.) units of lipase activity per dosage unit (Ref. 7). The same study also compared the effectiveness of an enteric-coated tablet product with and without the enteric coating in six patients and found greater effectiveness for the product lacking the enteric coating (Ref. 7). Many studies of the encapsulated enteric-coated microsphere dosage form of pancreatic enzymes in patients with severe pancreatic insufficiency and with cystic fibrosis indicate that these products have improved effectiveness over other formulations in treating pancreatic insufficiency (Refs. 11 through 15).

In addition to variations in effectiveness between various dosage forms, comparisons of the lipase activity and effectiveness of various products also show variations among encapsulated enteric-coated microsphere products from different manufacturers (Refs. 1, 10, 13, and 15). An in vivo random crossover study undertaken in 19 cystic fibrosis patients compared the efficacy of 4 pancreatic extract products, 1 tablet dosage form, and 3 encapsulated enteric-coated microsphere products (Ref. 15). The results of the study showed fewer gastrointestinal symptoms and increased fat absorption with two of the encapsulated enteric coated microsphere products. Patients using those two products were able to enjoy a normal diet without fat restrictions. The tablet product and the third encapsulated enteric-coated microsphere product gave less satisfactory results, although the enzyme content of the latter was similar to the two more successful encapsulated enteric-coated microsphere products.

A recent in vitro study of various commercial pancreatic enzyme preparations demonstrated the variations in lipase activity and release rates among the products (Ref. 10). Three main types of dosage forms were tested, i.e., simple pancreatic enzyme preparations (uncoated tablets and powder filled capsules), enteric-coated tablets, and encapsulated enteric-coated microspheres. The products were analyzed for amylase, lipase, and protease activity before being subjected to a simulated gastric fluid (0.1 N HCl) at 37 degrees for 2 hours in a disintegration apparatus. The lipase activity of each product was then reanalyzed. It was found that the simple dosage form products had lost all of the original lipase activity. The enteric-coated tablet dosage form retained all of the original lipase activity; the three encapsulated enteric-coated microsphere dosage form products retained the following percentages of their original lipase activity: 54.0, 90.7, and 99.9 percent, respectively. The study also investigated the release rate of enzyme and the pH level at which release begins. The enteric-coated tablets showed negligible release of enzymes in the pH range of 4.0 to 6.0. All the enteric-coated microsphere products released their enzymes in the pH range of 5.5 to 6.0. Although, as noted above, not all the original lipase content remained for all the preparations.

These studies demonstrate the variation in pancreatic extract drug products, both among various dosage forms and among products from different manufacturers of the same dosage form. Because of this, the agency recognizes that a monograph based only on the labeled activity of the enzymes contained in the product would not provide enough information on the activity of the enzymes after the product is ingested. Therefore, a monograph would not be sufficient to adequately regulate the drug products or to provide labeling for consumers to use the products safely and effectively. In addition, the United States Pharmacopeia XXII/National Formulary XVII monographs for pancreatic extracts (Ref. 16) do not contain dissolution standards and do not have quantitative drug release standards for dosage forms that are enteric coated. The United States Pharmacopeial Convention (U.S.P.C.) is aware of these problems and is presently evaluating what changes in the compendial standards are needed to effectively address them (Refs. 17 through 21).

As a result of the wide range of enzyme activity, the variety of dosage forms, and the apparent uneven quality of the enteric coatings among pancreatic extract drug products, there have been instances of underdosing and overdosing with pancreatic extracts. A recent paper reports on three patients whose pancreatic insufficiency had been controlled using one encapsulated enteric-coated microsphere dosage form pancreatic extract drug product. These patients experienced therapeutic failure when a similar product that was labeled as containing the same enzyme activity was substituted for the first product (Ref. 1). The therapeutic failure in these cases was characterized by various symptoms, e.g., stomach cramps, intestinal gas, abdominal distention, greasy stools, and constant hunger. The products involved in these cases, both original "brand name" products and substituted "generic" products, were analyzed for lipase activity before and after exposure to simulated gastric fluid. The two "brand name" products actually contained much greater lipase activity than labeled (almost twice as much). Of the three "generic" products,

two contained more than the labeled activity of lipase per capsule (one about 30 percent more and one 20 percent more), and one contained 25 percent less. After exposure to gastric conditions, the two "brand name" products retained 91 and 98 percent of their original lipase activities, respectively (still much more than their labeled lipase activity). The three generic brands lost essentially all their lipase activity, retaining only 2 to 4 percent.

The above study also demonstrates that the two "brand name" products have been delivering much more enzyme than is indicated in their labeling. One of the reported cases had been stabilized on 20 capsules per day of a "brand name" product. This product was labeled to contain 4,000 U.S.P. units of lipase activity per capsule but actually contained 7,480 U.S.P. units of lipase activity. This would be a daily dose of 149,600 U.S.P. units of lipase activity, which is almost twice the daily dose of 84,000 U.S.P. units recommended by the agency as safe for OTC use (50 FR 46600). This particular product was used by many of the cystic fibrosis patients who submitted comments to the rulemaking. The number of capsules used by these patients was in line with that reported in this study. It appears, therefore, that users of pancreatic enzymes are routinely ingesting higher than the recommended OTC dose of pancreatic enzymes even when the amounts on the labels of the products would appear to be within the OTC limits. This is consistent with claims made by many comments that high doses of pancreatic extracts are routinely being used currently, especially in the management of cystic fibrosis.

The published literature on the management of cystic fibrosis also emphasizes that higher fat diets, which require higher dosages of the encapsulated enteric-coated microsphere dosage form of pancreatic extracts individualized to the particular patient and diet, are recommended for the control of nutritional problems (Ref. 22). A recent 6-year study of 37 cystic fibrosis patients who consumed a high-energy diet with no fat restriction reported a significant weight gain (Ref. 23). These patients were given individualized nutritional counseling, and the dosage of pancreatic extract drug product was adjusted according to the fat content of meals and snacks. The agency notes that, according to the reports, the patients were being closely monitored by health professionals.

The agency believes that physician monitoring is imperative when large doses of pancreatic extracts are being consumed. In comment 2 of the tentative final monograph, the agency discussed reports (50 FR 46594 at 46596) (Refs. 24 through 29) of hyperuricosuria, hyperuricemia, obstipation, and intestinal obstruction resulting from daily doses of pancreatic extracts in excess of the amounts proposed in the tentative final monograph. The occurrence of cramps, bloating, and abdominal discomfort resulting from excessive doses of pancreatic enzymes has also been reported (Ref. 30).

The agency has become aware of another problem resulting from overdosing with another pancreatic enzyme drug product. In the last few years, encapsulated enteric-coated microsphere pancreatic extract drug products labeled with very high enzyme activity per capsule have entered the marketplace as prescription drugs without approved applications. The most potent of these products is labeled 16,000 U.S.P. units of lipase activity and 48,000 U.S.P. units each of amylase and protease activity per capsule. The agency is aware of a report of a 17-year old male who experienced a small bowel obstruction after 3 days of treatment with the above formulation (Ref. 31). This situation resulted in hospitalization but was resolved when the treatment was withdrawn and the patient given a lower potency pancreatic extract drug product.

Based on the above information, the agency recognizes that it is not possible for a consumer to safely use pancreatic enzyme drug products based only on the labeled enzyme content of the drug product. The products require (1) professional intervention to establish individual specifications and (2) agency preclearance of each product to standardize bioactivity to avoid serious safety problems resulting from too little or too much enzyme supplementation. Further, the above information shows the need for the agency to require approved NDA's for all exocrine pancreatic insufficiency drug products.

In addition, the agency recognizes that advances in the treatment of cystic fibrosis patients have been accomplished largely, although not exclusively, with the use of prescription pancreatic extracts in the encapsulated enteric-coated microsphere dosage form. Although changes in other factors in the treatment of cystic fibrosis over the years have certainly contributed to the improved prognosis in the disease, e.g., use of antibiotics and vitamin supplements, the agency does not believe it would be prudent to jeopardize the successes of this treatment by allowing pancreatic enzymes to be marketed only as OTC drug products, which would occur if they were generally recognized as safe and effective in an OTC drug monograph. Therefore, because of the above considerations, the agency is proposing to withdraw proposed 21 CFR part 357 subpart E (proposed OTC drug monograph) and to amend 21 CFR part 310 (new drugs) by adding new § 310.543 (21 CFR 310.543).

If this proposal becomes final, approved drug applications will be required for the marketing of these drug products. The requirements (procedures and content) for submitting an application are discussed above.

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2. One comment contended that manufacturers of prescription pancrelipase products were not given ample opportunity to participate in the rulemaking for OTC exocrine pancreatic insufficiency drug products. The comment stated that neither the call-for-data notices nor the advance notice of proposed rulemaking for OTC exocrine pancreatic insufficiency drug products stated that the review of these drug products would also include prescription pancrelipase. The comment requested that the administrative record be reopened to allow for comment and data for pancrelipase preparations.

The comment is correct that the November 16, 1973, and August 27, 1975, call-for-data notices did not specifically state that pancrelipase would be subject to the OTC drug review of ingredients in exocrine pancreatic insufficiency drug products. However, the advance notice of proposed rulemaking, published on December 21, 1979 (44 FR 75666), addressed pancrelipase. The Panel discussed pancrelipase in its discussion of Category I conditions (44 FR 75668). The Panel included this ingredient in § 357.410(b) of its recommended monograph and provided the recommended OTC dosage in § 357.450(d)(2) (44 FR 75669). In addition, in response to the advance notice of proposed rulemaking, two manufacturers of prescription pancrelipase products submitted comments to the rulemaking. These comments have been on public display in the Dockets Management Branch since they were submitted in 1980. Further, the agency also discussed these comments in the tentative final monograph (50 FR 46594 at 46595 to 46597).

The agency believes that manufacturers of prescription pancrelipase drug products have had ample opportunity to comment and submit data to the rulemaking for OTC exocrine pancreatic insufficiency drug products. However, this reproposal provides another opportunity (a 120-day period) for manufacturers to submit comments and data to this rulemaking.

3. One comment requested that the daily dosage limits of pancrelipase be increased to at least 350,000 U.S.P. units of lipase activity, 1,050,000 U.S.P. units of protease activity, and 1,050,000 U.S.P. units of amylase activity. The comment stated that the agency's proposal in the tentative final monograph (limits of 84,000 U.S.P. units of lipase activity, 350,000 U.S.P. units of protease activity, and 350,000 U.S.P. units of amylase activity) appears to be based upon the minimum activity per milligram (mg) of pancrelipase as described in the United States Pharmacopeia XXI/National Formulary XVI (U.S.P. XXI/N.F. XVI) (Ref. 1). The comment alleged that the proposed upper limit for lipase activity for pancrelipase preparations appears to have been arbitrarily set by using pancreatin as the reference standard. The comment stated that pancrelipase differs from pancreatin principally in lipase activity (1 mg of pancrelipase contains 12 times the lipase activity of pancreatin and only 4 times the protease and amylase activity). The comment argued that because the daily recommended dose proposed in the tentative final monograph appears to standardize pancreatin and pancrelipase preparations on the basis of lipase activity, the advantage of the greater lipase activity in pancrelipase is negated, and the protease and amylase activity are substantially decreased on a weight basis in the pancrelipase preparations. The comment recommended that if the two preparations were to be standardized, it should be on the basis of protease and amylase activity, which would allow for better control of steatorrhea at smaller doses. In addition, the comment expressed the opinion that preparations with much higher specific activity are urgently needed.

As discussed above in comment 1, the agency is withdrawing the proposed monograph on OTC exocrine pancreatic insufficiency drug products published in the **Federal Register** of November 8, 1985 (50 FR 46594). Therefore, OTC dosage strengths for any pancrelipase drug products are not being addressed in this document. If the proposal to require all exocrine pancreatic insufficiency drug products to acquire an approved application for marketing becomes final, each manufacturer who submits an application for an exocrine pancreatic insufficiency drug product will have the opportunity to include data in support of

a particular daily dosage limit for that product.

Reference

(1) "United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 777–781, 1985.

II. The Agency's Tentative Conclusions on Exocrine Pancreatic Insufficiency Drug Products

Pancreatin and pancrelipase have been present as ingredients in exocrine pancreatic insufficiency drug products. Both ingredients are composed of three types of digestive enzymes: Amylase, trypsin (protease), and lipase. Some exocrine pancreatic insufficiency drug products have been marketed OTC and others have been marketed by prescription, all without approved applications. Based on available evidence, the agency has determined that the bioavailability of these enzymes is dependent on the process used to manufacture the drug products. Therefore, the agency has determined that the safe and effective use of these enzymes for exocrine pancreatic insufficiency cannot be regulated adequately by an OTC drug monograph. The agency proposes that any pancreatic extract drug product that is labeled, represented, or promoted for use in exocrine pancreatic insufficiency will be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an approved application under section 505 of the act (21 U.S.C. 355) and Part 314 of the regulations (21 CFR part 314) is required for marketing. In the absence of an approved application, such a product would also be misbranded under section 502 of the act (21 U.S.C. 352).

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC exocrine pancreatic insufficiency drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significar t economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC exocrine pancreatic insufficiency drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on exocrine pancreatic insufficiency drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC exocrine pancreatic insufficiency drug products should be accompanied by appropriate documentation. Because this proposal on OTC exocrine pancreatic insufficiency drug products is significantly different from the previously-proposed rule, a period of 120 days from the date of publication of this proposed rule in the **Federal Register** is being provided for comments and data on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before November 12, 1991 submit to the Dockets Management Branch written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before November 12, 1991. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

In establishing a final rule, the agency will ordinarily consider only comments and data submitted prior to the closing of the administrative record on November 12, 1991. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final rule is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended in part 310 as set forth below; and the proposed amendment to subpart E of part 357 (November 8, 1985; 50 FR 46594) is withdrawn.

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.543 is added to subpart E to read as follows:

§ 310.543 Drug products containing active ingredients offered over-the-counter (OTC) for human use in exocrine pancreatic insufficiency.

(a) Pancreatin and pancrelipase have been present as ingredients in exocrine pancreatic insufficiency drug products. Both ingredients are composed of enzymes: amylase, trypsin (protease), and lipase. Some exocrine pancreatic insufficiency drug products have been marketed OTC and others have been marketed by prescription, all without approved new drug applications. Significant differences have been shown in the bioavailability of marketed exocrine pancreatic insufficiency drug products produced by different manufacturers. These differences raise a potential for serious risk to patients using these drug products. In addition,

continuous physician monitoring of patients who take these drug products is a collateral measure necessary to the safe and effective use of these enzymes, causing such products to be available by prescription only. Therefore, the safe and effective use of these enzymes for exocrine pancreatic insufficiency cannot be regulated adequately by an OTC drug monograph.

(b) Any drug product that is labeled, represented, or promoted for OTC use in exocrine pancreatic insufficiency is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which an approved application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted as an OTC exocrine pancreatic insufficiency drug product is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter

(d) After (*insert date 6 months after date of publication of the Final Rule in the* **Federal Register**), any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: May 31, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

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July 15, 1991

Part IX

Environmental Protection Agency

Reopening of Comment Period For Proposed Test Rules for Office of Drinking Water Chemicals, Cyclohexane, 1,6-Hexamethylene Diisocyanate and N-methylpyrrolidone; Proposed Rule

TSCA Section 4(a)(1)(B) Proposed Statement of Policy; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42144; FRL 3847-4]

RIN 2070-AC31

Reopening of Comment Period For Proposed Test Rules;Office of Drinking Water Chemicals; Cyclohexane; 1,6-Hexamethylene Diisocyanate; and N-methylpyrrolidone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: EPA is reopening the comment period for the proposed test rules on the Office of Drinking Water Chemicals (OPTS–42111), (May 24, 1990, 55 FR 21393), cyclohexane (OPTS–42094), (May 20, 1987, 52 FR 19096), 1,6-hexamethylene diisocyanate (OPTS–42107), (May 17, 1989, 54 FR 21240), and *N*-methylpyrrolidone (OPTS–42114), (March 28, 1990, 55 FR 11398), for 60 days to permit further comment on the findings made for these chemicals under TSCA section 4(a)(1)(B)(i), in light of the proposed policy articulated elsewhere in today's **Federal Register** for making legal findings under TSCA section 4(a)(1)(B)(i).

DATES: Submit written comments on or before September 13, 1991.

ADDRESSES: Written comments, in triplicate, identified by the docket number (OPTS–42144), should be submitted to: TSCA Public Docket Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, rm. NE–G004, 401 M St., SW., Washington, DC 20460. A public version of the rulemaking records supporting this action is available for inspection at the above address from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

Information submitted in any comment on this rulemaking may be claimed "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be disclosed publicly by EPA by placing it in the public record without prior notice to the submitter.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director Environmental Assistance Division (TS–799), Office of Toxic Substances, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, EPA is proposing criteria for making "substantial" production, "substantial" and "significant" exposure, and "substantial" release findings as set forth in test rules developed under TSCA section 4(a)(1)(B)(i). EPA is reopening the comment periods on four proposed test rules to allow comment solely on the findings made for these chemicals under TSCA section 4(a)(1)(B)(i). EPA recognizes that if the comments received in response to this notice on the notice proposed elsewhere in today's **Federal Register** for making findings under TSCA section 4(a)(1)(B)(i) change the general criteria in a way that would affect whether EPA could legally make a finding for any of these chemicals it will have to either repropose the specific rule or issue a decision not to test.

The following chemicals are affected by this reopening of the comment period:

Chemical	CAS No.	Docket No.
Chloroethane	75–00–3	42144/42111A
1,1 dichloroethane	75–34–3	42144/42111A
1,1,2,2-tetrachloroethane	79–34–5	42144/42111A
n-propylbenzene	103–65–1	42144/42111A
1,3,5-trimethylbenzene	108–67–8	42144/42111A
cyclohexane	110–82–7	42144/42094D
1,6-hexamethylene diisocyanate	822–06–0	42144/42107B
N-methylpyrrolidone	872–50–4	42144/42114A

I. Proposed Rules Pending Under TSCA Section 4(a)(1)(B)

A. Office Of Drinking Water Chemicals

Testing has been proposed for five chemicals: Chloroethane (CAS No. 75–00–3); 1,1-dichloroethane (CAS No. 75–34–3); 1,1,2,2-tetrachloroethane (CAS No. 79–34–5); *n*-propylbenzene (CAS No. 103–65–1); and 1,3,5-trimethylbenzene (CAS No. 108–67–8) under section 4(a)(1)(B) of TSCA (May 24, 1990, 55 FR 21393). Based on the available data on these five chemicals discussed in Unit II. of the preamble to the proposed rule, EPA finds that each of these five chemicals is produced in substantial quantities and that there is or may be substantial human exposure to these chemicals.

EPA finds that each of these five chemicals are produced in substantial quantities. All of the chemicals subject to this proposed test rule are listed on the TSCA Section 8(b) Inventory. Manufacturers have submitted information on recent production volumes of these chemicals but have claimed this information as CBI. EPA has reviewed these data and has found that current reported production volume of each chemical exceeds 1 million pounds. For the reasons discussed elsewhere in today's **Federal Register**, proposing the minimum criteria for testing under TSCA section 4(a)(1)(B), 1 million pounds of production constitutes substantial production under TSCA section 4(a)(1)(B).

EPA finds that there may be substantial human exposure to the chemicals. The five chemicals have been identified and quantified in soil, ground water and/or surface water samples from numerous locations throughout the United States. The five chemicals have been reported to be present in or near disposal sites: chloroethane in 17 states; *n*-propylbenzene in 10 states; 1,1-dichloroethane in 24 states; 1,1,2,2-tetrachloroethane in 25 states; and 1,3,5-trimethylbenzene in 7 states. These data may also indicate a larger problem since they represent only a portion of the hazardous waste sites in the Uunited States; not all hazardous waste sites have been sampled. Information on the presence of these five chemicals in drinking water has recently been made available in EPA's Hazardous Substance Data Base (HSDB). A summary of these data was developed for EPA by the Syracuse Research Corporation, Syracuse, New York in "Response to Public Comments Drinking Water Chemicals" (September 30, 1990). This summary showed that all five chemicals have been found in drinking water in the United States. This includes community drinking water systems of America's large cities (e.g., Miami, Philadelphia, Cincinnati, Seattle, New Orleans, and Washington, DC), private drinking water wells, and finished drinking water from ground water. In the studies which cited concentrations of these chemicals in drinking water, most concentration levels fell within the range of 0.1 to 4.0 parts per billion (ppb). Because of the widespread presence of each chemical in drinking water, soil, groundwater, and surface water in many states, it is reasonable to believe that more than 100,000 people may be exposed to these chemicals. For the reasons discussed in today's **Federal Register**, proposing the minimum criteria for testing under TSCA section(4)(a)(1)(B), potential exposure to 100,000 people constitutes potential substantial human exposure under TSCA section 4(a)(1)(B).

Therefore, for the reasons set forth elsewhere in today's **Federal Register**, proposing the minimum criteria for testing under TSCA section 4(a)(1)(B), and because each of these chemicals exceeds these thresholds, EPA finds that there is substantial production of each of these chemicals and that there is or may be substantial human exposure to each of these chemicals based on their disposal.

B. Cyclohexane

Testing is being proposed for cyclohexane (CAS No. 110–82–7) under section 4(a)(1)(B) of TSCA (May 20, 1987, 52 FR 19096). Based on the available data on cyclohexane discussed in Unit III. of the preamble to the proposed rule, EPA finds that cyclohexane is produced in substantial quantities, that there is or may be substantial human exposure to cyclohexane, and that there is or may be substantial release of cyclohexane to the environment based on its manufacture, processing, and use.

EPA finds that cyclohexane is produced in substantial quantities. Approximately 1.8 billion pounds of cyclohexane was produced in 1985. For the reasons discussed elsewhere in today's **Federal Register**, proposing the minimum criteria for testing under TSCA section 4(a)(1)(B), 1 million pounds of production constitutes substantial production under TSCA section 4(a)(1)(B).

EPA finds that there may be substantial human exposure to cyclohexane. According to the National Occupational Exposure Survey from 1981 to 1983, 42,558 workers were potentially exposed to the compound in the workplace. For the reasons discussed elsewhere in today's **Federal Register** proposal, potential exposure to 1,000 workers constitutes potential substantial exposure under TSCA section 4(a)(1)(B).

EPA finds that cyclohexane may be released to the environment in substantial quantities. Based on information submitted to EPA under the Toxic Release Inventory, EPA estimated that 11 million pounds of cyclohexane is released to the environment annually. For the reasons discussed elsewhere in today's **Federal Register** proposal, 1 million pounds of release to the environment constitutes potential substantial release under TSCA section 4(a)(1)(B).

Therefore, for the reasons set forth elsewhere in today's **Federal Register**, proposing the minimum criteria for testing under TSCA section 4(a)(1)(B), and because cyclohexane exceeds these thresholds, EPA finds that there is substantial production of cyclohexane, that there is or may be release of cyclohexane to the environment in substantial quantities, and that there is or may be substantial human exposure to cyclohexane based on its manufacture, processing, and use.

C. 1,6-Hexamethylene Diisocyanate

Testing has been proposed for 1,6-hexamethylene diisocynate (HDI) (CAS No. 822–06–0) under section 4(a)(1)(B) of TSCA (May 17, 1989, 54 FR 21240). Based on the available data on HDI discussed in Unit III. of the preamble of the proposed rule, EPA finds that HDI is produced in substantial quantities and that there is or may be substantial human exposure to HDI from its manufacture, processing, and use.

EPA finds that HDI is produced in substantial quantities. The public portion of the TSCA Section 8(b) Inventory data base lists U.S. production of HDI as 1 to 10 million pounds in 1977. Mobay Chemical Company reported 1981 production at between 9 and 11 million pounds, and has estimated its 1987 production in the area of 11 million pounds. The actual production and import volumes for 1987 have been claimed as CBI. For the reasons discussed elsewhere in today's **Federal Register** proposal, 1 million pounds of production constitutes substantial production under TSCA section 4(a)(1)(B).

EPA finds that there may be substantial human exposure to HDI. EPA believes that as many as 153,000 workers are potentially exposed to HDI in the workplace. For the reasons discussed elsewhere in today's **Federal Register** proposal, exposure to more than the 1,000 workers constitutes substantial human exposure under TSCA section 4(a)(1)(B).

Therefore, for the reasons set forth elsewhere in today's **Federal Register**, proposing the minimum criteria for testing under TSCA section 4(a)(1)(B), and because HDI exceeds these thresholds, EPA finds that there is substantial production of HDI and that there is or may be substantial human exposure to HDI based on its manufacture, processing, and use.

D. N-Methylpyrrolidone

Testing has been proposed for *N*-methylpyrrolidone (NMP) (CAS No. 872–50–4) under section 4(a)(1)(B) of TSCA (March 28, 1990, 55 FR 11398). Based on the available data on NMP discussed in Unit III. of the preamble to the proposed rule, EPA finds that NMP is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, and use.

EPA finds that NMP is produced in substantial quantities. Total imports and domestic annual production of NMP are in excess of 55 million pounds per year. For the reasons discussed elsewhere in today's **Federal Register** proposal, 1 million pounds of production constitutes substantial production under TSCA section 4(a)(1)(B).

EPA finds that there may be substantial human exposure to NMP. EPA believes an estimated 2.7 million consumers may be exposed to NMP. An estimated 71,000 workers may be routinely exposed to NMP during manufacture and processing. For the reasons discussed elsewhere in today's **Federal Register** proposal, exposure to 1,000 workers and/or 10,000 consumers constitutes substantial human exposure under TSCA section 4(a)(1)(B).

Therefore, for the reasons set forth elsewhere in today's **Federal Register**, proposing the minimum criteria for testing under TSCA section 4(a)(1)(B), and because NMP exceeds these thresholds, EPA finds that there is substantial production of NMP and that there is or may be substantial human exposure based on its manufacture, processing, and use. Elsewhere in today's **Federal Register**, EPA has solicited comments on whether its criteria for interpreting its authority under TSCA section 4(a)(1)(B)(i) should be adopted. Thus, people who have interest in these four rules should comment on those criteria.

II. Records

A. Supporting Documentation

EPA has established records for this rulemaking under section 4, docket number OPTS–42144, which are available for inspection Monday through Friday, excluding legal holidays, in rm. NE–G004, 401 M St., SW., Washington, DC., 20460. These records include basic information considered by the Agency and appropriate **Federal Register** notices.

B. Records for Underlying Rulemakings

(1) USEPA. Office of Drinking Water Chemicals; Proposed Test Rule (OPTS–42111; FRL 3712–5), Office of Pesticides and Toxic Substances, USEPA (May 24, 1990).

(2) USEPA. Cyclohexane; Proposed Test Rule (OPTS–42094; FRL 3202–7), Office of Pesticides and Toxic Substances, USEPA (May 20, 1987).

(3) USEPA. 1,6-Hexamethylene Diisocyanate; Proposed Test Rule (OPTS–42107; FRL 3572–5), Office of Pesticides and Toxic Substances, USEPA (May 17, 1989).

(4) USEPA. *N*-Methylpyrrolidone; Proposed Test Rule (OPTS– 42114; FRL 3712–9), Office of Pesticides and Toxic Substances, USEPA (March 28, 1990).

III. Other Regulatory Requirements

EPA discussed Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act in detail in each of the proposals; and no changes are indicated for this notice.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances Reporting and recordkeeping requirements, Testing.

Dated: July 5, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91–16748 Filed 7–12–91; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-47002J; FRL 3847-2]

RIN 2070-AC31

TSCA Section 4(a)(1)(B) Proposed Statement of Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Statement of Policy.

SUMMARY: EPA is proposing standards and criteria it intends to use in interpreting its legal authority to make findings under the Toxic Substances Control Act (TSCA) section 4(a)(1)(B)(i) for determining substantial production, release to the environment in substantial quantities, and substantial or significant human exposure. This policy is not intended to address how EPA establishes priorities for testing or whether any individual chemical should be tested. Further, EPA does not intend to require testing of every chemical that meets the criteria under TSCA section 4(a)(1)(B)(i) as articulated in this notice because EPA must also find under TSCA section 4(a)(1)(B)(ii) and (iii) that data are inadequate to determine or predict the effects of the chemical and that testing of such chemical is necessary. This notice is not intended to address the policy issues related to how EPA identifies candidates for testing. For the reasons articulated in this notice, EPA is proposing that in cases where the actual numbers for production, release, or exposure are above certain quantitative numerical thresholds, these numbers are per se substantial. Furthermore, EPA proposes that such findings are also appropriate in situations where the quantitative numerical thresholds are not met, if "additional factors" exist. EPA will continue to develop and refine the criteria as its experience with chemicals considered for testing evolves, particularly with regard to the findings of significant human exposure, for which EPA is not proposing a minimum cut-off in this notice. If EPA needs to provide further rationale for its findings beyond the explanation presented in this proposal, EPA will articulate the criteria used in making such findings in the proposal for that individual test rule. This notice also addresses the application of the proposed criteria to EPA's existing cumene test rule (July 27, 1988, 53 FR 28195).

DATES: Submit written comments on or before September 13, 1991.

ADDRESSES: Written comments, in triplicate, identified by the docket number (OPTS-47002J) for the proposed TSCA section 4(a)(1)(B) policy definitions should be submitted to: TSCA Public Docket Office (TS-793), Office Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action is available for inspection at the above address from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

Information submitted in any comment on this notice may be claimed as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be disclosed publicly by EPA by placing it in the public record without prior notice to the submitter.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is proposing to establish quantitative criteria (numerical thresholds) and other factors for evaluating "substantial production," "substantial" and "significant" exposure, and "substantial" release findings as set forth in test rules developed under TSCA section 4(a)(1)(B). In *Chemical Manufacturers Association et al.*, v. *Environmental Protection Agency*, 899 F.2d. 344, (5th Cir. 1990), the Fifth Circuit Court of Appeals (the "Court") remanded to EPA the rule requiring cumene testing and required EPA to articulate criteria for the findings EPA made in the cumene test rule (53 FR 28195). EPA has decided to use this opportunity to propose criteria for making all findings under section 4(a)(1)(B)(i) of TSCA.

I. Introduction

Under section 4(a)(1)(B) of TSCA, EPA must require testing of a chemical substance or mixture (chemical) to develop health effects, environmental effects, or chemical fate data, or other data relevant to determining risk, if it finds that:

(1) The chemical substance or mixture is or will be produced in substantial quantities, and (a) it enters or may reasonably be anticipated to enter the environment in substantial quantities, or (b) there is or may be significant or substantial human exposure to such substance or mixture,

(2) There are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or any combination of such activities on health or the environment can reasonably be determined or predicted, and

(3) Testing of such substance or mixture with respect to such effects is necessary to develop such data.

These are known as "release or exposure-based" findings as opposed to the "risk-based" findings of TSCA section 4(a)(1)(A).

On April 12, 1990, the Court remanded to EPA the TSCA section 4 test rule for cumene in response to a challenge to the rule by the Chemical Manufacturers Association (CMA). The Court generally upheld EPA's factual findings in the rule as being supported by substantial evidence but instructed EPA to "*** articulate the standards or criteria on the basis of which it found the quantities of cumene entering the environment from the facilities in question to be 'substantial' and potentially resulting human exposure to be 'substantial'." EPA decided to use the opportunity to explain its criteria for making all legal findings under section 4(a)(1)(B)(i) of TSCA. This notice is not intended to address EPA's policy decisions for selecting chemicals as potential candidates for testing. After consideration of public comments, EPA will publish a final notice on this policy.

TSCA provides EPA with little guidance on what criteria and standards should be used in making section 4(a)(1)(B) findings. The statute does not define the terms "significant" or "substantial." It is useful, however, to understand EPA's legal authority in TSCA section 4 in the context of the entire statute. The general purposes of TSCA are set forth in TSCA section 2(b):

> (b) Policy.—It is the policy of the United States that—
>
> (1) adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures;
>
> (2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and
>
> (3) authority over chemical substances and mixtures should be exercised in such a

manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment (15 U.S.C. 2601(b)(1)).

As explained in section 2 of TSCA, testing is only a first step. Once test data are obtained, EPA can then consider whether any regulatory restrictions on the manufacturing, processing, distribution in commerce, use, and disposal of the chemical are necessary. If EPA decides that the chemical presents an unreasonable risk of injury, EPA may then initiate rulemaking under section 6 of TSCA. Since testing is only a first step in protecting the public from unreasonable risk of injury to health and the environment, Congress gave EPA broad authority to require testing of chemicals not only when there is some preliminary concern about the chemical (TSCA section 4(a)(1)(A)), but also in the case of chemicals with large production (and release or exposure), even in the absence of any information that the chemical may be hazardous to human health or the environment. This makes sense because in the case of "large" production volume chemicals, it is most likely that these chemicals may have either the release or human exposure scenarios that EPA may wish to restrict based on the results of testing.

The legislative history of TSCA provides some guidance on criteria to be used in making section 4(a)(1)(B) findings: "The conditions specified in (TSCA) section 4(a)(1)(B) reflect the Committee's recognition that there are certain situations in which testing is desirable even though there is an absence of information indicating that the substance or mixture may be harmful" (H. Conf. Rept. 1341, 94th Cong., 2d sess. (1976), at 18 reprinted in, A Legislative History of the Toxic Substances Control Act (Comm. Print 1976) ("Legislative History") at 425) and "*** there are certain situations in which testing should be conducted even though there is an absence of information indicating that the substance or mixture per se may be hazardous" (H. Conf. Rept. 1679, 94th Cong., 2d sess. (1976), at 61 reprinted in, Legislative History at 674). The legislative history also indicates that "*** the Administrator is not limited to consideration of sheer volume of production or exposure at a specific point in time. The duration of the exposure, the level of or intensity of exposure at various periods of time, the number of people exposed, or the extent of environmental exposure are among the considerations which may be relevant in particular circumstances." (Legislative History at 425).

For example, the benefits of testing a chemical in the absence of hazard data is demonstrated by testing conducted under the cumene rule. The sponsors of the cumene testing conducted under the rule found effects of cumene that were important enough to submit to EPA under TSCA section 8(e), Notice to Administrator of Substantial Risks, prior to the time they were required to report the data under the test rule. Also, test sponsors indicated to EPA that they intended to notify workers and consumers about these results, reduce worker exposure to cumene, provide employee training and revise their material safety data sheets for cumene (Ref. 1).

EPA recognizes that it should not interpret the words "significant" and "substantial" in ways that would require it to make findings for every chemical in commerce, or the statute would have simply required testing for all chemicals. Nevertheless, TSCA section 4(a)(1)(B) is designed to support risk management activities under the other provisions of TSCA, including section 6. TSCA is different from most other environmental statutes in that it is intended to be preventative. To allow the continued widespread exposure to chemicals with unknown hazards would be contrary to the preventative goal of TSCA, which was expressed in the legislative history as follows:

> This vast volume of chemicals have, for the most part, been released into the environment with little or no knowledge of their long-term health or environmental effects. As a result, chemicals currently in commercial and household use are now being found to cause or contribute to health or environmental hazards unknown at the time commercial use of the chemical began.
> * * * * *
> [I]t is often many years after exposure to a harmful chemical before the effects of its harm become visible. By that time it may be too late to reverse those effects.
> * * * * *
> Because of the lack of testing by manufacturers and processors of chemicals to determine their health and environmental effects, the general population and the environment now serve as the laboratory for discovering adverse health and environmental effects. Aside from inequities in relying on human experience to indicate when a chemical is harmful, such a method is also a grossly inefficient way to identify problems.

(Legislative History at 411–413).

With greater than 60,000 chemical substances in commerce and a scarcity of knowledge on the vast majority, it is reasonable to interpret TSCA section 4(a)(1)(B) as authorizing EPA to require testing for every chemical that presents a scenario of environmental or human exposure which may need to be addressed on the basis of test data.

EPA is proposing quantitative criteria (numerical thresholds) and other factors that will generally be used to make those determinations while reserving the ability to consider other factors on a case-by-case basis. As a matter of course, EPA has reviewed past test rules promulgated under section 4(a)(1)(B) of TSCA, thresholds embraced in both EPA and non-EPA regulatory programs, and economic indices in developing these criteria. EPA believes that these proposed criteria and factors are both appropriate and reasonable for implementing the congressional mandate of requiring testing of chemicals under TSCA section 4(a)(1)(B).

EPA has implemented a policy designed to routinely seek data on new chemical substances which may present widespread human or environmental exposures that provides a starting point for the development of a policy for existing chemicals. Section 5(e) of TSCA provides EPA with the authority to regulate new substances pending development of health and environmental effects data based on either the potential risk presented by the substance (section 5(e)(1)(A)(ii)(I)) or the potential for substantial production volume and substantial or significant human exposure or substantial environmental release (section 5(e)(1)(A)(ii)(II)).

In initiating the section 5(e) policy, EPA developed criteria (guidelines) to define the terms "substantial" and "significant" in the section 5(e)(1)(A)(ii)(I) and 5(e)(1)(A)(ii)(II) findings. These guidelines are illustrated in Unit IV. A. of this notice. Because the production volumes of new substances are typically smaller until they have been in production for sometime and because of the greater uncertainty in accurately predicting the exposures which may result to humans and the environment from the manufacturing, processing, distribution in commerce, use, and/or disposal of these new substances, EPA has adopted threshold values for new substances which are lower than those which are being proposed in this notice for the testing of existing chemicals under TSCA section 4(a)(1)(B).

II. Proposed Approach

A. Substantial Production

The first finding under TSCA section 4(a)(1)(B) is whether the chemical "is or will be produced in substantial quantities," referred to as "substantial production." EPA is proposing that a threshold value of 1 million pounds (lbs.), 454,000 kilograms (kgs.), be established as the substantial production threshold. EPA believes it is reasonable to interpret production in substantial quantities to mean large production, and that 1 million pounds is a large amount of production. The TSCA section 8(b) inventory of the chemical substances in commerce shows that only about 11 percent of the listed substances have production volumes over 1 million pounds, together accounting for over 95 percent of the total production volume of all substances produced in the United States (Ref. 2). EPA believes that TSCA section 4(a)(1)(B) gives EPA sufficient discretion to set the level of substantial production lower than 1 million pounds per year; however, it is well within reason to find that this small number of chemicals (i.e., the top 11 percent according to production volume), which account for the vast majority of all production, clearly are chemicals with substantial production as that term is used in TSCA section 4(a)(1)(B).

However, some may feel that a substantial production threshold value of 1 million pounds per year is too low a value; others may feel it is too high. Therefore, EPA is soliciting comments on adoption of a different threshold value and the supporting rationale for such choice.

Some manufacturers of chemicals for which TSCA section 4(a)(1)(B) findings would be made may claim that their individual production volumes of a particular chemical are confidential business information. EPA recognizes that whenever it makes a finding under TSCA section 4(a)(1)(B) based on the numerical threshold for substantial production (i.e., 1 million pounds per year), it would be publicly acknowledging that the chemical is or will be produced in the aggregate in quantities exceeding 1 million pounds per year. EPA does not believe that disclosing to the public the fact that a chemical is produced in at least 1 million pounds per year would be a disclosure of CBI. In making such a finding, EPA would be relying on the aggregate production volume of the chemical for all manufacturers. Thus, EPA would not be disclosing specific information regarding any particular product. Moreover, a statement that a production volume is at least 1 million pounds, would not disclose sufficient information to be considered a disclosure of information which might be entitled to confidential treatment. In any event, TSCA section 14(a)(4) authorizes the disclosure of information which otherwise might be entitled to confidential treatment when relevant in any proceeding, including rulemaking, provided that disclosure is made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding. By disclosing only that a chemical is or will be produced in volumes of 1 million pounds per year or greater, EPA would preserve confidentiality to the extent practicable while still making findings under section 4(a)(1)(B).

B. Substantial Release

If the criterion for substantial production under section 4(a)(1)(B)(i)(I) is met, then at least one of the following three separate findings under section 4(a)(1)(B)(i)(II) would also have to be met to legally require testing: (1) There is or may be substantial release, (2) there is or may be substantial human exposure, or (3) there is or may be significant human exposure. Substantial release is discussed in this Unit II.B, while both human exposure components are discussed together in Unit II.C. of this notice.

EPA believes that the intent of Congress was that the phrase "enter the environment in substantial quantities" (referred to as "substantial release") captures chemicals for which there is or may be extensive release to the environment which, in itself, would be sufficient to require testing even in the absence of any information that the chemical may be hazardous to human health or the environment because such releases might be amenable to risk management. In other words, as with substantial production, release of substantial quantities means large release. EPA is proposing that, a value of 1 million pounds per year release or release of at least 10 percent of total production volume, whichever is lower, be established as the threshold. EPA believes that 1 million pounds of release to the environment each year is a sufficiently large amount of release where testing could be required even in the absence of any hazard information. The Toxics Release Inventory (TRI) (Ref. 3) established under section 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11023, shows that 37 percent of the listed chemicals have releases over 1 million pounds, accounting for over 99 percent of the total reported releases on the TRI by volume released. However, the TRI is comprised only of the releases of a select group of chemicals, and therefore may not be representative of the releases of all chemicals in commerce. EPA believes that because in actuality, only 11 percent of all chemicals are produced in quantities that exceed 1 million pounds, the percentage of those chemicals that are released in this quantity will be much smaller. Although EPA believes TSCA allows it the discretion to interpret substantial release at amounts lower than 1 million pounds per year, EPA believes it is reasonable to interpret the term "substantial release" to include this limited group of chemicals (i.e., less than 11 percent).

The alternative of at least 10 percent of production volume threshold is incorporated into this criterion to allow EPA some flexibility to require testing of chemicals that are produced in quantities equal to or greater than 1 million pounds per year, but that are released in amounts less than 1 million pounds per year. Although few chemicals with production volumes between 1 and 10 million pounds will have releases of greater than 10 percent of production volume, EPA believes it is reasonable to require testing of such chemicals because a release of 10 percent of production means that a sizable amount of what is being produced is escaping into the environment. Given the results of the testing, EPA may want to act to limit such releases. Again, by setting the level at 10 percent of production, EPA believes that this is a reasonable interpretation of EPA's authority under TSCA section 4(a)(1)(B).

However, some may feel that the 1 million pounds of release or 10 percent of production volume threshold may lead to inconsistent results. For instance, under these criteria a chemical with 1 million pounds of production and 100,000 pounds of release would met the criteria for substantial release, while a chemical with 2 million pounds of production and 100,000 pounds of release would not met the criteria for substantial release. Therefore, EPA solicits comments on the adoption of a fixed threshold, such as 100,000 pounds or 1 million pounds.

C. Substantial and Significant Human Exposure

The TSCA section 4(a)(1)(B) findings for human exposure have two bases: substantial or significant. Because a basic principle of statutory construction is that when Congress used two different words, it intended them to

have two different meanings, EPA believes that interpreting the two words to have different meanings is a reasonable interpretation of the statute. *United States v. Johnson*, 462 F.2d 463 (3rd Cir. 1972), cert. denied, 410 U.S 937 (1093). EPA has attempted to define these terms within the bounds established in TSCA and in its legislative history. Note that EPA can make a finding that there is or may be both significant human exposure and substantial human exposure if the number of people exposed exceeds the threshold set forth in the policy and the nature of the exposure is also significant as set forth in this policy. The following Table 1 compares the proposed criteria for "substantial" and "significant" exposure:

TABLE 1.—PROPOSED TSCA SECTION 4(A)(1)(B) HUMAN EXPOSURE CRITERIA

Category	Substantial	Significant
General population	100,000 people	< 100,000 people exposed more directly or on a routine or episodic basis
Consumers	10,000 people	< 10,000 people exposed more directly or on a routine or episodic basis
Workers	1,000 workers	< 1,000 workers exposed more directly or on a routine or episodic basis.

While there was little guidance provided by the statute itself or the legislative history, under TSCA EPA has traditionally interpreted the word "substantial" as a quantitative measure, referring in this case to widespread exposure-large numbers of people. EPA believes that it is reasonable to interpret the term "substantial human exposure" to mean widespread human exposure, or in other words, exposure to large numbers of people. This is reasonable because where large numbers of people are exposed to a chemical, EPA and others should have data indicating whether the chemical presents an unreasonable risk, to decide whether actions are necessary to protect the public against such unreasonable risk. EPA does not rely on levels of exposure in determining substantial exposure, because the risk presented by a level of exposure cannot be determined unless the toxicity of the chemical is known. Further, EPA can also require testing under TSCA section 4(a)(1)(B) to determine the level of exposure to a particular chemical.

EPA believes this is a reasonable interpretation of the word "substantial" because Congress made it clear that EPA should require testing under TSCA section 4(a)(1)(B) even in the absence of information that the chemical may be hazardous, if the other findings could be made. In risk assessment, it is necessary to take into account both the toxicity and the exposure to determine the risk. Under TSCA section 4(a)(1)(B), where there is or may be a substantial number of people exposed and toxicity is not characterized, EPA believes it is appropriate to obtain data on those chemicals for which EPA might consider further assessment. EPA believes that when there may be tens of thousands of people exposed to a chemical, thousands of consumers exposed to a chemical, or 1,000 workers exposed to a chemical, it is reasonable to require test data on that chemical. EPA believes that the different numerical thresholds for workers, consumers, and the general population are necessary to reflect the inherent differences in each probable exposure scenario (e.g., workers generally are exposed on a more routine or direct basis than consumers, and consumers are generally exposed on a more direct basis than the general public).

As a general matter, EPA has found that workers tend to be subject to routine or episodic exposure over a long period of time. Thus, exposure, to be considered substantial, does not have to be as widespread for workers as for consumers or the general population.

Similarly, TSCA and its legislative history provide little guidance about what constitutes significant human exposure. Under TSCA, EPA has generally interpreted the term "significant" as relating to the nature or importance of exposure. EPA therefore is proposing to interpret "significant" as referring to the nature of the exposure. EPA believes that if the nature of some exposure is sufficiently direct, large or prolonged, even if the number of people exposed is not "substantial", there is a need to develop data on the chemical because, on the basis of the data, EPA may take some risk management action to control the exposure.

By its interpretation of "significant human exposure," EPA does not adopt the approach suggested by CMA in the cumene litigation to require testing only if EPA demonstrates that people are exposed to levels that would be considered toxic if the chemical were found to be hazardous. EPA rejects this approach because it cannot know what level of exposure is hazardous until the chemical's toxicity has been fully tested. Currently, EPA and the scientific community do not have sufficient data about the universe of chemicals to set such an absolute cutoff level for requiring testing. Further, EPA rejects this approach because TSCA section 4 requires only that EPA find that there "is or may be significant or substantial human exposure" (emphasis added) to a chemical, not that EPA definitively prove exposure at a particular level.

A finding of significant exposure would generally be made where the numerical threshold for numbers of persons exposed for substantial exposure is not met, but the nature of the exposure is more direct than that which usually characterizes general population exposure, consumer exposure, or worker exposure. For example, if there is general population exposure to fewer than 100,000 people, but the nature of the exposure is quite direct, e.g., via drinking water, EPA may find that there is significant exposure for purposes of requiring testing under TSCA section 4. An example of significant consumer exposure might be where fewer than 10,000 consumers are exposed, but the consumers use the product near their food, or are likely to inhale it or dermally contact the substance.

EPA recognizes that the approach explained in this proposal integrates to some extent the concepts of "substantial" and "significant" in defining what constitutes "substantial human exposure" by distinguishing between the nature of the exposure to workers, consumers, and the general population. The Court in *CMA* recognized that there could be some overlap between substantial and significant human exposure: "*** it is not necessarily clear that 'significant' and 'substantial' as used in clause (II) must be understood in a way that prevents any overlap in their respective meanings or requires that any factor relevant to one be necessarily irrelevant to the other." *CMA* at 356, note 17. Finally, EPA believes its approach is a reasonable interpretation of its legal

authority because there must be substantial production before EPA even considers whether there is or may be substantial release or significant or substantial human exposure. Thus the criteria listed above for release and exposure will not result in testing any chemicals other than those in the highest 11 percent of all chemicals produced.

D. Additional Factors

EPA would apply the generic numerical thresholds for most chemicals considered for action under TSCA section 4(a)(1)(B). In some cases, however, where the thresholds are not met, it may be more appropriate to use a case-by-case approach for making findings by applying other considerations. That is to say, EPA may consider "additional factors" for making findings for chemicals which do not meet the numerical thresholds proposed herein for evaluating existing chemicals under TSCA section 4(a)(1)(B). EPA's authority to use this flexible approach was recognized by the Court in its decision regarding the cumene test rule. The Court stated that EPA's definition need not be precise — it need not "function like a mathematical formula." Further, the Court stated EPA need not even adopt a definition applicable to all cases, but may proceed on a case-by-case interpretation, if it rationally explains its exercise of discretion. (*CMA* at 359.)

An example of an "additional factor" is bioaccumulation. Bioaccumulation refers to the tendency of certain chemicals to concentrate in animal tissue in increasing levels as it progresses up the food chain. The term refers to both uptake from water (bioconcentration) and uptake from ingested food and sediment residues (Ref. 4). Chemicals that bioaccumulate have been found in shellfish, birds, mammals, and human adipose tissue. As a general matter, EPA believes that the release to the environment of a chemical that bioaccumulates is of greater concern than the release of a substance that does not bioaccumulate. EPA believes that the persistence of a chemical in the environment, the subsequent storage of a chemical in animal tissue, and the likelihood for concentration of a chemical in the food chain are factors that could indicate that a chemical should be tested to determine if risk management measures are necessary even at release levels below those specified in the general criteria. Thus, release to the environment of a chemical that bioaccumulates may be considered to be substantial release even if the 1 million pound or 10 percent threshold for substantial release is not met.

Further, existence of a chemical in human adipose tissue may indicate widespread human exposure to the chemical, if the tissue survey represents a large population. Therefore, for example, exposure as demonstrated by existence of a chemical in the National Human Adipose Tissue Survey may be the basis for making a finding of substantial human exposure to the chemical.

Finally, in some cases, EPA may consider a category of chemicals for testing where it does not have information for each chemical within the category that shows that each chemical meets the thresholds established in this policy. In these cases, EPA believes it is reasonable to use the thresholds articulated in this notice for making findings on the entire category, rather than requiring EPA to show that each individual within the category meets the criteria set forth in this notice.

On the other hand, there may be some instances when a chemical meets the criteria proposed in this notice under TSCA section 4(a)(1)(B)(i), but EPA decides not to propose testing under TSCA section 4(a)(1)(B) because EPA finds that data are sufficient to reasonably determine or predict the effects of the manufacture, process, distribution, use and disposal of the chemical and/or that testing is not necessary.

III. Application of Proposed Criteria to the Final Test Rule for Cumene

EPA issued a final test rule under TSCA section 4(a)(1)(B), requiring manufacturers and processors of cumene to perform health effects testing. Based on the available data on cumene discussed in Unit II. of the preamble to the final rule (July 27, 1988, 53 FR 28195) (Ref.5) and Unit II. of the preamble to the proposed rule (November 6, 1985, 50 FR 46104), EPA found that cumene is produced in substantial quantities, that there is or may be substantial human exposure from its manufacture, processing, use, and disposal, and that it is released in substantial quantities to the environment based on estimates of release.

EPA found that cumene is produced in substantial quantities. EPA has found, and the Court in *CMA* upheld EPA's finding that U.S. production of cumene in 1984 was reported to be 3.35 billion pounds, and an additional 339 million pounds was imported. For the reasons discussed elsewhere in this notice, EPA finds that 1 million pounds of production per year is substantial production and therefore, cumene is produced in substantial quantities.

Based on release estimates, EPA found that cumene is released to the environment in substantial quantities. EPA has found, and the Court in *CMA* upheld EPA's finding that the fugitive emissions of cumene to the atmosphere from manufacturing, processing, and use activities are estimated to be 3 million pounds per year. For the reasons discussed elsewhere in this notice, 1 million pounds of release to the environment is substantial release, and therefore cumene may be released into the environment in substantial quantities.

EPA also found that there may be substantial human exposure to cumene. The industrial releases of cumene are concentrated in a few large metropolitan areas where the majority of cumene manufacturing and processing facilities are located. The Court in *CMA* found that the record adequately supported EPA's finding that approximately 13.5 million people living in the vicinity of cumene manufacturing and processing facilities may be exposed to this chemical.

When CMA briefed its case, it submitted a monitoring study not submitted as comments on the rule that relates to the presence of many chemicals in the Houston Ship Channel area; including cumene. CMA submitted the study in support of its argument that there was not substantial exposure to cumene. The Court in *CMA* said, "The extent to which this information may be material may significantly depend on the criteria articulated or developed by EPA on remand. We direct that EPA on remand afford CMA an opportunity to present such studies (and any others that EPA deems appropriate) unless they would not be material to any of EPA's criteria relied on for the testing" (*CMA* at 360–361).

EPA's preliminary review of the study indicates that the study presents the level of cumene found at certain times in the Houston Ship Channel area, rather than the number of people exposed. Because the criteria for finding that there is or may be substantial human exposure is based on the number of people which are or may be exposed, rather than the levels of exposure, the study does not relate to whether EPA could make a substantial human exposure finding. However, because the finding that there is substantial production and that there is or may be substantial release to the environment are legally sufficient to support the test rule and the testing of cumene has been completed, it is not necessary for EPA to

give further consideration to the question of whether there is or may be substantial human exposure to cumene at this time.

Therefore, for the reasons set forth elsewhere in this notice proposing the minimum criteria for testing under TSCA section 4(a)(1)(B), and because cumene exceeded these thresholds, EPA finds that there is substantial production of cumene and there is or may be substantial release of cumene based on its manufacture, processing, use, and disposal.

IV. Alternatives to Proposed Criteria

A. *Substantial Production*

EPA considered other options for interpreting "substantial production": First, the 220,000 pound (100,000 kg.) substantial production threshold (Ref. 6) used by EPA under its TSCA section 5(e) authority; and second, a production volume threshold based on the uppermost quartile of chemicals produced. These two options would capture essentially the same chemicals. That is to say, chemicals with production volumes in or near the 220,000 pound range and above. EPA thinks that 220,000 pounds, while appropriate for new substances which inherently have smaller production volumes early in their commercial life, may be an unreasonably low production threshold for an existing chemical. For these reasons, EPA thinks that these options are less appropriate than the proposed criterion. EPA also solicits comment on whether a higher threshold should be used and the supporting rationale for using such a higher threshold.

B. Substantial Release

EPA considered other options for interpreting "substantial release": First, the 22,000 pound (10,000 kg.) substantial release (all environmental media) threshold used by EPA under its TSCA section 5(e) authority; second, a set threshold of 1 million pounds of release; and third, release greater than 10 percent of a chemical's production volume.

EPA believes that 22,000 pounds of release, while appropriate for new substances which inherently have smaller production and release volumes early in their commercial life, could include the release volumes of most existing commercial chemicals, and is therefore not indicative of the term "substantial release" as it relates to TSCA section 4(a)(1)(B).

Also, EPA believes that assigning a release threshold based solely on a fixed release volume of 1 million pounds is unreasonable and inappropriate for determining release into the environment of "substantial quantities" of chemicals. A fixed threshold of 1 million pounds would, in essence, exclude almost all chemicals with production volumes of between 1 and 10 million pounds from testing under TSCA section 4(a)(1)(B), based on release volume; rendering the 1 million pound "substantial production" threshold meaningless. This is because few chemicals with production volumes between 1 and 10 million pounds have releases which exceed 1 million pounds.

Finally, EPA rejected the percentage only approach because in the absence of data similar to TRI for all chemicals, it may be difficult for EPA to determine precisely what percentage of a chemical's production volume is released to the environment. Furthermore, even when releases are less than 10 percent of production volume, they may be large in quantity for extremely high production volume substances and therefore they merit testing. For these reasons, EPA believes that these options are less appropriate than the proposed criteria. EPA also solicits comment on whether a higher threshold should be used and the supporting rationale for using such a higher threshold.

C. Substantial And Significant Human Exposure

EPA considered other options for interpreting "substantial" and "significant" human exposure: First, define the terms "substantial" and "significant" solely on the basis of numbers of people exposed without regard to whether the persons are workers, consumers, or members of the general population, and base "significant" human exposure on the nature of exposure; or second, adopt the "substantial" and "significant" human exposure thresholds used by EPA under its TSCA section 5(e) authority (see Table 2.). EPA believes that the first option may not adequately address the inherent differences in magnitude and duration of exposures to workers, consumers, and the general population. Option 2 was rejected because new chemicals are more likely to have lower levels of exposure or less widespread exposure than existing chemicals and therefore the levels and numbers of persons exposed used by EPA in implementing TSCA section 5(e) may be more appropriate for new chemicals. For these reasons, EPA thinks these options are less appropriate than the proposed approach.

As discussed above, quantitative and qualitative guidelines have been established in interpreting each of the same statutory terms for the review of new substances pursuant to EPA's TSCA section 5(e) authority. In general, the guidelines used for evaluating new substances under section 5(e) have lower threshold values than those proposed herein for section 4(a)(1)(B). Therefore, EPA encourages public comment of the adoption of the section 5(e) guidelines for evaluating chemicals under section 4(a)(1)(B). If comments indicate to EPA that there is a sufficiently strong basis for adopting section 5(e) guidelines, or some other criteria, than the criteria proposed herein by EPA, EPA will consider adopting those criteria. The section 5(e) "substantial" and "significant" human exposure guidelines for all substances having annual production volumes of at least 220,000 pounds are as follows:

TABLE 2.—TSCA SECTION 5(e) HUMAN EXPOSURE GUIDELINES

Substantial and/or Significant Exposure Criteria	Description of Criteria
Worker:	
high number of workers exposed.	≧ 1,000 workers exposed (substantial)
acute worker exposure	≧ 100 workers exposed by inhalation to ≧ 10 mg/day(substantial and significant)
chronic worker exposure:	
inhalation	≧ 100 workers exposed to 1-10 mg/day for ≧ 100 days/year (substantial and significant)
dermal	≧ 250 workers exposed to by routine dermal contact for ≧ 100 days/year (substantial and significant)
Consumer:	
consumer exposure	Presence of the substance in any product where (1) the physical state of the substance in the product; and (2) the manner of use would make exposures likely (significant)
General Population:	
ambient surface water exposure.	≧ 70 mg/year of exposure via surface water (significant)
ambient air exposure	≧ 70 mg/year of exposure via air (significant)
ambient groundwater	≧ 70 mg/year of exposure via groundwater (significant)

TABLE 2.—TSCA SECTION 5(e) HUMAN EXPOSURE GUIDELINES—Continued

Substantial and/or Significant Exposure Criteria	Description of Criteria
aggregate ambient exposure through surface water, air, and groundwater (where leaching from landfill is expected).	≥ 22,000 lbs./year release to all environmental media (substantial)

EPA also solicits comment on whether a higher threshold should be used and the supporting rationale for using such a higher threshold.

V. Record

A. Supporting Documentation

EPA has established a record for this policy under TSCA section 4, docket number OPTS–47002J, which is available for inspection Monday through Friday, excluding legal holidays, in rm. NE–G004, 401 M St., SW., Washington, DC., 20460 from 8 a.m. to 12 noon and from 1 p.m. to 4 p.m. This record includes basic information considered by EPA in developing this policy. This record includes the following information:

(1) Interagency memoranda, comments, and proposals.

(2) Reports - published and unpublished data.

(3) Chemical Manufacturers Association v. EPA, 899 F.2d 344 (5th Cir. 1990).

B. References

(1) USEPA. Section 8(e) Notice, Public Docket Control No. 88–900000018, 8EHQ–0190–0846 FLWP, Office of Toxic Substances. USEPA (January 24, 1990).

(2) USEPA. Chemicals In Commerce Information Systems Search (CICIS). Office of Toxic Substances, USEPA (1977).

(3) USEPA. Toxic Release Inventory (TRI). Office of Toxic Substances, USEPA (1988).

(4) Casarett, L., and J. Doull. Toxicology: The Basic Science of Poisons. Macmillian Publishing Company , New York. (1986).

(5) USEPA. Cumene; Final Test Rule (OPTS–4207A; FRL 3420–2. Office of Toxic Substances, USEPA (July [illegible] 1988).

(6) USEPA. Implementation Proposal: "New Chemicals Exposure-Based Finding," letter from Charles L. Elkins to Geraldine V. Cox (Chemical Manufacturers Association). Office of Toxic Substances, USEPA (September 22, 1988).

Dated: July 5, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

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Monday
July 15, 1991

Part X

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Formaldehyde; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safe nd Health Administration

29 CFR Part 1910

[Docket No. H-225D]

Occupational Exposure to Formaldehyde; Response to Court Remand

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

ACTION: Response to Court remand; proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to amend its existing regulation for occupational exposure to formaldehyde, 29 CFR 1910.1048, in response primarily to a remand by the U.S. Court of Appeals for the D.C. Circuit in *UAW* v. *Pendergrass*, 878 F.2d 389 (D.C. Cir. 1989). The proposed amendments would lower the permissible exposure level for formaldehyde from the existing level of 1 ppm (parts per million) as an 8-hour time-weighted average to an 8-hour time-weighted average of 0.75 ppm. OSHA is also proposing to add medical removal protection provisions to supplement the existing medical surveillance requirements for those employees suffering significant eye, nose or throat irritation and for those suffering from dermal irritation or sensitization from occupational exposure to formaldehyde. In addition, certain changes are being proposed to the standard's hazard communication and employee training requirements. These amendments would establish specific hazard labeling requirements for solid materials capable of off-gassing formaldehyde between 0.1 ppm and 0.5 ppm and other hazard labeling requirements for those solid materials capable of off-gassing above 0.5 ppm under reasonably foreseeable conditions of use.

DATES: Comments on these proposed amendments must be postmarked by August 14, 1991.

ADDRESSES: Written comments should be sent in quadruplicate to the Docket Officer, Docket No. H-225D, U.S. Department of Labor, room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523-7894.

Any written comments received will be available for inspection and copying in room N-2625, at the above address, from 8:15 a.m. to 4:45 p.m., Monday through Friday.

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

SUPPLEMENTARY INFORMATION:

Background and History of the Regulation

On December 4, 1987, after an extensive rulemaking proceeding, detailed in the preamble to the final rule (52 FR at 46169-46171), OSHA issued a comprehensive regulation covering occupational exposure to formaldehyde at 29 CFR 1910.1048. This new rule reduced the permissible exposure limits (PELs) to 1 part formaldehyde per million parts of air (ppm) as an 8-hour time-weighted average (TWA), and established a 2 ppm 15-minute short term exposure limit (STEL). The new comprehensive standard also included an "action level" of 0.5 ppm, measured as an 8-hour TWA, and provisions for employee exposure monitoring, medical surveillance, recordkeeping, regulated areas, emergency procedures, preferred methods to control exposure, maintenance and selection of personal protective equipment, and hazard communication. OSHA's new rule was based on the consideration of a wide range of new evidence including animal bioassays and epidemiological evidence. It was based in part on OSHA's recognition of formaldehyde as a potential occupational carcinogen as well as its irritating and sensitizing effects.

The standard was challenged in the United States Court of Appeals for the District of Columbia Circuit, pursuant to section 6(f) of the Act, 29 U.S.C. 655(f), by both industry and labor. Four unions, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), the Amalgamated Clothing and Textile Workers Union (ACTWU), the International Ladies' Garment Wolkers Union (ILGWU) and the International Molders and Allied Workers Union, and Public Citizen, a public interest group, challenged the standard as being insufficiently protective. They contended that the PEL was not set low enough to eliminate all significant risk of harm from both cancer and from formaldehyde's irritant effects. They also objected to OSHA's decision not to include a medical removal protection (MRP) provision in the standard, and to a number of other aspects of the standard, including the setting of the action level, the lack of a requirement for annual medical examinations, and the provisions regarding labeling and training.

The Formaldehyde Institute (FI), on the other hand, sought review of the hazard communication provisions in paragraph (m) of the standard. While challenging these provisions in court, the FI, along with others, petitioned OSHA for an administrative stay of the hazard communication provisions and reconsideration of these provisions. On December 13, 1988, after giving the public an opportunity to comment on this petition, OSHA stayed the hazard communication provisions, paragraphs (m)(1)(i) through (m)(4)(ii), and announced its intention to consider further regulatory action on these provisions (53 FR 50198). The effect of the stay was to continue the implementation of OSHA's generic Hazard Communication Standard (29 CFR 1910.1200) in effect with respect to formaldehyde. The administrative stay was subsequently continued to allow the Agency more time to resolve the issue (54 FR 35639, 8/29/89; 55 FR 24070, 6/13/90; 55 FR 32616, 8/10/90; 55 FR 51698, 12/17/91; 56 FR 10377, 3/12/91; 56 FR 26909, 6/12/91).

The Court of Appeals affirmed the final standard in most respects but concluded that OSHA had failed to adequately explain why it had not adopted a lower PEL to protect against the carcinogenic effects of formaldehyde exposure and why it had not included medical removal protection (MRP) provisions in the standard. *UAW* v. *Pendergrass*, 878 F.2d 389 (D.C. Cir. 1989). The Court's decision required OSHA to better explain or reevaluate the risk assessment that led it to choose a PEL of 1 ppm. Should OSHA conclude that a significant risk remains at 1 ppm, according to the Court the Agency could then adjust the standard accordingly. The Court's decision also required OSHA to better explain or reevaluate its decision not to include an MRP provision in the standard.

The Court did not review the hazard communication provisions of the standard because they had been administratively stayed for reconsideration at the time. Because all of the provisions of the standard are interconnected, OSHA has determined that the hazard communication provisions should be reconsidered together with the remand issues.

The Parties' Recommendation

Following the remand, parties to the litigation developed recommendations for revisions to the standard that they believed represented a reasonable resolution of all outstanding issues.

Their recommendation, which was presented to OSHA on June 27, 1990, would (1) lower the PEL to 0.75 ppm TWA; (2) include in the standard certain provisions for MRP benefits; and (3) modify the standard's hazard communication provisions by revising labeling requirements for solid materials off-gassing small amounts of formaldehyde and providing annual training in formaldehyde hazards for all employees exposed at or above 0.1 ppm (Ex. 278).

OSHA has given these recommendations careful consideration. A recommendation advanced by representatives of the primary employee and employer organizations affected by the standard is likely to incorporate provisions that will adequately protect employees, within the limits of current knowledge, while not burdening employers with compliance costs that will produce little or no benefit in improved employee safety and health.

While a recommendation by interested persons cannot relieve the Agency of its statutory duty to independently decide regulatory issues, OSHA believes this recommendation is entitled to considerable weight. The Agency has carefully evaluated these recommendations in light of the entire rulemaking record in determining how best to resolve the remaining issues and respond to the Court's concerns.

OSHA's Proposal

OSHA's proposal to respond to the remand is consistent with the recommendations of the parties to the litigation and incorporates them. The final proposal significantly increases employee protection over the existing standard by lowering the PEL, adding a provision for MRP, and requiring annual training for all workers exposed at or above 0.1 ppm. The final proposal also requires less inclusive labels on certain formaldehyde-containing products. All containers of products that required labels under the original standard will still require labels. The revised labels will give employees access to complete hazard information, and employees will be better able to evaluate these hazards because they will now receive annual training instead of one-time training. OSHA believes that these changes in the unique case of formaldehyde will not reduce employee protection.

Rulemaking Procedure

The Agency plans to use expedited rulemaking in this proceeding. OSHA is asking for comments on the proposal but believes that there will be very few comments submitted because the proposal is consistent with a consensus of the parties who were active during the rulemaking proceeding and the issues addressed have been fully ventilated in the comprehensive rulemaking record already compiled. Therefore, the comment period will be limited to 30 days, which will allow interested persons an opportunity to voice legitimate concerns, but will not cause unwarranted delay. Although this document is a proposal, OSHA believes that it represents its best judgment as to how to resolve the remaining issues before it. Therefore, in the absence of significant comments to the contrary, the Agency gives notice that the amendments as proposed will probably be adopted as a final rule as they appear in this document.

Should the Agency receive significant objections to this proposal or in the unlikely event that issues are raised that have not been fully considered in developing this proposed final rule, the Agency would give the public notice of this fact, and proceed with further rulemaking under section 6(b) of the Act.

The Agency is proceeding with this expedited rulemaking in this case because of the unusual circumstances present here. This action is taken in the face of a court ordered remand, much public participation, a full airing of all sides of these issues and perhaps most importantly, an emerging consensus of the parties as to the necessary and appropriate action to resolve all remaining issues. It is felt that this expedited proceeding will serve the interests of all the parties as well as those men and women presently working with formaldehyde. This procedure will also avoid further needless delay and will help conserve scarce Agency resources that can, at this point, be better used to help protect workers from other dangers present in their workplaces.

OSHA has chosen this procedure with several considerations in mind. in remanding the PEL and MRP issues to OSHA, the Court of Appeals clearly contemplated that these issues could be resolved on the existing record, for the Court left open to the Agency the option of retaining the existing provisions and better explaining its rationale. While the hazard communication provisions were not remanded by the Court, they were part of the litigation before the Court and are closely related to the issues which were remanded. Section (6)(b)(7) of the Act allows the Secretary to follow the notice-and-comment procedures of the Administrative Procedure Act (5 U.S.C. 553) to make modifications in regulations dealing with the use of labels or other forms of warning (as well as those dealing with monitoring or measuring and medical examinations) "as may be warranted by experience (or) information * * * acquired subsequent to the promulgation of the relevant standard."

OSHA has concluded that the same procedures should be followed for all of the provisions of the standard currently being reconsidered. These provisions are inextricably intertwined; whenever a change is made in one of these provisions, its effect on the other provisions must be carefully evaluated. For example, as discussed more fully below, OSHA has concluded that the effectiveness of a provision for MRP will be enhanced by annual training that will enable workers to be better able to identify the signs and symptoms of formaldehyde exposure. Similarly, the effectiveness of the labeling provisions is greatly enhanced by the training requirements. It is sensible and efficient to consider all contemplated changes together. OSHA has therefore concluded that a single rulemaking action should encompass all the issues that remain outstanding.

OSHA has also concluded that an extensive rulemaking, including a lengthy comment period and hearings, is unnecessary in the absence of any indication that such procedures would add useful information to the already extensive rulemaking record. The issues under consideration were subject to extensive public participation and rulemaking procedures, and an extensive record has been compiled (52 FR 46171). OSHA believes that a further opportunity for extensive re-discussion may not yield significant evidence or information that is not already in the record. However, a procedure that would foreclose the public from any opportunity to comment would not be appropriate. OSHA has therefore determined that an opportunity for public comment should be afforded, but that the issuance of a final standard can be expedited if no significant evidence or comments are offered. The procedure OSHA has chosen will expedite the issuance of a final standard while assuring procedural fairness to all persons interested in the standard. Good cause is hereby found to use the procedure outlined above.

Properties, Manufacture, and Uses of Formaldehyde

The chemical "formaldehyde" is a colorless, pungent gas at room temperature with an approximate odor threshold of about 1 ppm (Ex. 73–120). While the term "formaldehyde" is also used to describe various mixtures of formaldehyde water, and alcohol, the

term "formalin" more precisely describes aqueous solutions, particularly those containing 37 to 50 percent formaldehyde and 6 to 15 percent alcohol stabilizer. Most formaldehyde enters commerce as formalin. Alcoholic solutions of formaldehyde are available for processes that require low water content (Ex. 73–53). Paraformaldehyde, a solid, also serves as a source of formaldehyde gas. Formaldehyde gas *per se* is not available commercially. The Chemical Abstracts Service (CAS) has assigned the number "50–00–0" to formaldehyde. This number applies to both formaldehyde gas and its aqueous or alcohol stabilized solutions.

Formaldehyde is a major industrial chemical, ranked 24th in production volume in the United States (Ex. 138–F). In 1985, 5.7 billion pounds of 37 percent formaldehyde (by weight) was produced. Formaldehyde has four basic uses: As in intermediate in the production of resins; as an intermediate in the production of industrial chemicals; as a bactericide or fungicide; and as a component in the formulation of end-use consumer items. The manufacture of three types of resins: urea-formaldehyde, phenolformaldehyde, and melamine formaldehyde, accounts for about 59 percent of total consumption (Exs. 70–2; 73–52). An additional seven percent is consumed in the production of thermoplastic acetal resins (Ex. 8). About one-third is used in the synthesis of high volume chemical derivatives, including pentaerythritol, hexamethylenetetramine, and butanediol (Ex. 8). Two percent is used in textile treating and small amounts of formaldehyde are present as preservatives or bactericides in consumer and industrial products, such as cosmetics, shampoos and glues.

Some products prepared from formaldehyde contain unreacted formaldehyde residues which may be released from the product over its useful life. One example is urea-formaldehyde resin. Urea-formaldehyde resin is a generic name that actually represents an entire class of related formulations. Over 60 percent of urea-formaldehyde resin production in 1977 was consumed by particleboard and plywood manufacturing, where the resin is used as a glue. Urea-formaldehyde resins are also used in decorative laminates, textiles, paper, and foundry sand molds (Ex. 73–53).

Textile treating to impart wrinkle-resistance to clothing is not a major use of formaldehyde on a strict volume basis. However, apparel manufacture is the sixth largest industry sector in the United States (Exs. 70–2; 70–14). About 60–85 percent of all apparel fabric is finished with formaldehyde-containing resins, and this use is the major source of widespread exposure to formaldehyde because of the large number of workers potentially exposed.

Formaldehyde destroys bacteria, fungi, molds, and yeast. Its commercial importance as a fungicide is probably its greatest use as a disinfectant (Ex. 70–2). Because of its bactericidal properties, formaldehyde is used in numerous cosmetic preparations.

Formaldehyde's uses can lead to widespread exposure in downstream industries. For example, when formaldehyde is present in disinfectants, preservatives, and embalming fluid, worker exposure can occur. Although formaldehyde changes into other chemicals when urea-formaldehyde resins and concentrates are produced, decay may occur, causing workers in numerous industries including wood products and apparel manufacture to be exposed to airbone formaldehyde when it offgasses from products manufactured with these resins.

Summary and Explanation of the Proposed Amendments

Paragraph (c)—Permissible Exposure Limits (PELS)

This proposed amendment to the final rule reduces the permissible exposure limit to 0.75 part formaldehyde per million parts of air as an 8-hour time weighted average (0.75 ppm TWA). The basis for proposing this change is the reexamination of the formaldehyde risk assessment that was undertaken in response to the Court remand. In its risk assessment accompanying the promulgation of the standard in 1987, OSHA calculated both the maximum likelihood estimate (MLE) and the upper confidence limit (UCL) for several mathematical models that it concluded best represented the carcinogenic action of formaldehyde. The MLE calculations, which statistically represent the most likely estimate of the risk, indicated that no significant risk remained at the PEL of 1 ppm. However, the UCL figures, which have only a 5% probability of understating the risk, indicated that a significant risk remained at 1 ppm.

OSHA did not accept either the MLE or the UCL as the single best prediction of risk for formaldehyde, but concluded that they defined a range in which the degree of risk was highly uncertain and effectively indeterminable based on the present state of scientific evidence. It was uncertain whether a significant risk remained below 1 ppm. OSHA included ancillary provisions in the standard with the expectation that they would further reduce any residual risk that remained at a PEL of 1 ppm (see discussion at 52 FR 46223–46224).

The Agency has now completed its reconsideration of the record evidence applicable to its original finding that a 1 ppm PEL and ancillary provisions would prevent a significant risk of cancer in workers who are exposed to formaldehyde. OSHA continues to believe that neither the UCL nor the MLE can be used to establish a precise estimate of the remaining risk, but rather believes that they define a continuum within which the risk falls. In choosing where in the continuum to establish the PEL, OSHA has reevaluated its conclusion that the ancillary provisions promulgated on December 4, 1987 would reduce the residual risk that remained at a PEL of 1 ppm. Although OSHA is convinced that the ancillary provisions contribute to risk reduction (52 FR 46253, 46275, 46285, 46287), the agency is unable to quantify that reduction. OSHA therefore believes it is appropriate to reduce the PEL further in order to increase the certainty that workers are adequately protected. The Agency is proposing that the PEL be reduced to 0.75 ppm TWA, a point within the continuum defined by the MLE and UCL risk estimates. This PEL represents OSHA's best judgment of the exposure limit necessary to eliminate a significant risk of harm to employees. As discussed later, OSHA concludes that this reduction is economically and technologically feasible. With this and the other proposed changes, the standard will provide more cost-effective and comprehensive protection to formaldehyde-exposed workers.

Paragraph (d)—Exposure Monitoring

Exposure monitoring informs the employer as to what the employees' exposures are and whether the employer meets the obligation to keep employee exposures below the PEL. It permits the employer to evaluate the effectiveness of engineering and work practice controls, and identifies and the need for additional controls. Exposure monitoring data are part of the information that must be supplied to the physician, and are essential to developing hazard communication programs.

The monitoring provisions of the formaldehyde standard contain many of the same elements as the monitoring requirements in other OSHA health standards, including provisions for initial and periodic monitoring; the use of objective data in lieu of initial

monitoring; use of representative sampling strategies; termination of monitoring; precision and accuracy of monitoring methods; and employee observation of monitoring and notification of the results. The proposed amendments do not affect these major components, which are desribed more fully in the preamble to the final standard (52 FR 46254–46261). The general requirement that the employer monitor employees to determine their exposure to formaldehyde is unchanged, as is the exemption which allows the employer to utilize objective data to determine that measurements are not required for employees exposed below the action level of STEL.

The Agency is proposing a minor amendment to the monitoring provisions of the formaldehyde standard. Specifically, OSHA proposes to delete paragraph (d)(1)(ii)(A) which contains an exception to the general exposure monitoring requirement, since this exemption is rendered redundant and confusing as a result of other proposed amendments. This paragraph exempts employers from monitoring unless there is a "formaldehyde hazard as defined in paragraph (m) or there are employee health complaints possibly associated with formaldehyde exposure." The use of the term "formaldehyde hazard" as defined in paragraph (m) becomes confusing in view of the other proposed amendments to paragraph (m) (discussed below) which would delete the definition of formaldehyde health hazard. Since the definition would be deleted, paragraph (d)(1)(ii)(A) is deleted. The intent of this section, however, is not changed.

The other exception in paragraph (d)(1)(ii)(A) referred to the need to monitor if there are employee health complaints, i.e., reports of signs and symptoms of formaldehyde exposure. This has been removed from paragraph (d)(1)(ii)(A) and added as a new paragraph (d)(2)(iii). This has the effect of stating the requirement positively rather than indirectly as was originally done in paragraph (d)(1)(ii)(A). It is felt that this change clarifies the employer's obligation.

The new paragraph requires employee monitoring if there are reports of signs or symptoms due to formaldehyde exposure, and additionally specifies that monitoring of employees reporting signs or symptoms be done promptly. While the time period represented by "promptly" is not specified, OSHA intends that no more than a few days elapse between the report and the exposure monitoring, unless there are extenuating circumstances. If the concentration is documented to be below the action level or STEL, then under existing paragraph (d)(1)(ii)(B), which is not being changed, objective data may be used to determine the employee's exposure. However, the data used must accurately reflect the affected employee's exposure (see discussion of objective data below.).

Paragraph (1)—Medical Surveillance

(8)—Medical Removal

The final formaldehyde standard promulgated on December 4, 1987 did not include medical removal protection (MRP) provisions. In response to the Court remand on this issue, OSHA has reexamined its reasoning, and carefully reviewed the record. OSHA now concludes that the record, considered as a whole, supports the requirement for MRP. The Agency believes that MRP provisions are important to the success of medical surveillance programs prescribed in the formaldehyde standard. The Agency has particularly relied on such participation in the case of formaldehyde, in that periodic exams were not required at the action level, even though there was some support for this in the record. Instead, effective medical surveillance was accomplished in the final rule through the completion of medical questionnaires, coupled with affected employees' reports of signs and symptoms and medical examinations where necessary. This alternative clearly depends on a high degree of employee participation and cooperation.

OSHA has concluded that the value of MRP in securing employee participation in medical surveillance programs, and the essential nature of these programs, requires that the Agency include MRP here. The other problems with adopting MRP originally cited by OSHA, i.e., nonspecificity and quick resolution of signs and symptoms, do not render MRP inappropriate *per se,* but rather require that the proposed medical removal provisions should be tailored to reflect the unique properties of formaldehyde. OSHA believes these new MRP provisions will encourage employee cooperation, and address our original concerns.

The proposed amendment specifies those conditions covered by MRP. Conditions which are potentially covered by MRP are limited to those clearly identified in the record as attributable to formaldehyde exposure: significant irritation or the mucosa of the eyes and of the upper airway, respiratory sensitization, dermal irritation, or dermal sensitization (Ex. 42–87, p.175). In the case of dermal irritation and dermal sensitization, and these conditions alone, the medical removal provisions do not apply when the percent of formaldehyde content in the product suspected of causing the dermal condition is below 0.05%. This is because, on the basis of evidence in the record, only those products with higher concentrations have clearly been associated with dermal irritation or dermal sensitization (Ex. 85–56, p.5).

The existing formaldehyde standard requires that employers institute medical surveillance programs for employees exposed to formaldehyde. The purpose of such programs is to identify employees adversely affected by formaldehyde exposure, even if the exposure is below the PEL. In this way, the employee can be treated if necessary, potential causes can be identified, and remedial measures taken.

The medical surveillance program, and all procedures conducted under it, must be supervised by a licensed physician, and provided at no cost to employees. The program consists of screening formaldehyde-exposed employees, with follow-up medical examinations in those instances when the physician feels it necessary. As a minimum, the screening consists of the administration of a questionnaire, which must include a work history, smoking history, and elicit information on a variety of medical conditions associated with formaldehyde exposure. These conditions include eye, nose, or throat irritation, chronic airway problems or hyperreactive airway disease, allergic skin conditions or dermatitis, and upper and lower respiratory problems.

All employees exposed to formaldehyde at or above the action level or STEL must be screened annually, by means of a medical questionnnaire. In addition, employees exposed to formaldehyde must be screened with the questionnaire if they develop signs or symptoms of possible formaldehyde-related illness. If the responsible physician, upon evaluating the questionnaire, determines that a medical examination is necessary, the employee must be examined, and given any tests which the physician feels are appropriate.

When the physician has determined that a medical examination is necessary, it must be conducted promptly (as soon as possible, but within a few days at most) and the employer shall promptly comply with any subsequent recommendations for removal or restriction. If an employee reports signs or symptoms, and the physician determines that a medical examination is not immediately necessary, a two-week observation period begins. The

purpose of this two-week period is to provide an opportunity for evaluation of the problem and for possible remediation of the condition, or causative factors. This provision is supported by information in the record that many formaldehyde-induced signs and symptoms often resolve themselves within a few hours or days (52 FR 46282). It will permit the employer to see whether signs or symptoms subside spontaneously or with minimal treatment, or to improve working conditions to alleviate the exposure, and the resulting condition, without unnecessary expenditure. If the signs or symptoms have not subsided or been remedied by the end of the two week period, the employee must be examined by the physician. If the signs and symptoms worsen during the two week period, the employee must be examined by the physician as soon as this fact is determined.

Any examination conducted in response to an employee report of signs or symptoms must include a medical and work history and any other element, including tests, which the examining physician deems necessary. The standard does not specify any particular tests. This is due to the variety of conditions associated with formaldehyde exposure which are covered by these provisions. Accordingly, the physician is given broad discretion in selecting any tests appropriate and useful under the circumstances. Any recommendation of restriction or removal must be based on the physician's professional judgment, since there are no specific criteria for evaluating the results that trigger automatic medical removal.

If the examining physician recommends restrictions or removal, these recommendations must be promptly followed as soon as possible (a day or two at most). In the case of removal, transfer alternatives must be considered first. The employee must be moved to a job location with significantly less formaldehyde exposure (about twenty-five percent or greater reduction) and not exceeding the action level. Transfer alternatives include possible job transfers that could be accomplished if the employee were to receive training for a short period of time. OSHA views a short period of time in this context as any period up to 6 months, the maximum period that MRP is available to employees under any circumstance. While the provisions require transfer, if possible, the type of training to be provided by the employer is not specified. OSHA does not intend that special job training programs be established. Job training opportunities such as the employer has afforded employees in the past should be sufficient to meet this requirement.

If there are no transfer alternatives, the employee must still be removed from the formaldehyde exposure for a period of up to six months or until a physician determines that the employee is able to return to work or determines that the employee will not ever be able to return to work.

In addition to effecting actual physical removal, MRP assures that employees are provided with temporary economic protection. When an employee is removed from formaldehyde exposure, through transfer or other means, the employer must maintain the employee's earnings, seniority and benefits. This includes overtime, bonuses, increases and production rate payments the employee would normally receive. This must be continued until the employee is determined to be able to return to the original job, or is determined to be unable to return to any workplace formaldehyde exposure, or for six months, whichever occurs first. If the employee receives any compensation through workers' compensation, or other programs, MRP payments can be reduced by that amount. If the employee obtains other employment, which is made possible by that employee's removal, the employer's obligation is similarly reduced.

The determination as to whether the employee can return to the original job, or is permanently unable to return to formaldehyde exposure is a medical decision, which must be based on a follow-up exam conducted by the employer's chosen physician. When the employee is returned to the original job, any subsequent signs or symptoms that may be reported are subject to another initial evaluation and determination whether an exam is necessary. If there is a determination that no exam is immediately necessary, a two-week period for evaluation and remediation is again initiated, and the employer proceeds from that point as described above.

Generally, when medical removal protection is part of a standard, OSHA usually provides a multiple physician review mechanism to assure successful operation of such programs. The provision of an opportunity for a second medical opinion strengthens and broadens the basis for medical determinations made under the standard. Multiple physician review also assures employee confidence in the soundness of medical determinations which may impact them significantly, and provides employees with a means of addressing judgments in situations where a worker questions the recommendations resulting from a medical exam or consultation. A full discussion of multiple physician review is contained in the preamble to the lead standard (43 FR 52972, 52998) which is applicable here since the proposal's multiple physician review mechanism is similar to that in the lead standard in all respects.

The initial choice of the examining physician is made by the employer. After any examination or consultation concerning medical removal or restriction is made by the employer's chosen physician, the employee must receive a copy of the physician's written opinion within 15 days from the time the employer receives it. The employer must also inform the employee of the right to seek a second medical opinion if the employee does not agree with the employer's physician's opinion. The employee must act within fifteen days from these notifications, or the employer may decline to participate in, or to pay for, any ensuing medical reviews. Otherwise, the multiple physician review mechanism must be provided to the employer without cost to the employee, including lost work time.

In seeking a second opinion, the employee must choose a physician to conduct appropriate examinations and tests, and issue a written opinion concerning the employee's ability to work with formaldehyde. If the two physicians arrive at different conclusions, and quick (a few days at most) resolution is not possible, a third physician, jointly designted by the two physicians or by the employer and employee (or the employee's authorized representative) must be consulted. This third physician must be a specialist in the area of the body affected or the condition (e.g. dermatologist, allergist, pulmonary physician) or must be an occupational physician. The recommendation of the third physician shall be promptly (a few days at most) followed, unless the employer and employee agree to follow any one of the three physicians' recommendations.

These provisions are in many respects similar to and consistent with the MRP mechanism of the lead standard, and a more detailed discussion of how the similar provisions work appears in the lead preamble (43 FR 52972). For example, both MRP programs base removal decisions on the recommendation of a physician, both programs include wage retention provisions and both programs include a multiple physician review mechanism.

To the extent the provisions of the formaldehyde MRP program are similar to those of the lead MRP program, OSHA adopts the legal justification supporting the lead standard, particularly the goal of encouraging employee participation in medical surveillance, in support of the MRP provisions of the formaldehyde standard. OSHA also intends that the provisions of the formaldehyde MRP program which are similar to those in the lead standard will operate and be enforced in a like manner.

Of course, OSHA recognizes that there are important differences between the lead MRP program and the MRP provisions of this standard. For example, formaldehyde MRP is limited to those employees exhibiting signs or symptoms of specified ailments; the formaldehyde MRP program includes a two-week remediation period for those employees not immediately referred to a physician and formaldehyde MRP is not automatically triggered by a feature, such as the blood lead measurements, relied upon in the lead standard. On the issues where the provisions of the formaldehyde MRP program are not consistent with those of the lead MRP program, OSHA expects that the lead standard will offer little enforcement guidance.

Paragraph (m)—Hazard Communication

The hazard communication provisions of the formaldehyde standard contained in paragraph (m) have been the subject of much of the controversy surrounding the formaldehyde standard. In response to a petition from the Formaldehyde Institute, the Agency stayed paragraphs (m)(l)(i) through (m)(4)(ii) (53 FR 50198). In deciding to administratively stay these provisions, OSHA cited the confusion generated by the Agency's attempt to provide a de minimis exemption from the hazard communication requirements. These provisions were also the result of an attempt to address the problem of products which emit or "offgas" formaldehyde, and because of this fact do not fall under the "articles" definition of the generic hazard communication standard, 29 CFR 1910.1200. Having decided these attempts were not successful, the Agency desired to investigate means of clarifying the requirements and improving compliance. One of the alternatives considered was to revoke paragraph (m), and substitute the generic hazard communication standard. This alternative did not really solve the problems that the Agency was trying to address, so upon reconsideration, OSHA has decided to amend paragraph (m) instead.

OSHA believes that the hazard communication provisions of this proposal will provide a satisfactory final resolution to this issue. The amended hazard communication provisions of the existing formaldehyde standard discussed below will provide hazard communication requirements that accommodate the unusual properties of formaldehyde, and provide employees who are exposed to this substance with appropriate and adequate warnings.

Generally, hazard communication requirements include the use of labels on containers of the hazardous substance, material safety data sheets (MSDSs) and employee information and training. The labels must include the identity of the hazardous chemicals, appropriate hazard warnings and the name and address of the chemical manufacturers, importer or other responsible party. The employer must retain MSDSs received from the manufacturers or distributor and make them available to employees working with the substance. The material safety data sheets include more extensive information than that on the label, such as the physical and chemical characteristics of the chemicals, the health hazards, the primary routes of entry, the PEL or other recommended exposure limit, whether the substance is listed in the NTP Annual Report on Carcinogens or has been found to be a potential carcinogen by IARC, precautions for safe use and handling, control measures, and emergency and first aid procedures. In addition, the employer must make sure that employees are informed of any operations in their workplace where hazardous chemicals are present, and the location and availability of a written hazard communication program with supporting materials, such as material safety data sheets. Employees must be trained in methods that may be used to detect the presence or the release of a hazardous chemical in their work area, the physical and health hazards of the chemicals in the work area and measures employees can take to protect themselves from these hazards.

In order to clarify the intent of the standard, the text has been simplified. Wood products continue to be covered by the hazard communication requirements of this section. Although the language specifying wood products industry coverage no longer appears in the regulatory language, that industry continues to be covered by the hazard communication requirements of this section, because the exemption in paragraph (b)(6)(ii) of the generic hazard communication standard, 29 CFR 1910.1200, is not referenced and does not apply to this standard. The inclusion of 29 CFR 1910.1200(e)–(j), currently referenced in the stayed provisions would also be deleted. Many of these paragraphs are specifically referenced in other parts of paragraph (m). The one significant provision that is not referenced elsewhere in the standard, 29 CFR 1910.1200(e), written hazard communication programs, has been redrafted specifically for formaldehyde, and added to this proposed revision of paragraph (m).

In this proposed amendment of paragraph (m)(1), the definition of "health hazard" has been deleted, while the purpose of this section, establishing a de minimis threshold or trigger for action at 0.1%, or 0.1 ppm is retained, and explicitly stated. The definition of health hazard is unnecessary and confusing, since 29 CFR 1910.1200(c) contains a definition of "health hazard" which the Agency intends to continue to control along with all other definitions contained in that standard. OSHA intends that the employer's obligations with respect to hazard communication labeling for containers of formaldehyde products will be governed by the formaldehyde standard alone.

The three main elements of hazard communication are labels, material safety data sheets and employee training. The employer is required to use these in assuring that employees are informed of hazards and health effects and know how to protect themselves and reduce risks. The Agency believes that the labeling of products that have some potential to emit formaldehyde, in amounts which range from trivial to considerable, may warrant special consideration and that there may be other acceptable ways to adequately inform employees of hazards in this instance. The Agency has given a great deal of consideration to formaldehyde and hazard communication and finds that this chemical is highly unusual. Many factors distinguish formaldehyde from other chemicals which are regulated under the generic hazard communication standard. Formaldehyde products are unique in their tendency to "off-gas", that is, to release formaldehyde gas from solid materials, such as wood products and textiles. The amount of formaldehyde released is highly variable. It is determined by (1) the amount of formaldehyde entrapped or bound up (measured in "formaldehyde equivalents"), and (2) the rate of decay or release, which decreases over time and is primarily determined by environmental conditions such as temperature and humidity.

To address this problem, OSHA is proposing that, where the potential exposure is low, under 0.5 ppm, the label needs to indicate that formaldehyde may be present, give the name and address of a responsible party and indicate that physical and health hazard information is available from the employer and from MSDSs. Specific hazard information need not appear on the label, only the indication that such information exists, and directions and the location for obtaining such information. Where it cannot be documented that the concentration of formaldehyde will always remain at or below 0.5 ppm under reasonably foreseeable circumstances, the label information must detail all appropriate hazards, including the information that formaldehyde is a potential cancer hazard.

The Agency feels that this "low potential exposure" labeling for solid materials which may offgas formaldehyde strikes a balance, eliminating unnecessary hazard warnings where the potential may not be realized, and giving employees the appropriate warnings, via the label, MSDS's and training (see training discussion below) where there are low level emissions from products which may represent a health risk. This alternative means of accomplishing the goal of effective hazard communication is appropriate here because of the unique properties of formaldehyde, its widespread use and ubiquitous nature. This alternative does not reflect any risk determination or lack thereof. Employers are, of course, free to fully label containers of formaldehyde products in the usual manner without regard to the exposure potential.

The proposed amendments specify that objective data can be used by the employer in determining anticipated levels of formaldehyde release. This is consistent with paragraph (d)(1)(ii)(B), which is discussed above. Objective data consists of information which demonstrates that a particular product or material cannot release formaldehyde in concentrations exceeding the two labeling triggers of at or above 0.1 ppm or above 0.5 ppm, even under reasonably foreseeable conditions. An employer who relies on objective data must establish that the data were obtained under, or are applicable to, workplace conditions closely resembling the processes, type of product or material, control methods, work practices, and environmental conditions used and prevailing in the employer's current operations. Changes in the workplace which result in a new or additional formaldehyde exposure may require a new determination, to which the objective data previously used may not be applicable. Examples of information which might be used as objective data include representative personal samples, area samples, historical monitoring data, industry-wide studies, lab test results, and manufacturer's data. A full discussion of objective data is contained in the preamble to the final standard (see 52 FR 46255–46256).

Paragraph (n)—Employee Information and Training

The proposed amendment would require that employee training would be conducted on an annual basis for all employees exposed to formaldehyde concentrations of 0.1 ppm or greater. The current standard requires initial training for persons exposed at 0.1 ppm or above, but just those exposed at or above the action level or STEL receive annual training. The content of the training remains unchanged, so that training programs already in place in the workplace are not affected by this proposed amendment.

OSHA is proposing this change for a number of reasons. Training is one of the three main elements of hazard communication. The success of risk management programs requires that employees be aware of hazard, work practice and other information essential to understanding the risks associated with their exposure, and the means of reducing that risk. The continued awareness on the part of the employee depends on constant reminders, such as hazard warning labels. Periodic training becomes especially important for formaldehyde, given the importance of the ancillary provisions in reducing risk, and the proposed exemptions to the labeling requirements, which are discussed above. Although employees will have access to material safety data sheets, they are a passive source of information. It is anticipated that training will play a more essential role in employees' awareness of the specific hazards in their workplace, and control measures employed. This is particularly true for illiterate or non-English speaking workers.

Annual training is also important for successful medical surveillance and MRP. These provisions will only be effective if employees know what signs or symptoms are related to the health effects of formaldehyde, if they know how to properly report them to the employer, and if they are periodically encouraged to do so. The record indicates that signs or symptoms are not uncommon in employees exposed to levels of formaldehyde below the action level and the STEL, the levels that currently trigger annual training (52 FR 46280). It is felt that annual training for employees exposed to lower concentrations of formaldehyde will help assure the continued effectiveness of the ancillary provisions in reducing the risks of formaldehyde exposure. It will also help identify and assist those employees actually suffering health effects, through improving employee cooperation and participation in medical surveillance programs.

Paragraph (p)—Dates

OSHA proposes that employers be given a thirty (30) day period from the time the proposal becomes a final rule in which to generally familiarize themselves with these new provisions. In addition, individual provisions, where appropriate, have delayed start-up dates.

OSHA proposes that employers be given one year to install any additional engineering controls necessary to achieve the new PEL of 0.75 ppm TWA. Many employers will be able to meet this new PEL presently and will not need any more time; with this in mind, this start-up date section requires that compliance be accomplished as quickly as possible, but no later than a year from the effective date of the amendment.

In those cases where respiratory protection is required, such protection must be provided to employees in compliance with paragraph (g) as quickly as possible but no later than 3 months after the effective date of the amendment. It is felt that this extra time may be needed because some employers may have situations where no respiratory protection was needed to meet the PEL of 1 ppm, while the new PEL of 0.75 ppm may require implementation of respiratory protection programs, at least temporarily until they can achieve compliance with the PEL through the use of engineering controls. Therefore a period of three months may be necessary for these employers to properly select the appropriate respirator to protect their employees and complete fit testing and other necessary elements of an effective respiratory protection program.

The standard's medical surveillance provisions have been in effect for over two years. Employers have already implemented these provisions, including the administration of medical questionnaires to employees reporting signs or symptoms of formaldehyde exposure or employees exposed above the action level or STEL, medical

examinations where appropriate and the receipt of physician's written opinions. Employers may need some additional time to implement the medical removal provisions and to ascertain how to adapt them to their particular workplace. The Agency believes that a six-month period is appropriate under the circumstances.

Paragraph (m) of the formaldehyde standard as well as the hazard communication standard already impose general hazard communication requirements on employers handling formaldehyde-containing products in their workplaces. The proposed amendments would alter somewhat the labeling requirements for containers of certain products capable of releasing small amounts of formaldehyde. The Agency believes that employers handling formaldehyde products such as those described above may need some additional time to formulate the new labels. Six months is believed to be an appropriate amount of time to accomplish this task in view of the substantial amount of inventory that may be on hand. Moreover, this delayed start-up date would not adversely affect employee health since formaldehyde products would still need to be labeled in the interim in compliance with OSHA's generic hazard communication standard.

The amendments increase the frequency with which employees exposed to formaldehyde between 0.1 ppm and 0.5 ppm must receive training. OSHA has decided that a two-month start-up period for this provision is appropriate to allow the employer to determine which employees must be trained more frequently. This delayed start-up date is quite generous in view of the fact that the obligation only begins to be effective two months after the effective date of the amendment. Therefore, annual training will not need to be completed for this newly-included group of employees until a year after the anniversary date of their initial training.

Regulatory Impact and Regulatory Flexibility Assessment

Executive Order 12291 (46 FR 13197, 2/19/81) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographic regions, or levels of government. In addition, the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., requires OSHA to determine whether a regulation will have a significant impact on a substantial number of small entities.

Consistent with these requirements, OSHA has prepared a Preliminary Regulatory Impact and Regulatory Flexibility Assessment. This regulatory assessment is a supplement to the final Regulatory Impact Analysis (RIA) currently in the docket (Ex. 206).

Industry Profile

As described in the 1987 RIA (Ex. 206), OSHA estimates that approximately 2.2 million workers are exposed to formaldehyde at levels of 0.1 ppm or greater. As a result of the introduction of the 1.0 ppm PEL, no workers should currently be exposed at levels above 1.0 ppm. An estimated 84,000 workers are exposed at levels between 0.75 ppm and 1.0 ppm. The balance of about 2.1 million workers are estimated to be exposed at levels between 0.1 and 0.75 ppm. The largest number of exposures currently is in the apparel industry, with an estimated 941,300 exposed workers, with 59,000 of these between 0.75 and 1.0 ppm.

For this analysis, OSHA has assumed that employees exposed between 0.5 and 1.0 ppm are distributed equally across this range; that is one-half are currently between 0.75 ppm and 1.0 ppm. As noted in the 1987 RIA (Ex. 206, p. V-3), all employees previously exposed above 1.0 ppm would not be exposed at 0.75 ppm. As noted below, OSHA believes that exposures in textile finishing, laboratories and formaldehyde production are now below 0.75 ppm. The number of affected establishments and employees within the various affected industries is broken down by exposure level in Table I.

TABLE I.—NUMBER OF AFFECTED ESTABLISHMENTS AND EMPLOYEES BY FORMALDEHYDE EXPOSURE LEVEL

SIC	Industry	Establishments				Exposed employees			
		0.75–1.0 ppm	0.5–0.75 ppm	0.1–0.5 ppm	Total	0.75–1.0 ppm	0.55–0.75 ppm	0.1–0.5 ppm	Total
2435	Hardwood Plywood	33	73	41	200	787	1,242	8,669	10,728
2492	Particleboard	8	22	16	46	720	1,021	2,836	4,577
2499	Fiberboard	3	12	0	14	294	524	335	21254
25	Furniture	1,323	1,507	2,645	5,474	11,612	12,643	235,095	259,349
2821	Resins	16	51	31	97	490	875	8,,335	9,700
332, 336	Foundries	718	1,765	520	3,002	6,085	10,594	43,322	60,000
806, 807	Laboratories	0	3,998	8,167	12,165	0	12,220	24,441	36,661
7261	Funeral Services	0	0	15,000	15,000	0	0	30,000	30,000
226	Textile Finishing	0	685	0	685	0	19,125	10,298	29,423
23	Apparel	2,869	2,869	17,211	22,948	58,831	58,831	823,637	941,300
2869	Formaldehyde Production	0	16	33	49	0	480	3,401	3,881
3079	Plastic Molding	500	500	4,000	5,000	5,000	5,000	90,000	100,000
2436	Softwood Plywood	0	0	250	250	0	0	31,100	31,100
2611	Pulp Mills	0	0	43	43	0	0	12,800	12,800
2621	Paper Mills	0	0	299	299	0	0	100,000	100,000
2631	Paperboard Mills	0	0	222	222	0	0	43,000	43,000
2642	Envelopes	0	0	296	296	0	0	19,000	19,000
2653	Corrugated & Solid Fiber Boxes	0	0	1,491	1,491	0	0	67,400	67,400
2865	Cyclic crudes, cyclic intermediates, Dyes	0	0	189	189	0	0	16,000	16,000
2851	Paints, Pigments	0	0	1,441	1,441	0	0	27,600	27,600
2873	Nitrogenous Fertilizers	0	0	152	152	0	0	6,300	6,300
2879	Agricultural Chemicals, NEC	0	0	330	330	0	0	9,700	9,700
2891	Adhesives & Sealants	0	0	683	683	0	0	10,900	10,900
2899	Chemicals & Chemical Preparations, NEC	0	0	1,439	1,439	0	0	23,100	23,100
3291	Abrasive Products	0	0	374	374	0	0	17,000	17,000
3293	Gaskets, Packaging & Sealing Devices	0	0	474	474	0	0	21,800	21,800
3296	Mineral Wool Insulation	0	0	179	179	0	0	15,500	15,500
3634	Electric Housewares & Fans	0	0	263	263	0	0	29,300	29,300
3643	Curent-carrying Wiring Devices	0	0	415	415	0	0	31,900	31,900
3644	Noncurrent-carrying Wiring Devices	0	0	226	226	0	0	18,100	18,100

TABLE I.—NUMBER OF AFFECTED ESTABLISHMENTS AND EMPLOYEES BY FORMALDEHYDE EXPOSURE LEVEL—Continued

SIC	Industry	Establishments				Exposed employees			
		0.75–1.0 ppm	0.5–0.75 ppm	0.1–0.5 ppm	Total	0.75–1.0 ppm	0.55–0.75 ppm	0.1–0.5 ppm	Total
3694	Electrical Equip. for I.C. Engines	0	0	433	433	0	0	32,300	32,300
3792	Mobile Homes Manufacturing	0	0	1,655	1,655	0	0	11,200	11,200
7395	Photofinishing Labs	0	0	3,589	3,589	0	0	71,742	71,742
806	Hemodialysis	0	0	10,500	10,500	0	0	31,500	31,500
822	Biology Instructors	0	0	22,575	22,575	0	0	28,950	28,950
822	Veterinary Anatomy	0	0	19	19	0	0	38	38
	Total	5,468	11,496	95,201	112,217	83,818	122,554	1,956,729	2,163,101

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Nonregulatory Alternatives

As elaborated in the 1987 RIA (Ex. 206, p. VII–1–14), market mechanisms and actions by other governmental bodies have been inadequate in eliminating significant risk to workers from formaldehyde exposure. For this reason, both a lower PEL and annual training for all workers exposed at 0.1 ppm and above are being instituted. In the case of workers leaving employment for medical reasons, workers compensation or unemployment insurance systems can provide income to workers. These systems, however, vary from state to state and do not provide for complete retention of wages and benefits. Without medical removal and wage protection safeguards, workers may continue to suffer acute formaldehyde-related symptoms out of fear of job loss.

Technological Feasibility

The feasibility of a 0.75 ppm PEL was not addressed in the record. Consistent with OSHA's analysis of compliance with the 1.0 ppm PEL, however, OSHA believes a 0.75 ppm PEL is technologically feasible.

In the 1987 RIA, OSHA judged that it was technologically feasible to achieve compliance with a 1.0 ppm PEL (Ex. 206, p. III–2). At that time, OSHA estimated that those establishments with exposures above 1.0 ppm, in order to comply with a 1.0 ppm PEL, would lower average personal exposures to 75% of the PEL, or 0.75 ppm.[1] Those establishments with exposures below 1.0 ppm were judged to be unaffected by the new PEL (Ex. 206, IV–1). This method of analysis coincided with that of the 1986 Heiden report (Ex. 133), which assigned no costs of engineering controls to establishments with exposures below 1.0 ppm.

Similarly, in this analysis, those establishments with exposures above 0.75 ppm are assumed to lower their exposures to 75% of the new PEL, or 0.56 ppm. These establishments generally had fewer structurally or process-inherent exposure problems than those establishments which had exposures above 1.0 ppm in 1987 (Ex. 206, p. IV–19, 20, 30, 32, 46, 51, 52, 58, 59, 61). Moreover, the required relative reduction of exposures is less than for those establishments affected by the 1.0 ppm PEL (Ex. 206, p. V–4). Therefore, feasibility is not expected to be a problem for these establishments.

Costs of Compliance

Engineering Controls

For the purposes of this analysis, it was assumed that (1) establishments are in compliance with the existing OSHA standard and (2) exposure levels have responded as projected in the 1987 RIA.

Consistent with the 1987 RIA, OSHA assumes that only those establishments with exposures between the new PEL of 0.75 ppm and the existing PEL of 1.0 ppm would be affected by the new PEL. These establishments would be expected to lower average exposures to 75% of the new PEL, or 0.56 ppm.[2] It is also assumed that employees exposed between 0.5 and 1.0 ppm are evenly distributed within this range.[3]

Sources available in the record for analyzing the incremental cost of moving from the current 1.0 ppm PEL to a PEL of 0.75 ppm are limited. While a shift to a new technology was postulated in some industries as the only means of achieving compliance with a 0.5 ppm PEL, there was no such prediction made with respect to a 0.75 ppm PEL. Additionally, there was little indication that controls in plants with exposures slightly above 1.0 ppm prior to 1987 were considerably different from those with exposures slightly below 1.0 ppm prior to 1987. For the purposes of this analysis, OSHA projects that the technology necessary to comply with a 0.75 ppm PEL would be generally the same that was used to bring those plants with exposures above 1.0 ppm prior to 1987 into compliance with a 1.0 ppm PEL.

[1] The assumption that establishments previously above 1.0 ppm would be reduced to 0.75 ppm in response to the 1.0 ppm PEL was a conservative assumption in two respects. First, as a technological matter, in a number of industries, the engineering controls described in the cost analysis were shown to be capable of lowering exposures by a factor of 10 or more, in many cases to below 0.5 ppm (Ex. 128, p. 6, 15; 1, chap. III). However, due to difficulties encountered in lowering exposures in some establishments in some industries (Ex. 206, chap. III), OSHA employed a generic assumption of 0.75 ppm as the exposure level establishments would reach afte, implementing costed engineering controls. All exposures above 1.0 ppm were projected to drop to 0.75 ppm. OSHA conservatively estimated that 0.75 ppm would be the effective TWA exposure limit firms would strive to reach. It would make little sense to expend money for engineering controls and new processes, only to find that they were inadequate to achieve their intended purpose. Targeting controls to achieve an effective TWA limit lower than the legal limit, provides a critical buffer for unforeseen problems that may arise. In order to insure compliance with the 1.0 ppm PEL, exposures were projected to drop to 0.75 ppm or lower.

In the 1987 RIA, OSHA indicated that for some foundries, complying with a PEL of 0.5 ppm would not be feasible (Ex. 206, p. III–2). The Agency's position was summarized in the Foundry section of the technological feasibility analysis; "OSHA therefore concludes that achieving 0.5 ppm is not feasible by the use of engineering controls." However, OSHA believes that achieving a 0.75 ppm TWA in the foundry industry is technologically feasible. Evidence in the existing record indicates that the majority of foundry employees were exposed to formaldehyde levels of 0.5 ppm or less (Ex. 206, p. II–13, IV–55). The introduction of engineering controls since the 1987 rule should have moved more employees below 0.75 ppm. OSHA inspection data since the standard took effect indicate that the majority of foundries inspected had exposures below 0.75 ppm (Ex. 301–1). These data support the conclusion that a PEL of 0.75 ppm is technologically feasible.

[2] This is consistent with the assumption made in the RIA of the Standard, in which it was assumed employers would reduce exposures to 0.75 ppm, in order to insure compliance with the 1.0 ppm PEL (Ex. 206, p. V–3).

[3] This is a conservative assumption, as exposure distributions tend to follow a lognormal distribution, with most exposures at relatively low levels, and a relatively small number at higher levels. To the extent this assumption overstates the number of establishments affected by the PEL, then OSHA has overestimated the cost of compliance.

Four additional industries—textile finishing, apparel manufacturing, formaldehyde production and plastic molding—are estimated to have potential exposures in excess of 0.5 ppm, but below 1.0 ppm. Both the 1985 Heiden report (Ex. 77–19) and the 1981 Ashford report (Ex. 70–1), examined the costs and impacts of reaching exposure levels below 1.0 ppm for these industry sectors. These studies, along with information from other sources were of particular use in this analysis. The following discussion provides OSHA's analysis of compliance costs in individual industries.

Foundries

In the 1987 RIA (Ex. 206, p. IV–54), it was estimated that 1,047 foundries had exposures above 1.0 ppm (first group), and an additional 1,435 had exposures between 0.5 ppm and 1.0 ppm (second group). It was projected that as a result of the 1.0 ppm PEL, average exposures in the first group would be lowered to 0.75 ppm, and that the second group would remain unchanged. OSHA estimates that half of the second group, or 718 foundries, would need to respond to the new PEL of 0.75 ppm.

As discussed in the 1987 RIA (Ex. 206, p. IV–53), OSHA found that this group is comprised largely of foundries using the shell core process. To comply with the standard, firms would incur capital costs for local exhaust ventilation of $10,000, with an annual operating cost of $900 per machine, and would have an average of 3 affected machines per plant (Ex. 206, p. IV–52), for a total capital cost of $21,540,000 (718×3×$10,000) and annual operating costs of $1,938,600 (718×3×$900). It is possible that providing controls for only a portion of the machines would reduce exposures sufficiently to achieve compliance with the proposed PEL, but OSHA conservatively assumes that controls on all three would be necessary.

Hardwood Plywood

In the 1987 RIA (Ex. 206, p. IV–36) it was estimated that forty hardwood plywood establishments had exposures above 1.0 ppm and would lower exposures to 0.75 ppm as a result of the 1.0 ppm PEL. Sixty-six establishments unaffected by the 1.0 ppm PEL were estimated to have exposures between 0.5 ppm and 1.0 ppm. OSHA estimates that half of these establishments, or 33, would be affected by a 0.75 ppm PEL.

OSHA assumes that plants with exposures between 0.75 ppm and 1.0 ppm have exposure problems similar to those plants which were out of compliance with the 1.0 ppm PEL. These plants were estimated to require fan replacement at an incremental capital cost of $2,000 and an incremental annual operating cost of $100 per plant (Ex. 206, p. IV–34). The costs to come into compliance with a 0.75 ppm PEL in this industry are therefore estimated to be $66,000 in capital costs and $3,300 in annual operating costs.

In the 1987 RIA, OSHA stated that some plants could comply with a 1.0 ppm PEL with ventilation alone, while others would also need to convert to LEUF resins (Ex. 206, p. IV–30–35). While it is possible that some or all of the plants discussed in the previous paragraph could achieve compliance with a 0.75 ppm PEL through increased ventilation alone, OSHA conservatively assumes that these plants would also need to convert to LEUF resins to assure compliance. The 1987 RIA noted a gradual shift to low-emitting ureaformaldehyde (LEUF) resins in the hardwood plywood industry (Ex. 206, p. IV–32,35). However, the establishments with highest formaldehyde exposures currently are also the least likely to have converted. Therefore, due to uncertainty regarding these plants, OSHA is employing the doubly conservative assumption that LEUF resins would be introduced directly as a result of this rule. Using the same method of estimating costs as was used in the 1987 RIA (Ex. 206, p. IV–35), it is estimated that an additional 235 million square feet (MMSF) of board production would need to be converted to LEUF at a cost of $2,750 per MMSF, or an annual operating cost of $646,250 ($2,750×235). The total costs associated with complying with a 0.75 pm in the hardwood plywood industry are therefore estimated to be $66,000 in capital costs, $649,550 in annual operating costs.

Particleboard

In the 1987 RIA (Ex. 206, p. IV–24,26) it was estimated that out of 46 plants, 14 had exposures above 1.0 ppm, and would lower exposures to 0.75 ppm as a result of the standard. An additional 16 plants were estimated to have exposures between 0.5 and 1.0 ppm, 8 of which are estimated to have exposures between 0.75 and 1.0 ppm. Assuming these plants would need to employ ventilation similar to those with exposures previously above 1.0 ppm, these plants would need additional ventilation at a capital cost of $215,320 per plant and annual operating costs of $53,830 per plant (Ex. 206, p. IV–21), or a total capital cost of $1,722,560 and a total annual operating cost of $430,640.

Medium Density Fiberboard (MDF)

The 1987 RIA (Ex. 206, p. IV–27,29,31) projected that 9 MDF establishments would lower exposures to 0.75 ppm as a result of the 1.0 ppm PEL. It estimated that 5 additional establishments would have exposures between 0.5 and 1.0 ppm after the standard. It is estimated that approximately half, or 3 of these establishments would be affected by a 0.75 ppm PEL.

In the 1987 RIA it was estimated that the capital costs of lowering exposures to 0.75 ppm through additional ventilation would be $105,534 per plant, with annual operating costs of $63,486. Applying these costs to the 3 affected plants, OSHA estimates the cost of additional ventilation in this industry would be $316,602 in capital costs, and $190,458 in annual operating costs.

Furniture

In the 1987 RIA, it was estimated that 184 plants had exposures above 1.0 ppm and would lower exposures to 0.75 ppm in response to the 1.0 ppm PEL. These were all facilities that produce both furniture and board ("integrated" plants), that had exposures in their board production operations rather than the furniture operations. There were an additional 2,646 establishments that had exposures estimated between 0.5 and 1.0 ppm, mostly furniture assembly plants with relatively isolated exposures above 0.5 ppm (Ex. 206, p. IV–43–44).

Again it was assumed that one-half, or 1,323 plants, have exposures between 0.75 ppm and 1.0 ppm. However, as noted in the 1987 RIA (Ex. 206, p. IV–44), in many of these plants, the exposure problems were due not to the lack of ventilation but to lack of usage. Poor work practices may be responsible. In this regard, more training, not additional engineering controls, would remedy the exposure problems.

However, to the extent that available ventilation is utilized, there would be an increase in operating costs for these furniture plants. One reasonable basis for estimating these costs is the cost of annual exhaust ventilation employed by Ashford (Ex. 70–1). The annual operating cost of these systems is estimated to be approximately $864 per year per establishment. OSHA assumes that these additional costs would apply to only half of annual work days, at a cost of $432 annually. Since this cost would be incurred at 1,323 plants, the estimated cost of compliance at these plants would be $571,536 annually.

In approximately 214 plants (one half the integrated plants unaffected by the 1.0 ppm PEL) additional ventilation

would likely be necessary to comply with a 0.75 ppm PEL. Based upon the analysis in the 1987 RIA (Ex. 206, p. IV–42), OSHA estimates that capital costs would be $52,000 per plant, or $11,128,000 for all furniture plants. The annual operating costs would be $13,000 per plant, or $2,782,000 for all "integrated" plants, or a total for the industry of $3,443,500.

Laboratories

In its analysis of formaldehyde exposures in laboratories (Ex. 206, p. IV–58–59, 61), a clear dichotomy was found between laboratories with functioning fume hoods and good work practices and those without them. High exposure levels were believed to exist in "problem" histology and pathology labs as a result of malfunctioning or misused fume hoods or poor work practices. The record indicated that such controls, as implemented in response to the existing standard, would have largely eliminated exposures above 0.5 ppm (Ex. 128, p. 4, 6, 9). Exposures in these laboratories also show significant peak periods or episodes (Ex. 128, p. 5). However to the extent that laboratories are in compliance with a 2.0 ppm STEL, they should also be in compliance with a 0.75 ppm PEL (Ex. 128, p. 9).

Funeral Services

The 1987 RIA indicated, based upon a study of 44 Iowa funeral homes, that TWA exposures were less of a problem than short-term exposures. TWA exposures were estimated to be below 0.5 ppm for all establishments in compliance with the present standard (Ex. 206, p. IV–66). Annual training for employees exposed between 0.5 and 0.1 ppm should improve work practices and help reduce short term exposures. No engineering controls are thought to be necessary for this.

Resins

OSHA's 1987 RIA indicated that 35 plants had partially open production processes and would need to install engineering controls, lowering exposures to 0.75 ppm. The other 62 plants had a closed production process and were not believed to have exposures above 0.5 ppm (Ex. 206, p. IV–70). No additional engineering control costs are estimated for this industry.

Textile Finishing

At the time of the 1987 rulemaking, OSHA estimated that there were 685 textile finishing plants with formaldehyde exposures between 0.5 and 1.0 ppm (Ex. 206, p. 78, 80). Approximately half, or 343, are estimated to have exposures between 0.75 and 1.0 ppm.

The Ashford report examined methods (Ex. 70–1) which would be expected to lower exposures in many areas of textile plants. However, the textile industry indicated that as of 1986, they were using the most chemically advanced resins available, and a further reduction of formaldehyde content in cloth would come only at the expense of a significant decrease in fabric quality (Ex. 159).

However, in 1989 OSHA lowered permissible exposure limits (PELs) on about 200 chemicals and instituted PELs for the first time on about 100 others. Since the textile finishing industry uses a large of number of regulated chemicals OSHA believes that engineering controls are being introduced in order to limit chemical exposure generally (54 FR 2816, 1/19/89). Recent OSHA inspection data have indicated no personal exposures to formaldehyde above 0.5 ppm in this industry (Ex. 301–1). OSHA therefore believes that all textile finishing plants are currently in compliance with a 0.75 ppm PEL.

Apparel

In the 1987 RIA, OSHA estimated that 5,737 establishments had exposures between 0.5 and 1.0 ppm. OSHA estimates that approximately half of these, or 2,869 establishments, may have exposures between 0.75 and 1.0 ppm.

The record indicates that exposure problems in the apparel industry are due to the lack of appropriate exhaust ventilation. That is, the workplace is treated like an office or store and air is recirculated rather than exhausted and replaced, allowing formaldehyde concentrations to build (Ex. 78–24, 78–48). A relatively simple solution to this problem on air stagnation is to install roof exhaust fans. Ashford cited the cost of installing a 2,000 cubic feet per minute (cfm) roof exhaust fan at $1,000, with an increased annual operating cost of $720 (Ex. 70–1, p. 4–19). However, factoring in inflation for capital equipment costs,[4] the capital cost is now estimated to be approximately $1,200, and the incremental annual operating cost $864. OSHA therefore estimates the cost of compliance with the lower PEL in the apparel industry to be $3,442,800 for capital, $2,478,816 in annual operating costs.

Formaldehyde Production

The 1987 RIA estimated that approximately 16 out of 49 establishments would have exposures above 0.5 ppm after promulgation of the standard. However, the 1987 RIA indicated no exposures above 0.7 ppm (Ex. 206, p. IV–78).

Ashford (Ex. 70–1) developed formaldehyde production engineering control cost estimates in 1981 and indicated costs of compliance to meet all potential exposure limits. By 1985, Heiden indicated that such plants were already in compliance with a 1.0 ppm PEL (Ex. 77–19). Therefore, consistent with the above analysis and data, OSHA believes no additional controls would be necessary to achieve compliance with a 0.75 ppm PEL.

Plastic Molding Laminates

In its 1987 RIA, OSHA estimated that approximately 1,000 plants have exposures between 0.5 and 1.0 ppm (Ex. 206, p. IV–75, 76). OSHA estimates that approximately half, or 500 plants, have exposures between 0.75 and 1.0 ppm. Ashford (Ex. 70–1) estimated that there was one molding machine for every four workers, the capital cost for local ventilation was $425 per machine and the annual operating cost was approximately $133 per machine. Given the estimated 5,000 workers exposed between 0.75 and 1.0 ppm, OSHA estimates ventilation would be required for 1,250 machines. Applying the cost adjustment introduced in the apparel section, OSHA now estimates the capital cost would be $510 per machine and the annual operating cost $160. Based upon these unit costs, OSHA estimates $637,500 in capital costs and $200,000 in annual operating costs.

Summary of Engineering Control Costs

OSHA estimates the total capital costs of instituting engineering controls which would be sufficient to comply with a 0.75 ppm PEL to be $38.9 million, with annual operating costs of $9.2 million. The annualized cost [5] of the engineering control capital costs is estimated to be $6.4 million, for a total annualized cost of $15.5 million.

Medical Removal Protection

The medical removal process begins when an employee reports signs and

[4] Electricity and heating equipment costs (here used as a proxy for ventilation equipment) rose approximately 20% between 1981 and 1987. However, other energy costs, which are also reflected in annual operating costs (e.g., gas heating) generally fell (BLS, Producer Price Indexes, 1987). The 1987 price index was used to match unit price assumptions and revenue data used in the 1987 RIA, as they have been used elsewhere in the analysis.

[5] The annualized cost is derived by applying a cost recovery factor (of 0.163 based on an equipment life expectancy of 10 years and a 10% cost of capital) to any capital costs and adding the annual operating costs.

symptoms of possible overexposure to formaldehyde. OSHA previously estimated that 10 percent of workers exposed between 0.1 and 0.5 ppm would report signs and symptoms (Ex. 206, p. IV–11). These workers would fill out a medical questionnaire, after which a two week evaluation and remediation period would begin. If the symptoms have not subsided after two weeks, the employee would be immediately referred to a physician. The physician might, in turn recommend transferring the employee to a job with significantly less formaldehyde exposure.

OSHA's medical removal provision is a codified version of plans that already exist in a number of companies (Ex. 159). Companies with current removal programs have noted that examples where someone had to be placed in another job because of formaldehyde exposure were rare. The former medical director of Burlington Industries reported that "clearly less than ten percent" of those employees completing medical questionnaires required further medical evaluation. He added that only about one percent of these employees had symptoms that were clearly "chemically related" (Tr., p. 160, 5/12/86). The American Textile Manufacturers Institute stated that "* * * most companies have a complaint mechanism in place to discover individuals with problems * * * Corporate medical surveillance programs show absolutely no evidence that contact dermatitis or allergic reaction from formaldehyde is a frequent problem (Ex. 159)." The medical director for the Dan River Clinic, which provides medical examinations for 6,000–12,000 company employees, 25 percent of whom are exposed to formaldehyde in textile operations, at levels between 0.15 and 1.0 ppm, indicated that over a 10-year period he received "no complaints about formaldehyde irritation or formaldehyde induced dermatological problems" (Ex. 159).

There are, however, additional safeguards in the proposed provision that may increase the amount of medical removal. The amended standard would provide for additional training, which would increase employee awareness of the signs and symptoms of formaldehyde exposure, as well as an understanding of their rights under MRP and the proper channels to follow in using it. Additionally, an employee is allowed to appeal the company doctor's decision. Therefore, it is reasonable to expect some increase in the amount of transfer and removal over what is reported currently. OSHA anticipates that less than 1 percent of the exposed working population would be affected by this provision. The large majority of these cases could be handled by transferring the employee. Only in the case of a very small employer, would an alternative job be unavailable.

OSHA estimates that 10 percent of all employees exposed to formaldehyde would report signs and symptoms that may be related to formaldehyde exposure, but only a small fraction of these would actually need to be moved into other jobs or placed on six-month removal benefits by their employer. Since these employees are already provided medical surveillance under the present standard and a large number of employers presently provide for medical removal in one form or another, the additional burden imposed by this amendment is expected to be small.

However, the potentially significant cost of this provision would be to provide 6 months compensation to employees for whom alternate jobs would not be available. Although the record on medical removal programs in larger companies suggests that alternate jobs are usually available (Ex. 159), the effect of universal medical removal protection on small firms is uncertain. For the purposes of estimating the impact of this provision, OSHA assumes that 10 percent (of the assumed 1 percent of employees who might be removed from their job) cannot be provided alternate employment by their employer and must be provided 6 months compensation. This estimate excludes employees who may find other jobs within 6 months. By these assumptions (10% × 1% removal × 2.2 million exposed × % annual turnover × average annual income × 1.3 fringe benefits × ½ year), the cost would be $5.8 million annually.

The existence of current medical removal plans in industry points to the fact that it makes economic sense to have a medical removal program. Workers who suffer adverse health effects from formaldehyde exposure can be moved to positions where they can contribute more productively to a firm's operation. OSHA therefore anticipates offsetting cost savings from this provision in the form of improved productivity, reduced absenteeism and reduced medical care costs.

Hazard Communication

In the proposed amendment of the existing standard, workers exposed between 0.1 and 0.5 ppm would now be required to receive annual training on the hazards of formaldehyde and ways to avoid them. OSHA estimates the cost of this to be $13.5 per year.

Based upon the 1987 RIA (Ex. 206, p. I–3), OSHA estimates that there are currently approximately 2 million employees exposed to formaldehyde between 0.1 and 0.5 ppm. OSHA estimates that when current compliance is accounted for, it would take an additional half an hour annually, on average, to provide adequate refresher training specific to formaldehyde for these employees.[6] Employing the data and methodology used in the RIA (Ex. 206, p. 15), OSHA estimates the cost of training as follows:

Employee training cost: # of employees between 0.1 and 0.5 ppm × (1 + ½ turnover rate [7]) × (wage × 1.3 fringe rate) × ½ hour Trainer cost in establishments with 20 employees or more: # of employees exposed between 0.1 and 0.5 ppm × (1 + ½ turnover rate)/20 × $26 [8] × ½ hour.

Trainer cost in establishments with 20 or fewer employees: # of affected establishments × $26 × ½ hour.

A summary of the compliance costs of these revisions to the Standard for each industry are provided in Table II.

[6] In the 1987 RIA, OSHA estimated that one hour training would be a reasonable estimate of the amount of time required for the annual training in the average establishment (Ex. 206, p. IV–15). However, the original RIA training costs did not factor in current compliance. In the apparel industry, with almost half of the affected employees, little time would be needed to train employees on these provisions. Morever, in addition to whatever baseline existed before, the current standard has likely spurred additional training for employees with exposure below 0.5 ppm, in part because some establishments may have chosen to establish training programs for all employees, not just new employees or those exposed above 0.5 ppm.

[7] The turnover rate varies by industry (Ex. 206, p. IV–4)

[8] Trainer hourly compensation (Ex. 206, p. IV–15).

TABLE 11.—ANNUALIZED COSTS OF COMPLIANCE OF REVISIONS TO FORMALDEHYDE STANDARD

[1987 dollars]

SIC	Industry	Engineering controls	Medical removal protection	Training	Total
2435	Hardwood Plywood	660,291	28,451	50,720	739,461
2492	Particleboard	710,979	14,374	17,634	742,987
2499	Fiberboard	241,984	3,621	2,011	247,615
25	Furniture	5,164,567	812,729	1,498,668	7,475,964
2821	Resins		19,944	81,433	101,377
332, 336	Foundries	5,444,136	173,080	397,961	6,015,177
806, 807	Laboratories		89,218	321,714	410,932
7261	Funeral Services		61,308	363,597	424,905
226	Textile Finishing		76,749	62,996	139,745
23	Apparel	3,039,116	2,815,416	4,367,703	10,222,235
2869	Formaldehyde Production		25,506	25,461	50,968
3079	Plastic Molding	303,750	380,952	630,934	1,315,636
2436	Softwood Plywood		100,903	193,398	294,301
2611	Pulp Mills		15,227	90,578	105,805
2621	Paper Mills		119,083	708,344	827,428
2631	Paperboard Mills		51,155	304,284	355,438
2642	Envelopes		49,316	142,735	192,051
2653	Corrugated & Solid Fiber Boxes		131,207	492,770	623,977
2865	Cyclic Crudes, cyclic Intermediates, Dyes		17,304	112,685	129,989
2851	Paints, Pigments		59,698	203,638	263,337
2873	Nitrogenous Fertilizers		11,583	45,849	57,432
2879	Agricultural Chemicals, NEC		17,834	70,593	88,426
2891	Adhesives & Sealants		21,219	79,691	100,910
2899	Chemicals & Chemical Preparations, NEC		44,968	168,887	213,856
3291	Abrasive Products		29,417	123,149	152,566
3293	Gaskets, Packaging & Sealing Devices		37,722	157,920	195,643
3296	Mineral Wool Insulation		26,821	112,283	139,104
3634	Electric Housewares & Fans		69,713	218,147	287,860
3643	Current-carrying Wiring Devices		68,999	235,365	304,364
3644	Noncurrent-carrying Wiring Devices		39,150	133,545	172,695
3694	Electrical Equip. for I.C. Engines		48,905	231,816	280,722
3792	Mobile Homes Manufacturing		52,085	91,275	143,360
7395	Photofinishing Labs		155,177	520,050	675,227
806	Hemodiaylsis		68,134	460,368	528,502
822	Biology Instructors		62,618	759,151	821,769
822	Veterinary Anatomy		82	720	802
	Total	15,564,822	5,799,669	13,478,073	34,842,564

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Benefits

OSHA expects these proposed revisions to the standard to produce quantifiable benefits in the form of reduced cancer incidence due to the lowered PEL and increased training, and reduced acute respiratory irritation due to the institution of medical removal protection. In addition, OSHA expects that the lower PEL and increased training will improve worker productivity through a lessening of irritation and an improved understanding of workplace processes.

Cancers Avoided

An estimated 83,818 workers are estimated to be currently exposed at an average formaldehyde concentration of 0.875 ppm (between 0.75 and 1.0 ppm). This exposure is expected to be reduced to an average of 0.5625 ppm after implementation of the 0.75 ppm PEL. The 1987 RIA employed a cancer risk model developed by the Consumer Product Safety Commission based upon rat studies (Ex. 206, p. V–1–5). Based upon this model, OSHA estimates that from 0.2 to 72 cancers would be avoided over the next 45 years by lowering the PEL from 1 to 0.75 ppm, depending on whether the Maximum Likelihood Estimate (MLE) or the Upper Confidence Limit (UCL) is used in the risk assessment.[9] Lowering exposure levels should also bring some decrease in respiratory distress and may result in greater worker productivity, as described further below.

OSHA believes that the additional training would also provide health benefits. Annual training insures that the knowledge and appreciation of the hazard and ways to limit exposure through good work practices are reinforced continually.

The Hazard Communication RIA claimed a 20% reduction in all chemical related worker injuries and illnesses as the result of labeling, MSDSs and initial training. With the specific exposure reductions noted in the industry discussion, OSHA expects an additional 5% reduction in formaldehyde-related illnesses and injuries among the workers exposed between 0.1 and 0.5 ppm. Using the same risk model used to project benefits from lowering the PEL, OSHA estimates that, given a 5% risk reduction from annual training, an additional .004 to 79 cancers would be avoided over the next 45 years as a result of annual training.[10]

In sum, OSHA estimates that lowering the PEL and providing additional training could prevent as many as 151

[9] Based upon the CPSC five-stage model, the Maximum Likelihood Estimate of Risk (MLE) is expressed as:

$EP(d) = 0.3954763163 \times 10^{-6} \times (\text{dose in ppm}) + 0.1597258396 \times 10^{-5} \times (\text{dose in ppm})^{4} \times (\text{dose in ppm})^{5}$

Where

EP (d) = the excess probability of cancer attributable to formaldehyde

The Upper Confidence Limit (UCL) is approximately linear at low dowes and, for the purposes of this analysis, could be expressed as:

$EP(d) = 264 \times 10^{-5} \times (\text{dose in ppm})$

[10] This was estimated by using the MLE and the UCL, applied to all employees exposed to formaldehyde between 0.5 and 0.1 ppm, assuming an average exposure of 0.3 ppm, and a 5% reduction in risk.

cancers over the next 45 years, or about 3 per year. However, the lower bound, maximum likelihood estimates of risk, produce only negligible benefits related to the proposed revisions.

Cost Savings

In the 1987 RIA, OSHA estimated that 5,911 cases of respiratory distress would be eased by lowering the PEL to 1.0 ppm (Ex. 206, p. V–9–11). However, these same symptoms persist at very low exposure levels for a small percentage of the population. These employees would be directly aided by medical removal protection.

OSHA estimates there are 2,163,101 employees exposed to formaldehyde at 0.1 ppm or greater. As estimated in the 1987 RIA, acute respiratory distress debilitates affected workers for half the working year, or 125 days, at a cost of between $5.50 and $23.50[11] per worker per day. As a result of this provision, OSHA estimates that as many as 1% of them may be removed for respiratory distress. The equation for calculating this cost savings would therefore be: # employees ×1% × turnover ×$5.50–23.50 per day ×125 days. This would amount to between $4.5 and 19.2 million annually.

It should be noted that while this may represent a cost savings to society, such a savings is not enjoyed entirely by employers. In the apparel industry, for example, employees generally work on a piecework basis. Under the current system, the impact of reduced productivity is borne largely by the employee.

Economic Impact and Regulatory Flexibility

An analysis of revenue and profit data provided in the 1987 RIA indicates that the costs to comply (without consideration of cost savings) with these amendments would not have a significant adverse impact on a substantial number of small entities nor on the economy as a whole. In only the fiberboard industry are costs expected to be as much as 0.1% of revenue, and costs are expected to be less than 1% of profits in all but a few industries. The greatest potential impact on profits would be in the hardwood plywood industry, where compliance costs are estimated to equal 5.4% of profits.

Smaller establishments should not be disproportionately impacted. Most of the costs in the hardwood plywood industry are attributed to the introduction of LEUF resins, and these costs are directly proportional to sales. In the furniture industry, most of the engineering control costs would be absorbed by a minority of larger plants. Human resource costs, such as removal protection and training are generally proportional to the number of employees, and therefore would not have a disproportionate impact on small businesses. The requirement to give employees six month removal compensation might be more burdensome to small businesses due to limited availability of alternate jobs, but this should be a particularly rare event. Since the likelihood of encountering such formaldehyde-sensitive employees is directly related to the number of employees in a business, this provision is not expected to substantially impact small entities. Estimates of average compliance costs per establishment, as a percentage of revenues and profits are provided for all affected industries in Table III.

TABLE III.—COST OF PROPOSED AMENDMENTS TO FORMALDEHYDE STANDARD AS A PERCENTAGE OF REVENUES AND PROFIT

SIC	Industry	Annualized costs ($)	Cost per establish-ment	Costs as % of revenues	Costs as % of profits
2435	Hardwood Plywood	739,461	3,697	0.075	5.35
2492	Particleboard	742,987	16,152	0.089	1.78
2499	Fiberboard	247,615	17,687	0.102	NA
25	Furniture	7,475,964	1,366	0.081	3.11
2821	Resins	101,377	1,045	0.002	0.06
332, 336	Foundries	6,015,177	2,004	0.048	1.60
806, 807	Laboratories	410,932	34	0.000	NA
7261	Funeral Services	424,905	28	0.009	0.09
226	Textile Finishing	139,745	204	0.003	0.15
23	Apparel	10,222,235	445	0.019	0.61
2869	Formaldehyde Production	50,968	1,040	0.002	0.05
3079	Plastic Molding	1,315,636	263	0.006	NA
2436	Softwood Plywood	294,301	1,177	0.004	NA
2611	Pulp Mills	105,805	2,461	0.003	0.07
2621	Paper Mills	827,428	2,767	0.003	0.07
2631	Paperboard Mills	355,438	1,601	0.003	0.08
2642	Envelopes	192,051	649	0.009	0.24
2653	Corrugated & Solid Fiber Boxes	623,977	418	0.005	0.12
2865	Cyclic Crudes, cyclic intermediates, Dyes	129,989	688	0.002	0.03
2851	Paints, Pigments	263,337	183	0.002	0.06
2873	Nitrogenous Fertilizers	57,432	378	0.002	0.12
2879	Agricultural Chemicals, NEC	86,426	268	0.002	NA
2891	Adhesives & Sealants	100,910	148	0.003	0.06
2899	Chemicals & Chemical Preparations, NEC	213,856	149	0.003	NA
3291	Abrasive Products	152,566	408	0.004	NA
3293	Gaskets, Packaging & Sealing Devices	195,643	413	0.009	NA
3296	Mineral Wool Insulation	139,104	777	0.004	NA
3634	Electric Housewares & Fans	287,860	1,095	0.009	0.17
3643	Current-carrying Wiring Devices	304,364	733	0.009	0.18
3644	Noncurrent-carrying Wiring Devices	172,695	764	0.007	NA
3694	Electrical Equip. For I.C. Engines	280,722	648	0.005	NA
3792	Mobile Home Manufacturing	143,360	87	0.011	0.37
7395	Photofinishing Labs	675,277	188	0.023	0.54
806	Hemodialysis	528,502	50	0.000	NA
822	Biology Instructors	821,769	36	0.001	NA

[11] As discussed in the 1987 RIA (Ex. 206, p. V–11), this figure was an estimate of the value of reduced work activity as the result of eye, nose and throat irritation, coughing, headaches, chest discomfort, changes in lung function, imparied physical performance and exacerbation of asthma.

TABLE III.—COST OF PROPOSED AMENDMENTS TO FORMALDEHYDE STANDARD AS A PERCENTAGE OF REVENUES AND PROFIT—Continued

SIC	Industry	Annualized costs ($)	Cost per establishment	Costs as % of revenues	Costs as % of profits
822	Veterinary Anatomy	802	42	0.000	NA

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Environmental Impact Analysis

The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, requires OSHA to determine whether this regulatory action would have a significant impact on the environment. These amendments would not increase the amount of formaldehyde found in the general environment and may decrease it as some establishments switch to low-emitting resins. Therefore, the Agency believes that these provisions would not have a significant impact on the environment. No comments made at the public hearing or submitted to the record contradict this conclusion.

Paperwork Reduction

OSHA is not seeking OMB clearance under the Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 *et seq.* (48 FR 13666) since there are no information collection requirements subject to OMB review under the Paperwork Reduction Act in this formaldehyde proposal.

Federalism and State Plan Applicability

This proposed standard has been reviewed in accordance with Executive Order 12612, 52 FR 41685 (October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with States prior to taking any action that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective as the Federal standards in providing safe and healthful employment and places of employment.

Those States which have elected to participate under section 18 of the OSH Act would not be preempted by this regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

The 25 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of publication of a final rule. The States are: Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. For New York and Connecticut, plans cover only state and local government employees. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

Authority and Signature

Pursuant to the authority of section 4(b)(2), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 653, 655, 657), the Construction Safety Act (40 U.S.C. 333), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), the Secretary of Labor's Order 1–90 (55 FR 9033), 29 CFR part 1911, 29 CFR part 1910 is proposed to be amended as set forth below. As with the original standard covering occupational exposure to formaldehyde, this proposed amendment of that standard would also apply to the maritime and construction industries.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational Safety and Health, Chemicals, Cancer.

Signed at Washington, DC this 8th day of July, 1991.

Gerald F. Scannell,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of title 29 of the Code of Federal Regulations is therefore proposed to be amended as follows:

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

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911. * * * § 1910.1048 also issued under 29 U.S.C. 653.

2. In 3191.1048, paragraphs (c) introductory text, (d)(i)(ii), (m)(1) introductory text, (m)(1)(i), (m)(3), (m)(4) and (n) would be revised and paragraphs (d)(2)(iii), (1)(8), (1)(9), (m)(5) and (p)(3) would be added to read as follows:

§ 1910.1048 Formaldehyde.

* * * * *

(c) *Permissible Exposure Limit (PEL)*—(1) *TWA:* The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds 0.75 part formaldehyde per million parts per air (0.75 ppm) as an 8-hour TWA.

* * * * *

(d) *Exposure monitoring*—(1) *General.* * * *

(ii) *Exception.* Where the employer documents, using objective data, that the presence of formaldehyde or formaldehyde-releasing products in the workplace cannot result in airborne concentrations of formaldehyde that would cause any employee to be exposed at or above the action level or the STEL under foreseeable conditions of use, the employer will not be required to measure employee exposure to formaldehyde.

* * * * *

(2) *Initial monitoring.* * * *

(iii) If the employer receives reports of signs or symptoms of respiratory or dermal conditions associated with

formaldehyde exposure, the employer shall promptly monitor the affected employee's exposure.

* * * * *

(l) *Medical surveillance.* * * *

(8) *Medical removal.* (i) The provisions of paragraph (l)(8) of this section apply when an employee reports significant irritation of the mucosa of the eyes or of the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization attributed to workplace formaldehyde exposure. Medical removal provisions do not apply in the case of dermal irritation or dermal sensitization when the product suspected of causing the dermal condition contains less than 0.05% formaldehyde.

(ii) An employee's report of signs or symptoms of possible overexposure to formaldehyde shall be evaluted by a physician selected by the employer pursuant to paragraph (l)(3) of this section. If the physician determines that a medical examination is not necessary under paragraph (l)(3)(ii) of this section, there shall be a two-week evaluation and remediation period to permit the employer to ascertain whether the sign or symptoms subside untreated or with the use of creams, gloves, first aid treatment or personal protective equipment. Industrial hygiene measures that limit the employee's exposure to formaldehyde may also be implemented during this period. The employee shall be referred immediately to a physician prior to expiration of the two-week period if the signs or symptoms worsen. Earnings, seniority and benefits may not be altered during the two-week period by virtue of the report.

(iii) If the signs or symptoms have not subsided or been remedied by the end of the two-week period, or earlier if signs or symptoms warrant, the employee shall be examined by a physician selected by the employer. The physician shall presume, absent contrary evidence, that observed dermal irritation or dermal sensitization are not attributable to formaldehyde when products to which the affected employee is exposed contain less than 0.1% formaldehyde.

(iv) Medical examinations shall be conducted in compliance with the requirements of paragraph (l)(5)(i) and (ii) of this section. Additional guidelines for conducting medical exams are contained in appendix C of this section.

(v) If the physician finds that significant irritation of the mucosa of the eyes or of the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization result from workplace formaldehyde exposure and recommends restrictions or removal, the employer shall promptly comply with the restrictions or recommendation of removal. In the event of a recommendation of removal the employer shall remove the affected employee from the current formaldehyde exposure and if possible, transfer the employee to work having no or significantly less exposure to formaldehyde.

(vi) When an employee is removed pursuant to paragraph (l)(8)(v) of this section, the employer shall transfer the employee to comparable work for which the employee is qualified or can be trained in a short period (up to 6 months), where the formaldehyde exposures are as low as possible, but not higher than the action level. The employer shall maintain the employee's current earnings, seniority, and other benefits. If there is no such work available, the employer shall maintain the employee's current earnings, seniority and other benefits until such work becomes available, until the employee is determined to be unable to return to workplace formaldehyde exposure, until the employee is determined to be able to return to the original job status, or for six months, whichever comes first.

(vii) The employer shall arrange for a follow-up medical examination to take place within six months after the employee is removed pursuant to this paragraph. This examination shall determine if the employee can return to the original job status, or if the removal is to be permanent. The physician shall make a decision within six months of the date the employee was removed as to whether the employee can be returned to the original job status, or if the removal is to be permanent.

(viii) An employer's obligation to provide earnings, seniority and other benefits to a removed employee may be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program or from employment with another employer made possible by virtue of the employee's removal.

(ix) In making determinations of the formaldehyde content of materials under this paragraph the employer may rely on objective data.

(9) *Multiple physician review.* (i) After the employer selected the initial physician who conducts any medical examination or consultation to determine whether medical removal or restriction is appropriate, the employee may designate a second physician to review any findings, determination or recommendations of the initial physician and to conduct such examinations, consultations, and laboratory tests as the second physician deems necessary and appropriate to evaluate the effects of formaldehyde exposure and to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation for the purpose of medical removal or restriction.

(iii) The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the notification of the right to seek a second medical opinion, or receipt of the initial physician's written opinion, whichever is later;

(A) The employee informs the employer of the intention to seek a second medical opinion, and

(B) The employee initiates steps to make an appointment with a second physician.

(iv) If the findings, determinations or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve the disagreement. If the two physicians are unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician who shall be a specialist in the field at issue:

(A) To review the findings, determinations or recommendations of the prior physicians; and

(B) To conduct such examinations, consultation, laboratory tests and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) In the alternative, the employer and the employee or authorized employee representative may jointly designate such third physician.

(vi) The employer shall act consistent with the findings, determinations and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(m) *Hazard communication*—(1) *General.* Communication of the hazards associated with formaldehyde in the workplace shall be governed by the requirements of paragraph (m) of this section. The definitions of paragraph 29

CFR 1910.1200(c) shall apply under this paragraph.

(i) The following shall be subject to the hazard communication requirements of this paragraph: formaldehyde gas, all mixtures or solutions composed of greater than 0.1 percent formaldehyde, and materials capable of releasing formaldehyde into the air, under reasonably foreseeable conditions of use, at concentrations reaching or exceeding 0.1 ppm.

* * * * *

(3) *Labels.* (i) The employer shall assure that hazard warning labels complying with the requirements of 29 CFR 1910.1200(f) are affixed to all containers of materials listed in paragraph (m)(1)(i) of this section, except to the extent that 29 CFR 1910.1200(f) is inconsistent with this paragraph.

(ii) *Information on labels.* As a minimum, labels shall identify that the material contains formaldehyde; list the name and address of the responsible party; appropriately warn of all hazards as defined in 29 CFR 1910.1200(d) and 29 CFR 1910.1200 Appendices A and B.

(iii) *Exceptions.* Employers whose employees handle solid materials which are only covered by this paragraph because the materials are capable of releasing formaldehyde into the air under reasonably foreseeable conditions of use, need only comply with the following:

(A) As a minimum, for those solid materials capable of releasing formaldehyde at levels of 0.1 ppm and above, labels shall identify that the product contains formaldehyde; list the name and address of the responsible party; and state that physical and health hazard information is readily available from the employer and from material safety data sheets.

(B) For those solid materials capable of releasing formaldehyde at levels above 0.5 ppm, labels shall also contain the words "Potential Cancer Hazard" and appropriately address all other hazards as defined in 29 CFR 1910.1200(d) and 29 CFR 1910.1200 Appendices A and B, including respiratory sensitization.

(C) In making the determinations of anticipated levels of formaldehyde release, the employer may rely on objective data indicating the extent of potential formaldehyde release under reasonably foreseeable conditions of use.

(iv) *Substitute warning labels.* The employer may use warning labels required by other statutes, regulations, or ordinances which impart the same information as the warning statements required by this paragraph.

(4) *Material safety data sheets.* (i) Any employer who uses formaldehyde-containing materials listed in paragraph (m)(1)(i) of this section shall comply with the requirements of 29 CFR 1910.1200(g) with regard to the development and updating of material safety data sheets.

(ii) Manufacturers, importers, and distributors of formaldehyde-containing materials listed in paragraph (m)(1)(i) of this section shall assure that material safety data sheets and updated information are provided to all employers purchasing such materials at the time of the initial shipment and at the time of the first shipment after a material safety data sheet is updated.

(5) *Written hazard communication program.* The employer shall develop, implement, and maintain at the workplace, a written hazard communication program for formaldehyde exposures in the workplace, which at least describes how the requirements specified in this paragraph for labels and other forms of warning and material safety data sheets, and paragraph (n) of the section for employee information and training, will be met. Employers in multi-employer workplaces shall comply with the requirements of 29 CFR 1910.1200(e)(2).

(n) *Employee information and training*—(1) *Participation.* The employer shall assure that all employees who are assigned to workplaces where there is exposure to formaldehyde participate in a training program, except that where the employer can show, using objective data, that employees are not exposed to formaldehyde at or above 0.1 ppm, the employer is not required to provide training.

(2) *Frequency.* Employers shall provide such information and training to employees at the time of initial assignment, and whenever a new exposure to formaldehyde is introduced into the work area. The training shall be repeated at least annually.

* * * * *

(p) *Dates.*

* * * * *

(3) *Start-up dates of amended paragraphs*—(i) *Respiratory protection.* Respiratory protection required to meet the amended PEL of 0.75 ppm TWA shall be provided as soon as possible but no later than 3 months after the effective date of the amendment.

(ii) *Engineering and work practice controls.* Engineering and work practice controls required to meet the amended PEL of 0.75 ppm TWA shall be implemented as soon as possible, but no later than one year after the effective date of the amendment.

(iii) *Medical removal protection.* The medical removal protection provisions including the multiple physician review mechanism shall be implemented within 6 months of the effective date of the amendment.

(iv) *Hazard communication.* The labeling provisions contained in paragraph (m) of this section shall be implemented within 6 months of the effective date of the amendment. Labeling of containers of formaldehyde products shall continue to comply with the provisions of 29 CFR 1910.1200 until that time.

(v) *Training.* The periodic training mandated for all employees exposed to formaldehyde between 0.1 ppm and 0.5 ppm shall begin within 2 months of the effective date of the amendment.

[FR Doc. 91-16582 Filed 7-12-91; 8:45 am]
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

H.J. Res. 138/Pub. L. 102–69

Designating the week beginning July 21, 1991, as "Lyme Disease Awareness Week". (July 10, 1991; 105 Stat. 327; 2 pages) Price: $1.00

H.J. Res. 149/Pub. L. 102–70

Designating March 1991 and March 1992 both as "Women's History Month". (July 10, 1991; 105 Stat. 329; 1 page) Price: $1.00

S. 674/Pub. L. 102–71

To designate the building in Moterey, Tennessee, which houses the primary operations of the United States Postal Service as the "J.E. (Eddie) Russell Post Office Building", and for other purposes. (July 10, 1991; 105 Stat. 330; 1 page) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.