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

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404–639–3528 (Atlanta area)]
1–800–347–1997 (outside Atlanta area)

Contents

Federal Register
Vol. 57, No. 165
Tuesday, August 25, 1992

Agricultural Marketing Service
RULES
Almonds grown in California, 38407, 38408
Celery grown in Florida, 38405
Filberts/hazelnuts grown in Oregon and Washington, 38410
Peanuts, domestically produced, 38413
Potatoes (Irish) grown in—
Idaho and Oregon, 38403
Washington, 38404
Prunes (dried) produced in California, 38412
PROPOSED RULES
Avocados grown in Florida, 38445
Potatoes (Irish) grown in—
Colorado, 38446

Agriculture Department
See Agricultural Marketing Service
See Food Safety and Inspection Service
See Forest Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 38488

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

Bonneville Power Administration
NOTICES
Transmission rates:
Third AC Intertie; addition to Pacific Northwest-Pacific Southwest Intertie, 38490

Centers for Disease Control
NOTICES
Airways disease in miners; NIOSH meeting, 38516
Meetings:
Tuberculosis Elimination Advisory Council, 38516

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Technical Information Service

Commodity Futures Trading Commission
RULES
Foreign futures and options transactions:
London Metal Exchange, 38437

Defense Department
See Air Force Department
PROPOSED RULES
Veterans:
Post-Vietnam Era Veterans Educational Assistance program (VEAP); changes of programs, 38458
NOTICES
Committees; establishment, renewal, termination, etc.:
Strategic Initiative Advisory Committee, 38487
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 38487
Meetings:
Nuclear Failsafe and Risk Reduction Advisory Committee, 38487

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Radian Corp., 38523

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Children with deaf-blindness services program, 38488
Children with severe disabilities program, 38488
Individuals with disabilities postsecondary program, 38489
Secondary education and transitional services for youth with disabilities program, 38489
Meetings:
Historically Black Colleges and Universities, President's Board of Advisors, 38490

Energy Department
See Bonneville Power Administration
See Energy Research Office
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Modesto Irrigation District, 38501

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research program—
Museum science education, 38500

Environmental Protection Agency
RULES
Hazardous waste:
Boilers and industrial furnaces; burning of hazardous wastes
Correction, 38558
NOTICES
Air pollution control; new motor vehicles and engines:
California pollution control standards, 38502, 38503
Meetings:
Risk Assessment Forum; workshops, 38504
Toxic and hazardous substances control:
Premanufacture notices receipts, 38504

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Meetings:
Materials Technical Advisory Committee, 38464
President's Export Council, 38464

Federal Aviation Administration
RULES
Airworthiness directives:
British Aerospace, 38430
Fokker, 38432
Control zones, 38435
Control zones and transition areas, 38434
Transition areas, 38435–38437
PROPOSED RULES
Transition areas, 38456
NOTICES
Passenger facility charges; applications, etc.:
Orlando International Airport, FL, 38542
Pensacola Regional Airport, FL, 38543

Federal Communications Commission
RULES
Organization, functions, and authority delegations:
Managing Director Office, 38444
PROPOSED RULES
Communications equipment:
Radio frequency devices—
Electromagnetic emissions from intentional and unintentional radiators and digital devices; measurement procedures, 38459

Federal Emergency Management Agency
NOTICES
Agency information collection activities under OMB review, 38507
Disaster and emergency areas:
Nebraska, 38508

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Southern California Edison Co. et al., 38495
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 38497
Citizens Power & Light Corp., 38497
Columbia Gas Transmission Corp., 38497
East Tennessee Natural Gas Co., 38497
Hartwell Energy Limited Partnership, 38498
Mississippi River Transmission Corp., 38498
Questar Pipeline Co., 38498
Tennessee Gas Pipeline Co., 38499
Texas Eastern Transmission Corp., 38499
Wisconsin Electric Power Co., 38499

Federal Highway Administration
NOTICES
Meetings:
National Motor Carrier Advisory Committee, 38543

Federal Maritime Commission
NOTICES
Agreements filed, etc., 38508

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 38550

Federal Reserve System
RULES
Depository institutions; reserve requirements (Regulation D):
Definitions and calculations, 38417
Vault cash application lag reduction; and excess or deficiency amount carryover increase, 38415
NOTICES
Meetings; Sunshine Act, 38550

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 38509
Prohibited trade practices:
Dollar Rent-A-Car Systems, Inc., 38509
Value Rent-A-Car, Inc., 38512

Fish and Wildlife Service
NOTICES
Agency information collection activities under OMB review, 38520

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Efrotomycin, 38441
PROPOSED RULES
Human drugs:
Category II and III (OTC); active ingredients status list, 38568
NOTICES
Animal drugs, feeds, and related products:
Generic animal drug products containing fermentation-derived drug substances; guideline availability, 38517

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Tocopherol and citric acid in various meat products; restricted use, 38448
Tricalcium phosphate in mechanically deboned chicken; restricted use, 38450

Forest Service
NOTICES
Meetings:
Radio and Television Broadcast Use Fee Advisory Committee, 38464

General Services Administration
NOTICES
Agency information collection activities under OMB review, 38515
Environmental statements; availability, etc.:
District of Columbia government buildings; central and west heating plants air quality improvement project, 38516
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 38487

Health and Human Services Department
See Centers for Disease Control
See Food and Drug Administration

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Community development block grant program—
Homeownership assistance eligibility, 38517
Housing opportunities for persons with AIDS program, 38552

Interior Department
See Fish and Wildlife Service

See Land Management Bureau
See National Park Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Water Data for Public Use Advisory Committee, 38518

Internal Revenue Service
PROPOSED RULES
Procedure and administration:
Interest on overpayments; period for which interest allowable in cases of credit, clarification, 38457
NOTICES
Meetings:
Commissioner's Advisory Group, 38548

International Trade Administration
NOTICES
Antidumping:
Extruded rubber thread from—
Malaysia, 38465
Industrial phosphoric acid from—
Israel, 38471
Tapered roller bearings and parts, finished and unfinished, from—
Italy, 38471
Countervailing duties:
Extruded rubber thread from—
Malaysia, 38472
Ferrosilicon from—
Venezuela, 38482
Fresh cut flowers from—
Peru, 38485
Fresh cut roses from Israel, 38484
Standard carnations from Canada, 38485
Sulfanilic acid from—
India, 38485

Interstate Commerce Commission
RULES
Interpretations and routing regulations; update, 38444
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern Railroad Co., 38522
Railroad services abandonment:
Boston & Maine Corp. et al., 38522

Justice Department
See Drug Enforcement Administration
See Juvenile Justice and Delinquency Prevention Office
NOTICES
Pollution control; consent judgments:
Specialty Systems, Inc., 38522

Juvenile Justice and Delinquency Prevention Office
NOTICES
Meetings:
State Juvenile Justice Advisory Groups National Coalition, 38523

Labor Department
See Pension and Welfare Benefits Administration
See Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Agency information collection activities under OMB review, 38523

Land Management Bureau
NOTICES
Alaska public lands; protection, 38518
Realty actions; sales, leases, etc.:
Idaho, 38519
Wyoming, 38519

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 38487

National Foundation on the Arts and the Humanities
NOTICES
Grants and cooperative agreements; availability, etc.:
Learning through design project, 38527

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Occupant crash protection—
Passenger side air bags installation; petition denied, 38462
Roof crush resistance; light trucks, 38462
NOTICES
Meetings:
Rulemaking, research, and enforcement programs, 38543
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 38544–38546

National Oceanic and Atmospheric Administration
NOTICES
Marine mammals:
Taking incidental to commercial fishing operations—
Yellowfin tuna, 38486

National Park Service
NOTICES
Meetings:
Sudbury, Assabet and Concord Rivers Study Commission, 38521
National Register of Historic Places:
Pending nominations, 38521

National Space Council
NOTICES
Meetings, 38527

National Technical Information Service
NOTICES
Meetings:
Advisory Board, 38486

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 38527, 38528
Meetings:
Generic reactor pressure vessel integrity issues, 38528
Meetings; Sunshine Act, 38550
Memorandums of understanding:
Georgia Environmental Protection Division; NRC emergency response data system utilization, 38528

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Publix Super Markets, Inc., et al., 38524

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 38530

Postal Service
RULES
Organization and administration:
Postal property, conduct, 38443

Public Health Service
See Centers for Disease Control
See Food and Drug Administration

Railroad Retirement Board
NOTICES
Privacy Act:
Computer matching programs, 38531

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Partners Income Fund, 38531
Tandum Variable Annuity Separate Account, 38539

Selective Service System
NOTICES
Agency information collection activities under OMB review, 38540

Small Business Administration
PROPOSED RULES
Small business size standards:
Advertising services industries, 38452
NOTICES
Agency information collection activities under OMB review, 38540
Disaster loan areas:
Kentucky, 38540
Ohio, 38540
South Dakota et al., 38541
Meetings; regional advisory councils:
Alabama, 38541
California, 38541
Kentucky, 38541
Nebraska, 38541
Oklahoma, 38542
Washington, 38542

State Department
NOTICES
Meetings:
International Radio Consultative Committee, 38542

Trade Representative, Office of United States
NOTICES
Committees; establishment, renewal, termination, etc.:
Tuna import restrictions, dispute settlement panel, 38549

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 38547, 38548

Veterans Affairs Department
RULES
Board of Veterans Appeals:
Rules of practice; fees and expenses, 38442
PROPOSED RULES
Vocational rehabilitation and education:
Veterans education—
Post-Vietnam Era Veterans Educational Assistance program (VEAP); changes of programs, 38458

Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Grants and cooperative agreements; availability, etc.:
Federal Contractor Reporting System (FY 93), 38524

Western Area Power Administration
NOTICES
Power and transmission rate adjustments:
Parker-Davis Project, AZ, 38501

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 38552

Part III
Environmental Protection Agency, 38558

Part IV
Department of Health and Human Services, Food and Drug Administration, 38568

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
945 38403
946 38404
967 38405
981 (2 documents) 38407, 38408
982 38410
993 38412
998 38413
Proposed Rules:
915 38445
948 38446

9 CFR
Proposed Rules:
318 38448
381 38450

12 CFR
204 (2 documents) 38415, 38417

13 CFR
Proposed Rules:
121 38452

14 CFR
39 (2 documents) 38430, 38432
71 (5 documents) 38434–38437
Proposed Rules:
71 38456

17 CFR
30 38437

21 CFR
510 38441
558 38441
Proposed Rules:
310 38568

26 CFR
Proposed Rules:
301 38457

38 CFR
20 38442
Proposed Rules:
21 38458

39 CFR
232 38443

40 CFR
260 38558
261 38558
264 38558
265 38558
266 38558

47 CFR
0 38444
Proposed Rules:
2 38459
15 38459

49 CFR
1004 38444
Proposed Rules:
571 (2 documents) 38462

Rules and Regulations

Federal Register
Vol. 57, No. 165
Tuesday, August 25, 1992

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV-92-088]

Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 945 for the 1992–93 fiscal period (August 1, 1992, through July 31, 1993). Authorization of this budget enables the Idaho-Eastern Oregon Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1992, through July 31, 1993. Comments received by September 24, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–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: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Order No. 945, both as amended [7 CFR part 967], 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 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.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Idaho-Eastern Oregon potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes handled during the 1992–93 fiscal period, beginning August 1, 1992, through July 31, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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 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 the 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 2,200 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 Idaho-Eastern Oregon potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the Idaho-Eastern Oregon Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Idaho-Eastern Oregon potatoes. They are familiar with the Committee's needs and with the costs of goods and services 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 fresh Idaho-Eastern Oregon potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 9, 1992, and unanimously recommended a 1992–93 budget of $88,535, $16,203 less than the previous year. An increase of $2,485 in salaries will be more than offset by a

decrease of $19,088 in the contingency category.

The Committee also unanimously recommended an assessment rate of $0.0026 per hundredweight, the same as each year for the past decade. This rate, when applied to anticipated shipments of 28,000,000 hundredweight, will yield $72,800 in assessment income. This, along with $15,735 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1992–93 fiscal period, estimated at about $47,000, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, 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 all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the fiscal period begins on August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Idaho-Eastern Oregon potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN 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 § 945.245 is added to read as follows:

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

§ 945.245 Expenses and assessment rate.

Expenses of $88,535 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20313 Filed 8–24–92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 946

[Docket No. FV-92-037]

Irish Potatoes Grown in Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenses and establishes an assessment rate under Marketing Order No. 946 for the 1992–93 fiscal period (July 1, 1992, through June 30, 1993). Authorization of this budget enables the State of Washington Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1992, through June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Order No. 946, both as amended [7 CFR part 946], regulating the handling of Irish potatoes grown in Washington. 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 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.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Irish potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes handled during the 1992–93 fiscal period, which began July 1, 1992, through June 30, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(c)(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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 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 the 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 50 handlers of Washington potatoes under this marketing order, and approximately 450 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 Washington potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the State of Washington Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and with the costs of goods and services 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 Washington potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met February 6, 1992, and unanimously recommended a 1992–93 budget of $38,100, $3,100 more than the previous year. Major increases are $1,100 for compliance audits, $600 for salaries, and $500 for compensation.

The Committee also unanimously recommended an assessment rate of $0.005 per cwt., the same as last season. This rate, when applied to anticipated shipments of 7 million hundredweight, will yield $35,000 in assessment income. This, along with $3,100 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1992–93 fiscal period, estimated at $27,634, were within the maximum permitted by the order of two fiscal periods' expenses.

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

A proposed rule was published in the **Federal Register** on June 10, 1992 [57 FR 24561]. This document contained a proposal to add § 946.245 to authorize expenses and establish an assessment rate for the Committee. This rule provided that interested persons could file comments through July 10, 1992. No comments were filed.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program began on July 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Washington potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is hereby amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

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

2. A new § 946.245 is added to read as follows:

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

§ 946.245 Expenses and assessment rate.

Expenses of $38,100 by the State of Washington Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1993. Unexpended funds may be carried over as a reserve.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20314 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 967

[Docket No. FV–92–080]

Celery Grown in Florida; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 967 for the 1992–93 fiscal year (August 1, 1992 through July 31, 1993). Authorization of this budget enables the Florida Celery Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1992, through July 31, 1993. Comments received by September 24, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–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: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 149 and Order No. 967, both as amended [7 CFR part 967], 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 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.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida celery is subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable celery handled during the 1992-93 fiscal year, beginning August 1, 1992, through July 31, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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 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 the 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 7 handlers of Florida celery under this marketing order, and approximately 13 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 Florida celery producers and handlers may be classified as small entities.

The budget of expenses for the 1992-93 fiscal year was prepared by Florida Celery Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Florida celery. They are familiar with the Committee's needs and with the costs of goods and services 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 Florida celery. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 10, 1992, and unanimously recommended a 1992-93 budget of $150,000, $15,000 less than the previous year. The addition of a $2,000 contingency reserve category will be offset by decreases of $10,000 for promotion, merchandising & PR, and $6,000 for research, for which no funding was recommended.

The Committee also unanimously recommended an assessment rate of $0.03 per crate, the same as last season. This rate, when applied to anticipated shipments of 5,000,000 crates, will yield $150,000 in assessment income. Funds in the Committee's authorized reserve as of July 31, 1991, estimated at $20,142, were within the maximum permitted by the order of one marketing year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, 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 all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year begins on August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Florida celery handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

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 § 967.227 is added to read as follows:

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

§ 967.227 Expenses and assessment rate.

Expenses of $150,000 by the Florida Celery Committee are authorized, and an assessment rate of $0.03 per crate of assessable celery is established for the fiscal year ending July 31, 1993. Unexpended funds may be carried over as reserve.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-20310 Filed 8-24-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

[Docket No. FV-92-005FR]

Handling of Almonds Grown in California; Salable and Reserve Percentages for the 1991-92 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes, without modification, the provisions of an interim final rule which established increased salable and reduced reserve percentages for marketable California almonds received by handlers during the 1991-92 crop year (July 1-June 30). The Almond Board of California (Board) unanimously recommended increasing the salable percentage from 90 to 100 percent and decreasing the reserve percentage from 10 to 0 percent. Half of the reserve was released upon publication of an interim final rule on April 1, 1992, and the remaining half was released on May 1, 1992. That action relaxed restrictions on handlers and was necessary to provide a sufficient quantity of almonds to meet trade demand and carryover needs.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Fruit and Vegetable Division, AMS, USDA, Room 2523-S, P.O. Box 96456, Washington D.C. 20090-6456; telephone: (202) 205-2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds 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 (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.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, salable and reserve percentages may be established for almonds during any crop year. This action continues in effect revised salable and reserve percentages for marketable California almonds received by handlers during the 1991-92 crop year (July 1, 1991 through June 30, 1992). This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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 action on small entities.

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

There are approximately 115 handlers of almonds who are subject to regulation under the order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less that $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

The 1991-92 almond salable, reserve, and export percentages were established in a final rule published in the **Federal Register** on November 22, 1991 [56 FR 58841]. The initial salable percentage was 90 percent, the reserve percentage was 10 percent, and the export percentage was 0 percent. These percentages were established pursuant to §§ 981.47 and 981.49 of the almond marketing order. At a December 5, 1991, meeting the Board recommended releasing the 10 percent reserve at one time. However, the Department was unable to act on the Board's recommendation because sufficient justification for such action was not provided.

On January 8, 1992, the Board met again and unanimously recommended increasing the salable percentage from 90 to 100 percent and decreasing the reserve percentage from 10 to 0 percent. If further recommended that half of the reserve be released on March 1 and the remaining half be released on May 1, 1992. The Board based its recommendation on the current estimates of marketable supply, combined domestic and export trade demand for the 1991-92 crop year, and desirable carryover for the 1992-93 crop year.

On the basis of that recommendation, the supporting information supplied, and other information, the Department issued an interim final rule published in the **Federal Register** on April 1, 1992 [57 FR 10976]. That interim final rule authorized release of half of the reserve on April 1, 1992, and the remaining half on May 1, 1992. That action was intended to provide an orderly flow of almonds to the market, without imposing any additional burden or costs on handlers. This action adopts, without change, that interim final rule.

Comments to the interim final rule were requested through May 1, 1992, and one comment was received from Panoche Creek Packing.

The commentor questioned why the initial release of the almond reserve was made effective April 1 rather than March 1 as the Board recommended. The 10 percent reserve percentage earlier established by the Department was in effect until modified in accordance with the rulemaking procedures required under the Administrative Procedure Act (5 U.S.C. 553). Therefore, the first release of the reserve could not be made effective on March 1, 1992, as recommended by the Board, because the rulemaking action relaxing the reserve percentages was not issued by the Department until March 27, 1992, and not published in the **Federal Register** until April 1, 1992.

The commentor also questioned the methods used in formulating the desirable carryover. The projected desirable carryover is based on production volume and market needs each year and is adjusted to reflect changing supply and market conditions as the season progresses.

Obviously, it is difficult to anticipate the exact volume of this year's crop and

to make projections for next year's crop at the outset of the current season. Therefore, the Board's estimates and the Secretary's rulemaking actions tend to be conservative early in the season.

As the season progresses, if the Board finds that its initial crop estimate is reasonably close to the actual crop, it sometimes raises the desirable carryover above its initial estimate. Larger desirable carryover estimates generally have been made by the Board in early May of the crop year after the Department's initial estimate of the upcoming crop is available. When the upcoming crop is estimated to be below normal levels, the Board generally has raised the desirable carryover to consider the contemplated shortage of almonds expected during the following crop year.

The estimates used by the Board in establishing the original and revised salable and reserve percentages, are shown below.

MARKETING POLICY ESTIMATES—1991 CROP

[Kernelweight basis in millions of pounds]

	11/22/91 initial estimates	1/8/92 revised estimates
Estimated production:		
1. 1991 Production	460.0	488.0
2. Loss and exempt—4.0%	23.0	24.4
3. Marketable Production	437.0	463.6
Estimated trade demand:		
4. Domestic	190.0	190.0
5. Export	370.0	395.0
6. Total	560.0	585.0
Inventory adjustment:		
7. Carryin 7/1/91	250.0	250.0
8. Desirable Carryover 6/30/92	83.30	128.6
9. Adjustment (item 8 minus item 7)	(166.7)	(121.4)
Salable reserve:		
10. Adjusted Trade Demand (item 6 plus item 9)	393.3	463.6
11. Reserve (Item 3 minus item 10)	43.7	0
12. Salable percentage (item 10 divided by item 3×100)	90	100
13. Reserve percentage (100 percent minus item 12)	10	0

Estimated 1991–92 crop production increased from 460 to 488 million kernelweight pounds. Estimated weight losses resulting from the removal of inedible kernels by handlers and losses during manufacturing also increased from 23 to 24.4 million kernelweight pounds. Therefore, marketable production is now expected at 463.6 million kernelweight pounds, compared to the initial estimate of 437 million kernelweight pounds.

The 1991–92 estimated domestic demand remained at 190 million kernelweight pounds. Estimated export demand increased from 370 to 395 million kernelweight pounds. Therefore, total estimated demand increased from 560 to 585 million kernelweight pounds for the 1991–92 crop year.

The Board estimated that 250 million kernelweight pounds of almonds were carried-in from the 1990–91 crop year to the 1991–92 crop year. The Board increased its estimate of desirable carryover from 83.3 to 128.6 million kernelweight pounds. After taking carryin (July 1991) and desirable carryover (June 1992) into account, the adjusted trade demand increased from 393.3 to 463.6 million kernelweight pounds, an amount equal to the Board's estimate of marketable production.

The increase in the salable percentage from 90 to 100 percent was intended to meet the increased export and carryover needs. The reason for the gradual release was to avoid potential marketing problems which the Board anticipated if all of the reserve had been released at the same time. Releasing the reserve in two increments was intended to help even out the increased supplies for the remainder of the crop year.

When recommending the establishment of salable, reserve, and export percentages for any crop year, the Board may include normal export requirements with domestic requirements in its estimate of trade demand. For the 1991–92 crop year, estimated exports are included in the trade demand. Because 0 percent was established as the export percentage, reserve almonds are not eligible for export to normal export outlets. However, handlers may ship their salable almonds to export markets. The export percentage is not affected by this action.

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

After consideration of all relevant matter presented, the comment received, and the Board's recommendation, it is found that this action will tend to effectuate the declared policy of the Act. The purpose of the two-step release was to allow a gradual flow of additional almonds into marketable channels. The Board was concerned that a one-step release could burden the market. The Board concluded that the conditions in the industry had changed since the reserve was recommended in July 1991, and established in November 1991.

Continuation of the interim final rule is expected to satisfy the increased market needs for almonds expected during the 1991–92 crop year.

Pursuant to 5 U.S.C. 553, it is also found 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 rule is intended to provide sufficient quantities of almonds for normal domestic, export, and carryover needs during the 1991–92 crop year; (2) this action was discussed at a public meeting; (3) this action is a relaxation of a regulation; and (4) this rule adopts an interim final rule without modification.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

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

2. Accordingly, the interim final rule revising § 981.238, which was published on April 1, 1992 [57 FR 10976], is adopted as a final rule without change.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20308 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[Docket No. FV–92–081]

Almonds Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 981 for the 1992–93 crop year (July 1, 1992, through June 30, 1993). Authorization of this budget enables the Almond Board of California (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning July 1, 1992, through June 30, 1993. Comments received by September 24, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-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: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981, both as amended [7 CFR part 981], regulating the handling of almonds grown in California. 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 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.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds handled during the 1992-93 crop year, beginning July 1, 1992, through June 30, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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 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 the 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 115 handlers of California almonds under this marketing order, and approximately 7,000 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 California almond producers and handlers may be classified as small entities.

The budget of expenses for the 1992-93 crop year was prepared by the Almond Board of California, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs of goods and services 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 Board was derived by dividing anticipated expenses by expected shipments of California almonds. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

The Board met June 4, 1992, and unanimously recommended a 1992-93 budget of $12,395,049, $854,954 more than the previous year. This amount includes administrative and other expenses of $5,620,049, $1,904,454 more than the previous year, and $6,775,000 for creditable advertising expenditures. Major increases include $200,000 for salaries, $7,000 for employee benefits, $20,500 for retirement, $2,000 for payroll taxes, $16,000 for office rent, $2,000 for storage rent, $2,000 for insurance, $3,500 for audit (contract), $33,000 for vehicles, $1,400 for security, $2,000 for telephone, $4,000 for postage & UPS, $15,000 for office equipment, $2,500 for equipment maintenance, $82,654 for production research, $1,626,000 for public relations, $3,500 for crop estimate, and the addition of a $10,000 relocation expenses category. These would be partially offset by decreases of $4,000 for research conference, $3,000 for field rep travel, $10,000 for investigation/consultant, $9,000 for newsletter, $3,000 for printing, and $100,000 for management consultant for which no funding was recommended.

The Board also unanimously recommended an assessment rate of 2.25 cents per kernel pound, the same as last year. It was also unanimously recommended that handlers should be eligible to receive credit for their own marketing promotion activities for up to 1.25 cents of this 2.25 cents assessment rate, 0.50 cents less than last year. The 1.00 cent per kernel pound noncreditable assessment rate is .50 cents more than last year. Revenues are expected to be $5,420,000 from administrative assessments (542,000,000 pounds @ 1.00 cent per pound), $960,000 from advertising assessments, $30,000 from interest, and $100,000 from the sale of generic packages for a total of $6,510,000. A cash carryin from 1991-92 of $301,578 also is expected.

The remaining $6,775,000 of recommended 1992-93 expenses is the estimated amount which handlers are expected to spend on their own marketing promotion activities based on a projected 1992-93 marketable California production of 542,000,000 kernel pounds. This figure also assumes that all handlers will receive full credit against their 1.25 cents per pound creditable assessment obligation. Unexpended funds from 1992-93 may be carried over to cover expenses during the first four months of the 1993-94 crop year.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional

costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, 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 all relevant matter presented, including the information and recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year began on July 1, 1992, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

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

2. A new § 981.339 is added to read as follows:

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

§ 981.339 Expenses and assessment rate.

Expenses of $12,395,049 by the Almond Board of California are authorized for the crop year ending June 30, 1993. An assessment rate for the crop year payable by each handler in accordance with § 981.81 is fixed at 2.25 cents per kernel pound of almonds less any mount credited pursuant to § 981.41, but not to exceed 1.25 cents per kernel pound of almonds.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20309 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 982

[Docket No. FV–91–447FR]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1991–92 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting, without modification, as a final rule the provisions of an interim final rule which established interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1991–92 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This action was recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–6862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 982 [7 CFR part 982], both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This 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 rule has been reviewed by the Department of Agriculture (Department) under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, interim and final free and restricted percentages for sales of inshell filberts/hazelnuts may be established. This action establishes interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1991–92 marketing year, beginning July 1, 1992, through June 30, 1992. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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. 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 25 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order and approximately 1,000 producers in the Oregon and

Washington production area. 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 handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this final rule are based on requirements specified in the order. This rule will restrict the amount of inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of interim and final free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the market can utilize throughout the season, and the percentages release the inshell trade demand. The preliminary percentages release 80 percent of the inshell trade demand, while the interim and final percentages release 100 percent and 115 percent, respectively, of the inshell trade demand.

The inshell trade demand, rounded to the nearest whole number, equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported or shelled (restricted) early in the 1991–92 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates.

At its August 28, 1991, meeting, the Board computed and announced preliminary free and restricted percentages of 12 and 88 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

On or before November 15, the Board must meet to recommend to the Secretary interim percentages which release 100 percent of the inshell trade demand and final percentages which release an additional 15 percent of the three-year-average trade acquisitions.

The Board uses current crop estimates to calculate the interim final and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to ensure an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 14, 1991, reviewed and approved an amended marketing policy and recommended the establishment of interim and final free and restricted percentages of 16 and 84 percent and 19 and 81 percent, respectively. The Board also recommended that the final percentages be effective on May 1, 1992, which is 60 days prior to the end of season. The marketing percentages are based on the industry's final production estimates and release of 4,263 tons to the domestic inshell market. (The interim final rule incorrectly stated that 25,133 tons were released to the domestic inshell market.) The Oregon Agricultural Statistics Service provided an early estimate of 25,300 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current estimate of 25,133 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 25,133 tons.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1991–92 marketing year:

Inshell supply		Tons
(1) Total production (Filbert/Hazelnut Marketing Board handler survey estimate)		25,133
(2) Less substandard, farm use (disappearance)		2,161
(3) Merchantable production (the Board's adjusted crop estimate)		22,972
(4) Plus undeclared carryin as of July 1, 1992, subject to regulation		37
(5) Supply subject to regulation (Item 3 plus Item 4)		23,009
(6) Average trade acquisitions based on three prior years' domestic sales		4,252
(7) Increase to encourage increased sales (10 percent)		425
(8) Less declared carryin as of July 1, 1992, not subject to regulation		1,052
(9) Inshell Trade Demand		3,625
(10) 15 percent of the average trade acquisitions based on three years domestic sales		638
(11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)		4,263
Percentages	Free	Restricted
(12) Interim percentages (Item 9 divided by Item 5) x 100	16	84
(13) Final percentages (Item 11 divided by Item 5) x 100	19	81

In addition to complying with the provisions of the marketing order, the Board also considers the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that this primary market have available a quantity equal to 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This is to provide for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to meet the Guidelines, an increase of 10 percent (425 tons) has been included in the calculations used in determining the inshell trade demand.

The established interim and final percentages, which release 100 percent and 115 percent, respectively, of the inshell trade demand, will make available 110 percentage and 125 percent, respectively, of prior years' sales, thus exceeding the goal of the Guidelines.

An interim final rule establishing final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1991–92 marketing year was published in the **Federal Register** on January 10, 1992 [57 FR 1073]. A 30-day comment period was established to provide opportunity for industry comment. No comments were received.

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.

After consideration of all available information, it is found that the establishment of interim and final free and restricted percentages, as hereinafter set forth, 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) The 1991–92 marketing year began July 1, 1991, and the percentages established herein apply to all merchantable filberts/hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this action, which was recommended at an open Board meeting, and need no additional time to comply with these percentages which release more filberts/hazelnuts than the preliminary percentages; and (3) this final rule is an adoption, without modification, of an interim final rule effective January 6, 1992, establishing interim and final free and restricted percentages for the 1991–92 crop year.

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

1. The authority citation for 7 CFR part 982 continues to read as follows:

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

2. For the reasons set forth in the preamble, the provisions of the interim final rule amending 7 CFR part 982 which were published at 57 FR 1074 on January 10, 1992, are adopted as a final rule without change.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20311 Filed 8–24–92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 993

[Docket No. FV-92-092]

Dried Prunes Produced in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule and request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 993 for the 1992–93 crop year (August 1, 1992, through July 31, 1993). Authorization of this budget enables the Prune Marketing Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1992, through July 31, 1993. Comments received by September 24, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2423–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: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended [7 CFR part 993], regulating the handling of dried prunes produced in California. 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 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.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California prunes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable prunes handled during the 1992–93 crop year, beginning August 1, 1992, through July 31, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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 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 the 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 17 handlers of California prunes under this marketing order, and approximately

1,400 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 California Prune producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 crop year was prepared by the Prune Marketing Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of California prunes. They are familiar with the Committee's needs and with the costs of goods and services 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 dried California prunes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 23, 1992, and unanimously recommended a 1992–93 budget of $285,000, $5,224 less than the previous year. Major increases of $8,750 for salaries and wages, $1,000 for office supply and expense, $1,000 for postage and messenger, and $4,500 for fieldman and Committee travel will be offset by decreases of $1,500 for insurance, $2,000 for repairs and maintenance, $1,000 for telephone, $1,500 for office travel, $5,000 for purchase of equipment, $2,000 for research and development, and $4,624 in the reserve for contingencies.

The Committee also unanimously recommended an assessment rate of $1.50 per salable ton, $0.26 less than the previous year. This rate, when applied to anticipated shipments of 190,000 salable tons, will yield $285,000 in assessment income, which will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, 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 all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the crop year begins on August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable California prunes handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

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

2. A new § 993.343 is added to read as follows:

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

§ 993.343 Expenses and assessment rate.

Expenses of $285,000 by the Prune Marketing Committee are authorized, and an assessment rate of $1.50 per salable ton of assessable dried prunes is established for the crop year ending July 31, 1993.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20315 Filed 8–24–92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 998

[Docket No. FV-92-051]

Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures for administration and indemnification, establishes an assessment rate, and authorizes continuation of an indemnification reserve under Marketing Agreement 146 for the 1992–93 crop year (July 1, 1992 through June 30, 1993). Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay these expenses, and settle indemnification claims during the 1992–93 crop year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

EFFECTIVE DATES: July 1, 1992 through June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–6862.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 [7 CFR part 998] regulating the quality of domestically produced peanuts. This agreement 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 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.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments, and deductible type insurance for 1992–93 indemnification expenses. This rule authorizes expenditures and establishes an assessment rate for the Peanut Administrative Committee for the fiscal period beginning July 1, 1992. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this 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.

There are approximately 70 handlers of peanuts covered under the peanut marketing agreement, and approximately 47,000 producers in the 16 States covered under the agreement. 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. Some of the handlers covered under the agreement are small entities, and a majority of producers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget, assessment rate, and indemnification reserve. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received by handlers from July 1, 1992. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

The Committee met on March 4–5, 1992, and unanimously recommended 1992–93 crop year administrative expenses of $1,042,000 and an administrative assessment rate of $0.57 per net ton of assessable farmers' stock peanuts received by handlers. In comparison, 1991–92 crop year budgeted administrative expenditures were $1,009,258, and the administrative assessment rate was $0.54 per ton.

Administrative budget items for 1992–93 which have increased compared to those budgeted for 1991–92 (in parentheses) are: Executive salaries, $138,364 ($131,775); clerical salaries, $158,366 ($140,000); field representatives salaries, $266,420 ($251,352); payroll taxes, $46,850 ($42,873); employee benefits, $147,000 ($133,500); Committee members travel, $32,000 ($30,000); field representative travel, $107,000 ($95,000); insurance and bonds, $7,500 ($6,500); office rent and parking, $54,000 ($51,000); repairs and maintenance agreements, $6,000 ($4,000); and audit fees, $8,000 ($7,000). Items which have decreased compared to those budgeted for 1991–92 (in parentheses) are: Furniture and equipment, $4,000 ($15,000); office supplies and stationery, $14,000 ($24,000); postage and mailing, $13,000 ($24,000); and employee bonus for 1990 claims work, $0 ($14,258). All other items are budgeted at least year's amounts. The administrative budget includes $9,000 for contingencies.

The Committee also unanimously recommended 1992 crop indemnification claims payments of up to $9,000,000 and an indemnification assessment of $2.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. The $9,000,000 of indemnification claims coverage to be provided on 1992 crop peanuts includes $5,000,000 in excess loss insurance to be purchased by the Committee.

The total recommended assessment rate is $2.57 per ton of assessable peanuts ($0.57 for administrative and $2.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,828,070 will yield $1,042,000 for program administration and $3,656,140 for indemnification. The indemnification amount, when added to expected cash carry over from 1991–92 indemnification operations of $9,136,000, will provide $12,792,140, which should be adequate for the 1992 fund, and to maintain an adequate reserve.

A proposed rule was published in the **Federal Register** on June 9, 1992 [57 FR 24392], proposing to add § 998.405 authorizing expenses and an indemnification reserve and establishing administrative and indemnification assessment rates. Interested persons could file comments to the proposed rule through June 19, 1992. One comment was received from the manager of the Peanut Administrative Committee. On behalf of the Committee, he requested a change to make the final rule consistent with revised indemnification procedures for the 1992–93 crop year. The $9,000,000 indemnification fund should be reserved for payment of claims only. The cost of the indemnification insurance premium and the costs to carry out indemnification procedures (sampling and testing of 2–AB and 3–AB Subsamples, and crushing supervision, pursuant to the Outgoing Quality Regulation, § 998.200(c)), are additional costs which must be authorized and should be paid from available indemnification funds. Such indemnification costs not allocated to claims payments are not expected to exceed $2,000,000. This revision has been incorporated in this final rule.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. 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 agreement. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the expenses, assessment rates and indemnification reserve specified in this rule are reasonable and likely to be incurred and that such expenses, assessment rates and indemnification reserve will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 crop year for the marketing agreement begins July 1, 1992, and the marketing agreement requires that the rate of assessment for the crop year apply to all assessable peanuts handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

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

2. New § 998.405 is added to read as follows:

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

§ 998.405 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1992, shall be in the amount of $1,042,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee not to exceed $9,000,000 for indemnification claims payments and claims expenses, pursuant to the terms and conditions of indemnification applicable to the 1992 crop effective July 1, 1992, are authorized. In addition, indemnification expenses, in an undetermined amount estimated not to exceed $2,000,000, which are incurred by the Committee for excess loss insurance, sampling and testing fees for 2–AB and 3–AB Subsamples, and fees for the supervision of the crushing of indemnified peanuts are also authorized.

(c) *Rate of assessment.* Each handler shall pay to the Committee, in accordance with § 998.48 of the marketing agreement, an assessment at the rate of $2.57 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31 (c) and (d). A total of $0.57 shall be for administrative expenses and a total of $2.00 shall be for indemnification. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $2.00 rate not expended on indemnification claims payments on 1992 crop peanuts and related expenses shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20312 Filed 8–24–92; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-0750]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted two amendments to its Regulation D to facilitate the computation and maintenance of reserves. The Board is reducing the lag in the application of vault cash to reserve requirements in order to damp the seasonal variations in required reserve balances. Reducing the lag in application should decrease the probability that reserve balances will drop seasonally to levels that would cause depository institutions difficulty in managing their reserve balances. The Board is also increasing from the greater of 2 percent or $25,000 to the greater of 4 percent or $50,000 the amount of excesses or deficiencies in reserve balances that may be carried over from one reserve maintenance period to the next to give depositories greater flexibility in managing reserve balances.

DATES: The amendment to § 204.3(c)(3) is effective November 12, 1992. The reduced lag in application of vault cash for weekly reporters will apply for the maintenance period beginning November 12, 1992. The amendments to § 204.3(h) are effective September 3, 1992. The increase in carryover of reserve deficiences or surpluses will apply for the maintenance period beginning September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Patrick J. McDivitt, Attorney (202/452-3818), or Lawranne Stewart, Attorney (202/452-3513), Legal Division; or Joshua Feinman, Economist (202/452-2841), Division of Monetary Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: On March 6, 1992, the Board published for comment revisions to its Regulation D, Reserve Requirements of Depository Institutions, 12 CFR part 204, concerning the computation and maintenance of reserves.[1] The proposed changes, which concerned vault cash and carryover of reserve deficiencies and excesses, were intended to improve the ability of depository institutions to manage their reserve balances. Comments were due by April 6, 1992. The Board has reviewed the comments received on the proposals and is now adopting final amendments to Regulation D.

Summary of Comments

The Board received comments on the proposed rule changes from the following 39 commenters:

Type	Number
Commercial Banks	20
Bank holding companies	8
Federal Reserve Banks	5
Trade associations	2
Credit unions	2
Clearing house	1
Savings and loans	1

Vault Cash

Currently, reserve requirements for depository institutions that report weekly are assessed against transaction accounts on a roughly contemporaneous

[1] 57 FR 8096, March 6, 1992.

basis,[2] but offsetting vault cash is applied to the required reserves with a lag of two reserve maintenance periods. The Board proposed to amend Regulation D to reduce the lag in the application of vault cash to reserve requirements from two periods to one in order better to synchronize movements in required reserves and applied vault cash. The Board requested comment on whether a reduction in the lag in the application of vault cash would improve the ability of depository institutions to manage their required reserve balances and whether the proposal would have any adverse effects on their ability to predict required reserve balances. The Board also requested comment concerning the costs of implementing a shift in vault cash application, and whether these costs would be considered significant in relation to the benefits of the proposed amendment to the depository institution.

Thirty-five commenters supported the proposal generally, with twenty-four of these commenters indicating that the proposed amendment would improve their ability to manage their reserve positions. Of the fourteen commenters that addressed the question of costs, all indicated that the costs to depository institutions associated with the shift would be minimal.

Four of the commenters, while supporting the proposed shift in the application of vault cash, recommended that vault cash be applied to reserve requirements on a contemporaneous basis, that is, with no lag in application. The Board has not adopted this recommendation, as the lagged application of vault cash provides information needed to estimate the demand for reserves in the current maintenance period. Such estimates are essential to the conduct of open market operations. Two other commenters pointed out that the proposed amendment would not reduce the lag in the computation period for deposits other than transaction accounts, and indicated that if reserve requirements for nonpersonal time deposits and Eurocurrency liabilities were to be reimposed, depository institutions would have to maintain reserves based on three computation periods. At the time that the reserve ratios relating to nonpersonal time deposits and Eurocurrency liabilities were reduced to zero, however, the provisions of Regulation D providing for lagged maintenance of reserves against such deposits also were removed.[3] Should these ratios be raised above zero in the future, the Board would determine the appropriate period for reserve maintenance on such deposits at that time. Another commenter suggested that depository institutions be divided into two groups, with the reserve maintenance period for each group ending on alternating Wednesdays. The Board previously considered alternating maintenance periods, but concluded that such a system was not operationally feasible.

Although none of the commenters specifically opposed the proposed amendment, two commenters urged that reserve requirements be eliminated altogether. The Board does not have the authority to eliminate reserve requirements completely, as section 19(b) of the Federal Reserve Act establishes minimum reserve ratios for reserves on transaction account balances. Two other commenters expressed support for legislative proposals to permit interest to be paid on reserve balances.

In view of the comments received, the Board has adopted the amendment to reduce the lag in the application of vault cash to meet reserve requirements from two periods to one period as a final rule. The amendment will be effective for the reserve maintenance period beginning on November 12, 1992.[4] The delayed effective date has been provided in order to permit the necessary modifications to the reserve computation systems of depository institutions and the Federal Reserve Banks.

Carryover of Excesses or Deficiencies

The Board proposed an increase in the amount of reserve deficiencies or surpluses that a depository institution would be permitted to carry forward into the next maintenance period to the greater of 4 percent of required reserves and clearing balances[5] or $50,000. Currently, carryover of reserve surpluses or deficiencies into the next maintenance period is permitted up to the greater of 2 percent of the sum of required reserves and required clearing balances or $25,000. In either case, the carryover is reduced by the amount of an institution's required clearing balance penalty-free band, if applicable.[6] In proposing the amendment, the Board noted that reductions in reserve requirements have resulted in a decline in the maximum dollar value of the carryover, reducing the ability of a depository institution to cushion a given dollar shock to its reserve position late in maintenance period. The proposed amendment was intended to provide depository institutions with more flexibility in managing their reserve positions. The Board also proposed to amend the language of the carryover provision to clarify and more accurately reflect the method used to calculate the maximum carryover permitted.

Thirty-seven commenters stated that they supported the Board's proposed amendment. Of these thirty-seven, twenty-eight commenters indicated that the increase in permitted carryover would improve their ability to manage their reserve positions. No commenters opposed the amendment.

Two commenters suggested that the Board consider further increases in permitted carryover. While the Board would consider a further increase if it appeared necessary to permit depository institutions to manage their reserve positions adequately, the Board believes that carryover generally must be limited in order to permit accurate estimates of required reserves. Another commenter suggested that the penalty-free band for clearing balances also be increased in order to provide similar benefits to depository institutions that maintain required clearing balances but are not bound by reserve requirements. Since these institutions hold no reserve balances, their ability to manage their reserve accounts has not been adversely affected by the recent cuts in reserve requirements. The Board believes that the current penalty-free band provides these institutions with adequate leeway in managing their clearing balance accounts.

Based on the comments received, the Board has adopted the amendment as a

[2] Weekly reporters generally are depository institutions with total deposits of $44.8 million or more. Required reserves for weekly reporters are assessed based on daily average balances for a period beginning on a Tuesday and ending on the second Monday thereafter. This period is known as the "computation period." Reserves against the daily average balances for the computation period must be maintained throughout the "maintenance period," which begins on the Thursday following the beginning of the computation period and ends on the second Wednesday thereafter. *See* 12 CFR 204.3(c).

[3] 55 FR 50540, Dec. 7, 1990.

[4] For the reserve maintenance period beginning Thursday, November 12th and ending Wednesday, November 25th, depository institutions will apply to their reserve requirements vault cash from the computation period beginning on Tuesday, October 27th, and ending on Monday, November 9th.

[5] Required clearing balances are set by agreement between a depository institution and its Federal Reserve Bank, based on clearing needs of the depository and its account overdraft record. Information on clearing balance requirements may be obtained from a depository institution's local Reserve Bank.

[6] The required clearing balance penalty-free band is currently equal to the greater of $25,000 or 2 percent of the depository institution's required clearing balance.

final rule. For both weekly and quarterly reporting institutions, the amendment will be effective for the maintenance period beginning September 3, 1992, with reserve surpluses or deficiencies from this maintenance period carried over into the maintenance period beginning September 17, 1992, based on the amended carryover provisions.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the amendments will not have a significant economic impact on a substantial number of small entities. The Board does not believe that the amendments would impose any additional reporting or recordkeeping requirements. To the extent changes in recordkeeping procedures may be required by the vault cash proposal, this will affect only weekly reporters, that is, depository institutions with total deposits of $44.8 million or more, and should enable these depository institutions to manage their required reserves more efficiently. Smaller institutions, which report only quarterly, will not be affected by the vault cash amendment.

Notice of Final Rule

A final rule generally is required to be published at least thirty days prior to its effective date. 5 U.S.C. 553(d). An exception is provided, however, for a substantive rule that grants or recognizes an exemption or relieves a restriction. 5 U.S.C. 553(d)(1). Although the amendment relating to carryover has an effective date less than thirty days after publication of this notice, the amendment permits a depository institution to carry over larger reserve balance deficiencies or surpluses than previously permitted. Because the amendment provides depository institutions with greater relief from reserve requirements, a thirty-day notice is not required for the amendment to become effective.

List of Subjects in 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for part 204 continues to read as follows:

Authority: Sections 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn St-Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. Section 204.3 is amended by revising paragraphs (c)(3) and (h) to read as follows:

§ 204.3 Computation and maintenance.

* * * * *

(c) * * *

(3) In determining the reserve balance that is required to be maintained with the Federal Reserve, the daily average vault cash held during the computation period that ended 3 days prior to the beginning of the maintenance period is deducted from the amount of the institution's required reserves.

* * * * *

(h) *Carryover of excesses or deficiencies.* Any excess or deficiency in a depository institution's account that is held directly or indirectly with a Federal Reserve Bank shall be carried over and applied to that account in the next maintenance period as specified in this paragraph. The amount of any such excess or deficiency that is carried over shall not exceed the greater of:

(1) The amount obtained by multiplying .04 times the sum of the depository institution's required reserves and the depository institution's required clearing balance, if any, and then subtracting from this product the depository institution's required clearing balance penalty-free band, if any; or

(2) $50,000, minus the depository institution's required clearing balance penalty-free band, if any. Any carryover not offset during the next period may not be carried over to subsequent periods.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 19, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20270 Filed 8-24-92; 8:45 am]

BILLING CODE 6210-01-F

12 CFR Part 204

[Regulation D; Docket No. R-0729]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a number of amendments to its Regulation D relating to the definition of "transaction account" and concerning the calculation of reserves. The amendments include adding "teller's checks" to the definition of "transaction account" and clarifying the definition of "cash items in the process of collection." The Board is also adopting four interpretations concerning the definition of "transaction account" and arrangements used to avoid transaction account reserve requirements.

EFFECTIVE DATES: September 29, 1992, except for §§ 204.2(a)(1), (b)(1), and (u) (teller's checks), § 204.2(i) (cash items in the process of collection), and § 204.136 (netting of trust balances), which will be effective December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), Patrick J. McDivitt, Attorney (202/452-3818), or Lawranne Stewart, Attorney (202/452-3513), Legal Division; or Thomas Brady, Chief, Banking and Money Market Statistics Section (202/452-2469), Division of Monetary Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington DC 20551

SUPPLEMENTARY INFORMATION: On April 12, 1991, and by notice published in the **Federal Register**, 56 FR 15,522, April 17, 1991, the Board proposed a number of revisions to its Regulation D, Reserve Requirements of Depository Institutions, 12 CFR part 204, and a number of interpretations of the Federal Reserve Act and Regulation D. These proposals primarily relate to the definition of "transaction account" and the calculation of required reserves on transaction accounts. Comments were due on the proposals by June 24, 1991. The Board has reviewed the comments received on the proposals and is now adopting final amendments to

Regulation D and final interpretations to the Federal Reserve Act and Regulation D.

Under Regulation D, transaction accounts generally are subject to a 10 percent reserve requirement.[1] Currently, the reserve requirement applicable to all other deposit accounts is zero.[2] The Board has identified a number of practices that result in depository institutions: (1) issuing nonreservable payment instruments in place of functionally equivalent reservable instruments; (2) classifying accounts as time deposits when the accounts are used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others and are therefore the functional equivalent of transaction accounts; (3) taking inappropriate "due from" or "cash item in the process of collection" deductions from their gross demand deposits in calculating required reserves; or (4) inappropriately netting negative trust account balances against positive balances in unaffiliated accounts in order to reduce reserve requirements on transaction accounts containing commingled trust funds.

The described practices avoid or reduce transaction account reserves, reducing the reserve base available for the conduct of monetary policy. Avoiding reserve requirements by exploiting the technical language of the regulation frustrates congressional intent that transaction accounts be subject to reserve requirements, results in inequitable treatment of similar transactions at other depository institutions, and favors depository institutions that have the legal and automation resources to develop reserve avoidance practices and are willing to implement such practices. Moreover, the increased use of such reserve avoidance practices could reduce required reserve balances at institutions using these practices to levels below those needed for clearing purposes, potentially resulting in much less predictable demands for Federal Reserve balances and more volatile funds rates.

The Board believes that reductions in reserve requirements on transaction accounts should be accomplished by the Board through changes in the ratio of transaction account reserves under section 19(b)(2)(B) of the Federal Reserve Act, such as the Board's action reducing this ratio from 12 percent to 10 percent, rather than through the growth of arrangements and accounts designed to avoid or reduce reserve requirements. Accordingly, the Board is adopting a number of amendments to Regulation D and interpretations to the Federal Reserve Act and Regulation D to treat certain transaction account substitutes as transaction accounts subject to reserve requirements and to clarify the deductions that may be made in computing required reserves.

Comments on the April Proposals

The Board received comments on the proposals from the following 67 commenters:

Type	Number
Commercial Banks	22
Bank Holding Companies	20
Trade Associations	8
Credit Unions	5
Financial Service Providers	4
Federal Reserve Banks	4
Savings and Loans	3
Individuals	1
Total	67

The comments are summarized below.[3]

General Comments

One trade association urged that the comment period be extended an additional 120 days so that credit unions could study the effect of the teller's check proposal. This comment was received on the last day of the comment period and did not elaborate on the reasons a longer comment period was needed other than to refer to other Board proposals that were outstanding. Because the request was received after most commenters had already submitted their comments and because it did not demonstrate a clear need for an extension, the Board did not extend the comment period.

One commenter suggested that the Board should pay interest on reserves. The Board does not, however, have express statutory authority to pay interest on reserves. Another commenter suggested that Regulation D be clarified generally. One commenter urged the Board to provide transitional relief (such as a ninety-day period) if it adopts the proposals to permit depository institutions to institute operational changes. The Board is deferring for 120 days the effective date of the amendments defining teller's checks and incorporating teller's checks in the definition of transaction account, the amendments modifying the definition of cash items in the process of collection, and the proposed interpretation on trust netting. The other proposals will be effective thirty days after the date of publication in the Federal Register.

A number of commenters questioned the economic validity of the reserve function or suggested that the proposals would increase the regulatory burden imposed on depository institutions. Nineteen commenters generally expressed concern that more stringent applications of reserve requirements would increase the competitive disadvantage that depository institutions have, particularly in competing with money market funds and other financial institutions. For example, one commenter suggested that if reserves are a necessity, they should apply to all forms of deposits at every depository institution and any organization that provides payment services. Another commenter suggested that no change be made in Regulation D until an overall strategic direction is established for the Regulation. Five commenters claimed that the proposals would result in funds leaving the banking system for other financial institutions, and would therefore adversely affect the ability of the Board to control the reserve base for monetary policy purposes.

The Board believes that reserves continue to be an important tool for implementing monetary policy and therefore believes that it is important to continue to maintain the integrity of the reserve base. To the extent that reductions in reserve requirements on transaction accounts are appropriate, the Board believes that such reductions should be accomplished by the Board through changes in the ratio of transaction account reserves under section 19(b)(2)(B) of the Federal Reserve Act. As noted above, the Board has recently reduced from 12 percent to 10 percent the ratio applicable to transaction account balances of over $42.2 million. In addition, the Board from time to time may consider the level of reserve requirements to ensure that they are appropriate.

Transaction Account Definition

Amendments

Teller's Checks

Many depository institutions use checks ("teller's checks") drawn by the depository institution on accounts at other depository institutions, Federal

[1] A reduction in reserve requirements on transaction accounts from 12 percent to 10 percent became effective April 6, 1992. 57 FR 8059, March 6, 1992.

[2] In December 1990 the Board reduced reserve requirements on nonpersonal time deposits with a maturity of less than 18 months and net Eurocurrency liabilities from three percent to zero percent. 55 FR 50540, Dec. 7, 1990.

[3] The Board specifically requested comments from the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration, but did not receive written comments from any of these agencies.

Home Loan Banks, or Federal Reserve Banks, or payable through or at depository institutions, as a substitute for reservable cashier's checks. Teller's checks are effective substitutes for cashier's checks, which are drawn by a depository institution on itself, because teller's checks bear the important legal characteristics of cashier's checks (*See* § 3–413(2) and § 3–802(1)(a) of the Uniform Commercial Code, Pre–1990 Official Text (UCC)). Under § 3–413(2) of the UCC, a bank drawing a check is liable on the check, whether it be a cashier's check or a teller's check, if the check is dishonored by the drawee. Under Section 3–802(1)(a) of the UCC, payment by either cashier's check or teller's check results in *pro tanto* discharge of the underlying obligation. However, under Regulation D, teller's checks have not been subject to reserve requirements while cashier's checks have been.

Teller's checks are often more economical to issue than cashier's checks, in part because they have not been subject to reserve requirements. Because of the cost savings attributable to shifting from cashier's checks to teller's checks, the Board is concerned that competitive pressures will encourage depository institutions to use teller's checks to avoid the cost of holding reserves against cashier's checks, and that this shift could materially affect the reserve base. Further, the disparate treatment accorded these instruments has put depository institutions using cashier's checks rather than nonreservable teller's checks, as well as teller's checks service providers that are bank affiliates, at a competitive disadvantage.[4]

Accordingly, the Board proposed amendments to Regulation D to change the manner in which reserve requirements apply to teller's checks, including checks drawn on Federal Home Loan Banks and Federal Reserve Banks. Under the proposal, a teller's check would be a transaction account of the depository institution drawing the check until the check is paid by the drawee. To the extent that the check is covered by immediately withdrawable funds of the selling depository institution on deposit in an account of the selling institution at the depository institution on which the check is drawn (or at or through which the check is payable), the selling depository institution would be able to take a "due from" deduction under § 204.3(f) of Regulation D.[5]

The proposal would: (1) amend Regulation D to include a definition of teller's checks; (2) amend § 204.2(a)(1)(iii) of Regulation D to define "deposit" to include teller's checks; (3) amend § 204.2(b)(1)(ii) of Regulation D to define "demand deposit" to include teller's checks; and (4) delete § 204.2(b)(3)(iv) of Regulation D, which excludes teller's checks from the definition of demand deposit.

The Board received thirty-three comments on this proposal. Seven of these commenters generally supported the proposal, twenty objected to the proposal generally, and six supported or did not object to the proposal as long as clarifications to the language of the provision were made. The objecting commenters claimed that adoption of this proposal would impose burdens on depository institutions, and suggested that reserves on teller's checks were unnecessary or should also be imposed on all financial institutions, not just depository institutions. One commenter suggested that the Board has not included teller's checks in the reserve base for eleven years and has not demonstrated a compelling reason to impose reserves on these items now. Another commenter noted that depository institutions can obtain economies of scale by using teller's checks provided by non-depository service providers. Another commenter suggested that the proposal should be limited to instruments drawn on a Federal Reserve Bank or a Federal Home Loan Bank because other transactions were already properly reflected in the reserve requirements calculation.

Teller's checks drawn on or payable through or at depository institutions as well as teller's checks drawn on Federal Reserve Banks and Federal Home Loan Banks currently are treated differently from cashier's checks for reserve purposes. In the proposal, the Board noted that, because of the cost savings attributable to shifting from the use of cashier's checks to teller's checks where the teller's check service provider is not subject to reserve requirements, the increased use of teller's checks could materially affect the reserve base. The Board also noted that market pressures could increase this effect. After a review of the comments, the Board continues to believe that its conclusions are correct.

Three commenters expressed concern that the proposal would require the same liability to be reserved against twice—once on the teller's check, and once by the depository institution where the funds are placed. The Board believes that the proposal generally would not produce this effect. Outstanding teller's check balances generally are not held in reservable deposit accounts at the drawee or paying bank. The Board understands that outstanding balances are generally invested by the service provider in order to earn a return on the funds for the service provider and the selling institutions.

The commenters indicated that the issuance of a teller's check resulted in a reduction of the due from account for the bank on which the check was drawn. For Call Report purposes, to the extent that a selling institution has a balance due from the drawee or paying bank, this balance must be reduced by the amount of any teller's checks drawn. For purposes of calculating reserve requirements, however, a depository institution may continue to take a due from deduction for a qualifying account at another depository institution until the balance in that account is debited to pay the teller's checks.

Nine commenters were concerned that depository institutions should not be subject to reserves on checks on which they have no liability (such as where the institution serves solely as agent for the entity drawing the instrument). Another commenter asserted that the proposal should be amended to apply to these instruments specifically. The Board's proposal would not impose reserve

[4] The Board has conditioned approval of bank holding company applications to issue and sell large-denomination payment instruments, including teller's checks, on several commitments that the bank holding company file weekly reports of the level of this activity and comply with certain deposit reserve requirements. These conditions were designed to counter the potential reserve avoidance characteristics of such instruments and to ensure accurate reporting of related monetary statistics. *Midland Bank PLC*, 76 Federal Reserve Bulletin 860 (1990); *Midland Bank PLC*, 74 Federal Reserve Bulletin 252 (1988); *Hong Kong and Shanghai Banking Corporation*, 73 Federal Reserve Bulletin 808 (1987); *BankAmerica Corporation*, 73 Federal Reserve Bulletin 727 (1987); *FirstBank Holding Company of Colorado*, 72 Federal Reserve Bulletin 662 (1986); *Wells Fargo & Company*, 72 Federal Reserve Bulletin 148 (1986); *The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 905 (1985); *RepublicBank Corporation*, 71 Federal Reserve Bulletin 724 (1985); *Citicorp*, 71 Federal Reserve Bulletin 58 (1985); *BankAmerica Corporation*, 70 Federal Reserve Bulletin 364 (1984). In addition, a number of the Board orders referenced above include limits on the denominations of some payment instruments. The Board will entertain applications and requests for relief from conditions from bank holding companies subject to these limits or requirements.

[5] This deduction would not be available for accounts that do not meet the requirements for a due from deduction in § 204.3(f)(3) of Regulation D such as escrow accounts and balances held at a Federal Reserve Bank, or of pass-through reserves held at a Federal Home Loan Bank. 12 CFR 204.3(f)(3). In order for a depository institution to take a "due from" deduction for funds held at another depository institution, the funds generally must be held in an account in the name of the depositing institution and be subject to immediate withdrawal by the depositing institution.

requirements on sellers of checks sold in an agency capacity where that capacity is clearly stated on the face of the check, as the selling bank would not be the drawer of the check. (*See* Article 3–403 of the Uniform Commercial Code Pre 1990 Official Text and Article 3–403 of the 1990 Official Text.) The Board believes that it would not be appropriate to impose reserve requirements on the selling bank for instruments on which the selling bank has no liability, as such checks are not the equivalent of cashier's checks.[6]

Another commenter, a teller's check service provider, claimed that some banks offer these checks as agent for a non-depository institution (and therefore have no liability on the check), but that the depository institution still is the issuer of the obligation. For this reason, the commenter argued, the check is a "teller's check" for purposes of the Board's Regulation CC (12 CFR Part 229), and thus is entitled to next day availability under that regulation. The commenter further argued that, under state law (UCC section 3-102(1)(a)), the issuer and the drawer are not necessarily the same person. The Board believes that this comment reflects a misunderstanding of the provisions of Regulation CC. Under § 229.2(gg) of Regulation CC, the term "teller's check" is limited to checks drawn by banks (as that term is defined in Regulation CC.) Therefore, under Regulation CC, checks sold by a depository institution as agent, but on which a depository institution was not the drawer, would not be considered to be teller's checks even if the checks were "issued" by the depository institution.

One commenter suggested that, in states that have not adopted the new section 3–414 of the UCC, the Board would be assessing reserves on a bank beyond the Board's statutory authority if the proposal applied to banks issuing teller's checks without recourse. Under the Board's proposal, checks drawn without recourse against the drawer are not defined as teller's checks. Two commenters also were concerned that the proposal would subject depository institutions to reserves on traveler's checks, and one suggested the Board clarify that this is not the case. The Board's proposal does not apply to instruments sold as traveler's checks unless the checks are drawn by a depository institution. Two commenters suggested that the proposal should be revised to include an exception for teller's checks under $10,000. Another commenter suggested that teller's checks that were only used for certain classes of transactions, such as international payments, should be exempt from reserve requirements. The Board does not believe that a special purpose test for determining the applicability of teller's check reserve requirements is practical. Depository institutions can, however, provide their customers with checks on which the selling institution does not act as drawer. Such instruments would function as substitutes for money orders, rather than as substitutes for cashier's checks, and would not be reservable under the Board's proposal.

One trade association suggested that depository institutions with less than $100 million in assets should be exempt from reserves on their teller's checks. The Board does not believe that such an exemption is appropriate, as smaller institutions already have lower reserve requirements relative to their total reservable deposits under the zero and low reserve tranches, and report deposits considerably less frequently than larger banks. In addition, an exemption for depository institutions under $100 million in assets would allow the current erosion in the reserve base to continue as exempted institutions moved from cashier's to teller's checks. Another trade association suggested that, rather than adopt this proposal, the Board could impose additional reserves on depository institutions that habitually draw teller's checks in such a manner that they avoid reserves. The Board regards a "habitual abuser" test for determining the applicability of teller's check reserve requirements as impractical, as it would require the Board to determine the motivation for the use of teller's checks.

Two commenters suggested that the Board permit an arrangement whereby teller's check service providers would hold the reserves relating to teller's checks for their customer depository institution. While nonmember depository institutions may hold their reserves through another depository institution, a Federal Home Loan Bank, or the National Credit Union Central Liquidity Facility, the Federal Reserve Act does not permit banks that are members of the Federal Reserve System to maintain reserves through another depository institution.[7] Reporting of account balances, however, must be done by the account holding depository institution, in this case the selling institution.

One commenter argued that the proposal would require depository institutions drawing teller's checks to track and report outstanding teller's checks themselves and that this might cause depository institutions to return to the use of less efficient cashier's checks. This commenter further argued that, under certain existing teller's check programs, the drawee bank reserves against the teller's checks and that these arrangements should be permitted to continue in order to satisfy reserve requirements on teller's checks. Specifically, this commenter suggested that teller's checks be considered to be reservable deposits until paid by the drawee "or until the issuing depository institution has remitted immediately available funds to the drawee bank or payable through bank in satisfaction of the issuer's liability." This commenter further suggested that the Board require that the receipt of funds by the paying bank be a reservable deposit of the paying bank until the item had been paid or otherwise disbursed, and that the selling institution be permitted to take a "due from" deduction against funds remitted to the paying bank, regardless of the disposition of the funds after receipt by the paying bank. The commenter indicated that funds held by the paying bank are held in "omnibus accounts" for reasons of efficiency and to protect teller's check purchasers, and argued that separate accounts subject to withdrawal by the selling institutions should not be required in order for each selling institution to take a "due from" deduction against the accounts.

The Board has considered a number of alternatives for centralizing the holding of reserves against teller's checks, including the suggestion made by this commenter. Each alternative, however, suffers from significant practical or legal difficulties.

In order to create a liability subject to reserves that would be "centralized," a service provider would have to create a deposit subject to reserve requirements that could substitute for the liabilities of the individual depository institutions selling teller's checks. For example, the reserves could be maintained against the proceeds of outstanding teller's checks that are remitted to the service provider, instead of by the remitting depository institution, if the service provider placed the proceeds in a demand deposit account. This arrangement does not appear to be economically viable, as funds held in

[6] If the selling bank is acting as agent for another depository institution, however, that depository institution would be required to hold reserves against the checks drawn by it or by the selling bank as its agent, as these checks would be drawn by that depository institution.

[7] See section 19(c)(1) of the Federal Reserve Act (12 U.S.C. 461).

such a deposit account would not earn interest. The Board understands that teller's check service providers generally pay a return to sellers of teller's checks based on outstanding balances of funds remitted to the service provider to cover checks sold.[8] Sellers of teller's checks would no longer be able to earn such returns, as the service provider would receive no interest on its demand deposit and would not have earnings to pass on to selling institutions. Similarly, if the proceeds of the teller's checks were placed in an account under an agreement between the account holding depository institution and a depository institution selling the teller's checks to pay these checks, payment of interest on the account by the depository institution to the selling institution would constitute payment of interest on a demand account.

Finally, as noted above, while the holding of reserves against teller's checks could be centralized for many depository institutions by those institutions holding all their reserves through a single depository institution under a "pass through" arrangement under § 204.3(i) of Regulation D, section 19(c)(1) of the Federal Reserve Act precludes such arrangements for member banks.

Accordingly, the Board believes that the proposed structure of teller's check reserve requirements is appropriate. Staff will work with teller's check sellers and service providers to explore procedures to facilitate the holding of reserves against teller's checks.

Twelve commenters expressed concern that depository institutions would have to incur significant operating changes to treat teller's checks as reservable liabilities. One commenter asserted that a depository institution will not have the information it needs to report teller's checks for reserve purposes and, accordingly, should not be subject to reserves on these instruments. One commenter suggested that depository institutions be permitted to use the average outstanding balance of such instruments. Commenters indicated that drawers of teller's checks often do not track outstanding balances of teller's checks because this tracking is performed by the teller's check service providers, which may report activity to their customers only on a monthly basis. For a weekly reporter (generally a depository institution with deposits in excess of $44.8 million) to report teller's check data on a timely basis, confirmation of the daily outstanding balances of teller's checks would be required from the service provider with only a short lag.

The Board is concerned that it may not be appropriate to base teller's checks reporting requirements on average outstanding balances while other reporting requirements are based on actual balances. Special reporting arrangements would continue to favor the use of teller's checks over economically and legally similar cashier's checks. Further, daily deposit data permit verification of the data and ensure proper seasonal adjustments.

The Board recognizes, however, that implementation of the teller's check amendments will require operational changes for some drawers of teller's checks and for teller's check service providers, particularly for weekly reporters. These changes should be less significant for smaller institutions that report quarterly, as they are not required to track daily outstanding balances throughout the year. The Board is deferring the effective date of the teller's check amendment for 120 days. During that period, Board staff will work with teller's check sellers and service providers to ease potential reporting burdens.

Finally, one commenter suggested that the reference to teller's checks in proposed § 204.2(v)(iii) conflicted with the definition of teller's checks in proposed § 204.2(u). Section 204.2(a)(1)(iii) and § 204.2(b)(1)(ii) have been redrafted for clarity and § 204.2(u) has been revised to include checks payable through the drawing depository institution in the definition of teller's checks.

The Board is adopting the teller's check proposal subject to the drafting changes discussed above, with the effective date of this amendment deferred for 120 days to permit depository institutions to make appropriate arrangements to provide teller's check and other payment instrument services consistent with this amendment.

Incorporation of Reference to Interpretations

The definition of "transaction account" in Regulation D includes "[a]ll deposits other than time and savings deposits." 12 CFR 204.2(e)(6). The proposal would amend this subparagraph to refer also to accounts that may be nominally time or savings accounts, but that the Board has determined, by rule or order, to be transaction accounts. This amendment was intended to provide a reference to the Board's interpretations on transaction accounts. The only comment received on this amendment supported the amendment. The amendment is being adopted as proposed.

Interpretations

The Board identified two practices involving the use of time deposits (including savings deposits) that it believed were designed to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others. The Board believes that these time deposits should be considered to be transaction accounts. Accordingly, the Board proposed for comment two interpretations identifying as transaction accounts certain deposits that would otherwise be considered to be time deposits. The Board is adopting these interpretations with certain modifications discussed below. If other practices become prevalent in which time deposits are used directly or indirectly for the purpose of making payments or transfers to third persons or others, the Board will consider appropriate action to ensure that such deposits are not used to avoid reserve requirements on transaction accounts.

Linked Savings Accounts (§ 204.133)

The Board proposed an interpretation, to be published at 12 CFR 204.133, that would require a depository institution to treat multiple savings deposits as transaction accounts in certain circumstances. The proposed interpretation would prohibit a depository institution from assisting a customer to establish multiple savings deposits with transfer abilities unless the customer has a legitimate purpose for the multiple accounts.

The Board received twenty-nine comments on this proposal, all but three of which opposed the proposal.

Three commenters contended that multiple accounts are not used to avoid transfer limits, but rather to meet customer needs. Three commenters claimed that the proposal would force institutions to use complicated arrangements to move funds out of the depository institution overnight to earn a return for their customers without violating the regulation. The proposal was intended to maintain the distinction between savings deposits and transaction accounts. The Board recognizes that maintaining this distinction imposes costs on depository institutions, but believes that it is necessary to maintain this distinction for monetary policy purposes. One commenter suggested that the final interpretation clearly state that it does not apply to sweep arrangements

[8] Similarly, depository institutions earn a return on the proceeds of the sale of cashier's checks until the cashier's checks are presented for payment.

involving only a single savings account. While this interpretation applies only to arrangements involving multiple savings accounts, the Board believes that sweep arrangements involving only a single savings account could constitute evasions of reserve requirements in certain circumstances not addressed here.

Thirteen commenters asserted that depository institutions would have difficulties in determining whether there was a legitimate business purpose for the use of multiple savings deposits, and expressed uncertainty as to the efforts that a depository institution would have to make to comply with the proposal. For example, one commenter stated that because depository institutions could not judge the legitimacy of the classification, the burden should be on the Board to judge the legitimacy of a customer's purpose in opening an account. One commenter urged that the proposal be revised to eliminate any duty to determine whether there is a business purpose for the opening of multiple accounts. One commenter noted that customers wishing to circumvent the restrictions would simply present false reasons for opening up the accounts. Another commenter asked whether the "business purpose" test could be met by establishing a "personal business" purpose, and noted that if that were the case, customers could easily justify a purpose for multiple accounts. One commenter contended that, as long as the depository institution does not promote multiple accounts, the depository institution should be able to assume that there is a legitimate purpose for the multiple accounts. That commenter also argued that the proposal relies upon whether the accounts are "solely" for transfer purposes, and that a bank would have a nearly impossible time of monitoring compliance. Another commenter suggested that specific guidance be provided for the treatment of accounts of related persons, such as close family members. One commenter requested a clarification that credit unions could continue to use a sub-account arrangement if the purpose was not to evade Regulation D. Another commenter, also a credit union, claimed that under the proposal it would have to convert all its savings accounts to transaction accounts.

In order to address the comments as to the difficulty of identifying the legitimacy of customer purposes for establishing multiple savings deposits, the Board has revised the proposed interpretation. The final interpretation classifies as transactions accounts multiple savings deposits established by a single customer when the depository institution suggests or otherwise promotes the establishment or operation of multiple savings deposit arrangements to increase the customer's transfer capabilities and the multiple accounts do not have another legitimate purpose. The Board believes that, while some customers of depository institutions may be able to avoid the transfer limits on savings deposits on their own initiative, the revised interpretation will lessen the administrative burden on depository institutions and will prevent proliferation of linked savings accounts that are encouraged by depository institutions.

One commenter suggested redrafting the interpretation so that the language of the interpretation would be more consistent with the language of Regulation D, thereby avoiding confusion or reclassification of an account as a result of an occasional lapse by a customer or an oversight by the depository institution. The language that concerned the commenter has been revised to parallel the language in Regulation D more closely.

The Board has adopted proposed interpretation § 204.133 subject to the modifications discussed above.

Linked Time Deposits and Transaction Accounts (§ 204.134)

The Board proposed an interpretation, to be published at 12 CFR 204.134, that would require depository institutions to classify certain deposits as transaction accounts that at present are classified as time deposits. The reclassification would apply to time deposits where a number of participating depositors maintain transaction accounts linked to time deposits in an arrangement that permits each depositor to draw checks based on the aggregate amount held by that depositor in these accounts, including unmatured time deposits. The time deposits in such arrangements are held directly by the depositor or indirectly through a trust or other arrangement that generally contains the commingled funds of a number of depositors. The individual depositor's interest in time deposits may be identifiable, with an agreement by the participating depositors that balances held in the arrangement may be used to pay checks drawn by other depositors participating in the arrangement, or the depositors may have undivided interests in a series of time deposits. The time deposits have staggered maturities so that one time deposit matures each business day. At the end of each day, funds over a specified balance in the depositors' transaction accounts are swept into one or more time deposits. New deposits made, as well as funds from any maturing time deposits, are available each day to pay checks or other charges to the transaction accounts of any of the depositors participating in the arrangement.

The depository institution's decision whether to pay checks drawn on an individual depositor's transaction account is based on the aggregate amount of funds that the depositor has invested in the arrangement, including any amount that may be invested in unmatured time deposits. Only if checks drawn by all depositors participating in the arrangement exceed the total balance of funds available that day is a time deposit withdrawn prior to maturity so as to incur an early withdrawal penalty. Because the aggregate of individual participants' deposits plus the time deposit maturing each day tends to exceed the aggregate of individual participants' withdrawals on any day, the total balance maintained in the arrangement is highly stable and an early withdrawal of time deposits is rarely, if ever, necessary. The arrangement may be marketed as an arrangement to provide the customers unlimited access to their funds with a high rate of interest.

The Board believes that (1) these arrangements substitute time deposit balances for transaction accounts balance with no meaningful reduction in the depositors' access to their funds in practice, and (2) the time deposits in such arrangements are used to provide funds indirectly for the purposes of making payments or transfers to third persons. Accordingly, the Board proposed an interpretation to be published at § 204.134 that would require that such time deposits be considered to be transaction accounts.

The Board received eighteen comments on this proposal. Three comments supported the proposal although one of these commenters urged the Board to permit depository institutions to compete against nondepository institutions for transaction balances. Ten commenters claimed that the purpose of this kind of program was not to avoid reserves, but to compete with nonbanking entities. One commenter contended that providing higher yield transaction accounts rather than reduction in reserves was the driving force behind such arrangements. The Board notes, however, that while the practice covered by the interpretation enables depositors to earn a higher rate of return than would be possible in the absence of

these practices, it does so by allowing the depository institution to reclassify transaction accounts as time deposits, thereby avoiding the transaction account reserve requirement. Even though these funds remain in the banking system, reservable liabilities and the reserve base may be substantially reduced, impairing the ability of the Federal Reserve to conduct monetary policy. In addition, such arrangements allow depository institutions with the resources to establish such arrangements to reduce their reservable liabilities while other, often smaller, depository institutions lack the resources or sizeable deposit base necessary to establish similar programs.

One commenter suggested that the Board create a "super NOW" account upon which the first $5,000 would be reserved as a transaction account, and the balance as a savings deposit. The Board believes that such an exemption would provide an inequitable benefit by reducing reserve requirements on large deposits in transaction accounts while retaining reserve requirements on small deposits in transaction accounts.

Two commenters suggested that the arrangements covered by the proposal were preferable to other sweep arrangements where funds are transferred out of the bank to a securities dealer. These commenters believed that the Board should not encourage such arrangements because they are contrary to Board concerns about the systemic risks arising from a failure of the securities dealer, a computer system failure, or the failure of a bank in a large daylight overdraft position. The Board recognizes that funds transfers due to nightly sweep arrangements may involve operational and credit risks, but believes that permitting unlimited sweep arrangements within a depository institution could virtually eliminate transaction accounts and reduce reserve balances below the level necessary for the conduct of monetary policy.

One bank holding company contended that, under the proposed interpretation, large businesses and wealthy individuals have access to other sweep arrangements, but that others on the lower end of the economic spectrum would not. This commenter also argued that adoption of the proposal would not be fair because the commenter had developed its program after consultation with Board staff, and that, if the commenter's service had to be discontinued, it would lose a significant amount in research and development costs. At one time, Board staff had advised certain depository institutions that the program did not violate Regulation D, as it appeared that the time deposits met the requirements for time deposits under Regulation D. Experience with the arrangement, however, has demonstrated that the time deposits serve as an effective substitute for transaction accounts. Accordingly, the Board is exercising its authority under sections 19(a) and 19(b)(1)(F) of the Federal Reserve Act to treat such time deposits as transaction accounts.

Two commenters asked for clarification of the effect of this proposal on cash management sweep accounts generally. The proposal applies to the sweep arrangements described in the interpretation and does not necessarily apply to other sweep arrangements, although the Board might view other arrangements where funds are swept between transaction accounts and time deposits similarly.

Two commenters claimed that the Board's proposal would make transaction accounts out of certain commingled time deposits opened by trust departments for their fiduciary customers as allowed by state law and by regulations of the Comptroller of the Currency. The Board's interpretation is limited to the arrangements described in the interpretation and it does not necessarily apply to other arrangements. For example, where a bona fide trust or collective fund invests in certificates of deposit of the fiduciary bank, the proposed interpretation would not require the classification of these time deposits as a transaction account for Regulation D purposes in the absence of an arrangement under which these funds were used to fund a transaction account or to pay overdrafts incurred in a transaction account. Similarly, arrangements under the Comptroller's Interpretation section 9.3206 (*See*, Comptroller's Handbook for Fiduciary Activities, section 9.3206), in which funds are swept from demand deposits maintained by the trust department into a commingled interest bearing account maintained by the trust department and the trust department makes withdrawals from this account to carry out the terms of the trust agreement, would not necessarily be affected by the proposed interpretation. The Board notes, however, that an arrangement that is permissible under the Comptroller's rulings or is within a permissible trust activity may result in the reclassification of accounts under Regulation D if the arrangement is being used to avoid reserve requirements.

Two commenters expressed concern that the proposed interpretation, coupled with a recently issued staff interpretation on trust department use of non-interest bearing time deposit open accounts, would have the cumulative effect of prohibiting the long-standing practice of bank trust departments of segregating a portion of the trust department's commingled demand account into one or more time accounts. The practice of segregating a portion of the demand account into a non-interest bearing time account was the subject of a staff opinion letter dated May 17, 1991, which discussed the rescission in December 1987 of a 1959 interpretation of Regulation D (FRRS 2-491). The 1959 interpretation recognized the practice of classifying a portion of a demand deposit as a time deposit where the practice was consistent with principles of fiduciary law. The May 1991 staff letter expressed the opinion that, in view of recent technological advances, the practice of maintaining zero interest bearing time deposits is inconsistent with a trustee's responsibility to make productive use of trust funds (unless specific consent or authorization to the contrary is obtained). The proposed interpretation is directed at the use of time deposits to provide funds, indirectly, for the purpose of making payments or transfers to third persons. It is not directed at the segregation into time deposits of trust department balances that are not required for immediate disbursement.

The Board has adopted the interpretation § 204.134 as proposed.

Time Deposit Withdrawal Penalty

Section 204.2(c)(1)(i) of Regulation D defines "time deposit" generally to include a deposit from which the depositor does not have a right and is not permitted to make withdrawals within six days after the date of deposit, unless the withdrawal is subject to an early withdrawal penalty of at least seven days' simple interest. One type of time deposit, known as a "time deposit open account," does not have a stated maturity and may be payable any time after the expiration of a specified time not less than seven days after the date of deposit. *See* 12 CFR 204.2(c)(1)(i)(A). Unlike savings deposits, this type of time deposit may have no restrictions on the number of transfers from the account that can be made each statement period. If the early withdrawal penalty is not imposed on a time deposit, the account becomes either a savings deposit subject to limitations on withdrawals and transfers or a transaction account.

Depository institutions have asked whether the six-day period runs from the date of the last deposit or the date that an amount corresponding to the amount of the withdrawal was initially deposited. Under a first-in first-out, or "FIFO", accounting treatment, depositors could regularly withdraw funds from the account if a like amount had been on deposit for more than six days. Such withdrawals would not be subject to an early withdrawal penalty and would not be limited by the transfer limits on savings deposits.

The Board was concerned that a FIFO rule would facilitate the use of a time deposit open account to make transfers, in excess of those permissible for a savings deposit, from the time deposit to a transaction account for the purpose of making payments to third persons, thus avoiding transaction account reserves. Accordingly, for reserve purposes the Board proposed to adopt a last-in first-out or "LIFO" accounting treatment for time deposits. To this end, the Board proposed amending § 204.2(c)(1)(i) by adding the words the "last" before the word "deposit" at the end of the first sentence of that paragraph.

The Board received twelve comments on this proposal. Three commenters supported this proposal or indicated that it corresponded to their current practice. The remainder opposed the proposal. Four commenters contended that the proposal would freeze funds in the accounts and would be inconsistent with the expectation of customers that the customers can have access to their funds as long as an amount equal to the amount withdrawn had been on deposit for six days. Another commenter claimed that the proposal would preclude the use of time deposits for investing idle trust funds. One commenter argued that LIFO accounting for time deposits would permit as many withdrawals as FIFO accounting where only large periodic deposits are made.

Four commenters noted that the proposal would cause institutions to incur significant costs to implement and to monitor compliance with the proposal. One of these cited the costs associated with notifying customers of the change.

This amendment was proposed to prevent a time deposit from being used for the purpose of funding a transaction account through transfers from the time deposit in excess of the six transfers per month that can be made from a savings deposit to a transaction account. While the Board regards such an arrangement as a method of evading reserve requirements, the Board wishes to avoid imposing unnecessary costs on depository institutions that do not use time deposits for this purpose. Accordingly, the Board is not adopting the proposed amendment at this time. The Board may reconsider this proposal if the use of time deposits to fund transaction accounts proliferates.

Computation of Reserve Requirements

Amendments

Cash Items in the Process of Collection

Section 204.2(i)(1) of Regulation D defines the term "cash items in the process of collection" to include redeemed bonds and coupons. Section 204.3(f) provides that, in determining the reserve balance required by Regulation D, a depository institution may deduct the amount of cash items in the process of collection from its gross transaction accounts. The reference to redeemed bonds and coupons in § 204.2(i)(1)(iii)(B) has caused confusion, as bonds and coupons that have been redeemed by the paying agent have no further need for collection. The term "redeemed" could be interpreted, however, to refer to the receipt for redemption of bonds or coupons by a depository institution in order to send them for collection, regardless of when the bonds or coupons mature, if the depository institution has given credit for the bonds or coupons.

Such an interpretation could allow a depository institution to send bonds or coupons for redemption and extend credit on the security of the bonds or coupons while receiving a "cash item in the process of collection" deduction until the bonds or coupons were redeemed by the paying agent on maturity. This practice could materially reduce the amount of reserves held against transaction accounts in a way that the Board believes is inappropriate and inconsistent with the purpose of the "cash items in the process of collection" deduction.

The Board proposed an amendment to the definition of the term "cash item in the process of collection" in § 204.2(i)(1)(iii)(B) of Regulation D to delete the term "redeemed" and replace it with the term "matured." Bonds that have not reached the original maturity date, but that have been called and are payable immediately upon presentation, would be considered matured for the purposes of this provision.

The Board received seven comments on this proposal. Three commenters supported the proposal. One commenter noted that this proposal would be cumbersome and time consuming as normal account reconciliation would not necessarily coincide with reporting dates. One commenter suggested that the Board's regulation clarify that bonds that have been called can qualify for the deduction.

One commenter urged that bonds and coupons be eligible for the "cash item in the process of collection" deduction for two days prior to maturity. This commenter further maintained that the proposed treatment of bonds and coupons is inconsistent with some depository institutions' treatment of other items in the process of collection. The commenter indicated that some depository institutions take a cash item in the process of collection deduction for commercial paper and bankers' acceptances that have not yet matured, as well as for post-dated drafts.

The Board believes that the commenters have not demonstrated that the costs of reconciling bonds and coupons in the process of collection will outweigh the potential use of this deduction to avoid reserve requirements. With respect to commercial paper and bankers' acceptances that have not yet matured and post-dated drafts, which some depository institutions may be treating currently as cash items in the process of collection, the Board believes that these instruments do not fit within the current definition of "cash item in the process of collection," as these items are not "payable immediately upon presentation" when the deduction is taken, as required by § 204.2(i)(1)(iii) of Regulation D. Accordingly, the Board has adopted the amendment, with the clarification that called bonds may be considered to be cash items in the process of collection. The effective date of this amendment has been deferred for 120 days to permit depository institutions to make any necessary modifications to their systems.

Interpretations

Due from Deduction (§ 204.135)

A number of depository institutions have been engaging in practices designed to reduce their reserve requirements by increasing the use of the low reserve tranche among affiliated depository institutions. Under § 204.9(a)(2) of Regulation D, a depository institution is exempt from reserve requirements on its first $3.6 million in reservable liabilities and is subject to three percent reserves on its transaction account balances of up to $42.2 million. Under § 204.3(f)(1) of Regulation D, balances subject to immediate withdrawal from other depository institutions located in the United States may be deducted from gross transaction accounts in computing reserve requirements. Further, under

§ 204.2(a)(1)(vii)(A)(1) of Regulation D, federal funds transactions with other offices located in the United States of depository institutions and certain other entities generally are exempt from reserve requirements. In a number of cases, depository institutions have used the relationship between these provisions to reduce their reserve requirements through a series of transactions entered into for that purpose.

For example, when small depository institutions in an affiliated family of depository institutions do not take full advantage of the low reserve tranche in § 204.9(a)(1) of Regulation D (i.e. the 3 percent reserve ratio on transaction account balances up to $42.2 million), these small depository institutions may accept demand deposits from larger affiliates to increase the small institutions' total transaction accounts up to the $42.2 million limit. These deposits may be subject to immediate withdrawal by the larger depository institution and thereby generate a "due from" deduction for the larger depository institution. The transaction account balances at the small depository institutions are subject to a 3 percent reserve requirement rather than the full 10 percent requirement. The small depository institutions then return the funds to the larger depository institution, less an amount equal to the 3 percent reserve requirement that the small depository institutions must hold against the larger depository institution's deposit. The funds are returned by means of a federal funds transaction. The federal funds transaction is exempt from reserve requirements under § 204.2(a)(1)(vii)(A)(1) of Regulation D. The larger depository institution may then invest or lend the funds. The net effect of these transactions is to reduce the reserve requirements of the larger depository institution by 7 percentage points on the amount transferred to the smaller depository institutions at a cost of a few bookkeeping entries and funds transfers.

The Board believes these transactions are designed to avoid reserve requirements, and are inconsistent with the purpose for which Congress provided the low reserve tranche, and proposed an interpretation that would eliminate the due from deduction under these circumstances.

The Board received ten comments on this proposal. Three commenters supported the proposal. One of these commenters suggested that the proposal should also cover similar transactions that are designed to take advantage of the transition provisions of Regulation D, under which some institutions, including *de novo* or merged institutions, may be subject to lower reserve requirements during a phase-in period. The Board did not include such transactions in the final interpretation, but will monitor them to determine whether such transactions are being used to evade reserve requirements.

Seven commenters opposed the proposal. Generally, these commenters argued that the proposal would serve to penalize banks for legitimate transactions, such as deposits placed to compensate the smaller institution for services provided to the larger institution, or deposits to buttress the deposit base of the smaller institution or deposits for other prudent business purposes. Two commenters suggested that transactions between larger banks and smaller affiliates be permitted if the funds either do not flow back to the larger bank or, if they do, interest is charged at the going fed funds rate.

The Board recognizes that there may be legitimate reasons for large banks to place deposits subject to immediate withdrawal, and that are therefore eligible for the due from deduction, in small affiliated banks. However, in the case of deposits subject to immediate withdrawal by large banks in small affiliated banks or other small banks, the Board believes that there are few, if any, legitimate reasons for the small banks to then sell federal funds to the larger bank in lieu of the large bank withdrawing its deposit. This is particularly true in cases in which such sales are made at a low or zero rate of interest.

One commenter argued that this problem could be eliminated by elimination of the low reserve tranche. The low reserve tranche is established by section 19(b)(2) of the Federal Reserve Act, and therefore the Board does not believe that it has the authority to eliminate the low reserve tranche.

The Board has adopted the proposed interpretation with revisions to clarify that it applies to all situations in which funds are returned to the larger institution by a transaction that is exempt from reserve requirements, such as a sale of federal funds.

Commingled Trust Deposit Netting (§ 204.136)

Depository institutions' trust departments often commingle the idle balances of the individual trusts and place the funds in a single transaction account in the depository institution. This account is subject to reserve requirements as a transaction account. In some cases, the trust department nets negative balances in some trust accounts against positive balances in other trust accounts in order to arrive at a net amount that it credits to the commingled transaction account. This practice generally understates the balances in the transaction account. Individual trust instruments generally do not authorize the trustee to use the funds in one trust to lend to another trust. Consequently, any overdraft in a trust is covered, in effect, by a loan from the bank where the bank makes a payment on behalf of the trust. A negative balance in a trust account should be reflected as a zero balance and should not be netted against positive balances in other trusts in computing the amount in the commingled transaction account each day.

Accordingly, the Board proposed an interpretation to be published at 12 CFR 204.136 that, in certain circumstances, would prohibit the netting of negative balances in individual trust accounts against positive balances in other trust accounts. The effect of this proposal would be to increase aggregate trust department transaction account balances for reserve requirement purposes in certain depository institutions. The prohibition would not apply, however, if the applicable trust law specifically permitted the netting, or if a written trust agreement, valid under applicable trust law, permitted a trust to lend money to another trust account.

The Board received seventeen comments on this proposal, one of which supported the proposal. Seven commenters contended that adoption of the proposal would result in a competitive advantage for trust companies that deposit their institution's uninvested trust balances at another bank. They argued that those trust companies would not be subject to the prohibition on netting of trust balances because such netting would take place outside of the institution determining the reserves, while at the same time, trust demand deposit accounts of the reserving bank's own trust department would be subject to reserves on a gross basis even though the accounts at both institutions serve the same purpose. Additionally, these commenters claimed that prohibiting netting would inflate trust cash balances.

The Board believes that the prohibition against netting for reserve purposes is consistent with accurate accounting of a bank's cash deposit liability to its trust customers. Trust principles apply to non-depository as well as depository institutions engaged in the administration of fiduciary

accounts. These principles do not permit a trustee to lend funds from one trust to another trust unless specifically authorized by the governing trust agreement or State law. Consequently, unless such loans are expressly authorized, the negative balances in individual trust accounts, in effect, represent loans from the trustee institution. Both non-deposit trust companies and bank trust departments must conduct their activities in accordance with these trust principles. Additionally, the adoption of the interpretation should reduce, rather than promote, competitive inequalities that may now exist among trust institutions by reminding all such institutions that they are subject to the same fiduciary principles in the determination of cash balances for deposit.

Two commenters were concerned that national banks would be required to post additional collateral for trust deposits if netting were prohibited. National banks are required to post collateral only where the cash balance of an *individual* trust account is in excess of Federal insurance. As collateral requirements are not determined on the aggregate balance in a commingled trust department account, the Board does not believe that additional collateral will be required as a result of the interpretation.

Two commenters maintained that the proposed changes would place reserves on transactions that are accomplished on the trust side of the bank when Regulation D specifically excludes these transactions from reserve requirements. One commenter claimed that the proposal could be interpreted as a limit on the authority of the bank to pay overdrafts in a trust.

Fiduciary funds are not subject to reserve requirements under Regulation D unless they are placed in a deposit account in a depository institution. Most trust departments deposit uninvested trust funds in their depository institution. Where the institution has netted uninvested trust fund balances, it avoids reserve requirements by reporting a lower balance than that for which the fiduciary is responsible.

Other commenters requested the establishment of a safe harbor for overdrafts of less than $200,000 per day, requested an exemption from separate reporting for institutions with less than $100 million in trust assets, and requested guidance on the calculation of overdrafts and the meaning of netting. One commenter argued that the costs of complying with the proposal would be greater than the costs of holding the additional reserves that would be required.

The Board believes that it is unnecessary and in appropriate to provide safe harbors or exemptions from reserves for deposits by a depository institution's trust department. Further, the Board believes that it is inappropriate to specify detailed trust accounting procedures in Regulation D.

Nine commenters argued that the interpretation would prohibit overdrafts that are "technical overdrafts," i.e. overdrafts for bookkeeping purposes only, or that result from longstanding practices that trust departments are permitted to employ. Some of these commenters cited as examples of technical overdrafts negative balances in suspense accounts used for the prepayment of interest or dividends, and negative balances in clearing house fund accounts used for the processing of securities transactions.

The proposed interpretation was intended to prohibit netting of *true* overdrafts and was not intended to prohibit netting where overdrafts are merely technical and where funds are still available within the trust department to offset the overdraft. The Board agrees that technical overdrafts may be netted provided there is a corresponding positive balance for the trust incurring the overdraft that is available for the offset. For example, a negative balance in a trust account could be offset by a corresponding credit in a securities settlement suspense account until settlement date, and a negative balance in a pre-credit suspense account could be offset by a corresponding positive balance in a trust account until the dividend or interest payment corresponding to these entries is received. Paragraph (d) of the interpretation has been revised to reflect the permissibility of netting in these circumstances.

One commenter also urged that there be no prohibition on netting overdrafts in a common trust fund (using accrual accounting methods) since such overdrafts represent amounts, such as interest or dividends, that have been distributed to participating individual trust accounts. The commenter noted that OCC precedents require the use of accrual accounting and that OCC Regulations (12 CFR 9.18(b)(8)(i)) recognize the inevitability of net cash overdrafts in common trust funds. The only OCC precedent related to the permissibility of netting overdrafts in common trust funds appears to be OCC Opinion 9.6900. This Opinion permits offsetting within a single common trust fund of overdrafts of income cash with principal cash, where the income cash overdraft is the result of a required income distribution and the distribution does not exceed total principal and income cash then on hand. The Board's interpretation is not intended to prohibit netting in circumstances described in OCC Opinion 9.6900 where the fund has a legally permissible right of offset between principal cash and income cash. The Board notes, however, that the cited Opinion does not authorize net cash overdrafts, and that netting such balances against other trust accounts is prohibited by the interpretation.

One commenter requested the Board to clarify that the interpretation is not intended to limit a bank's payment of overdrafts in a trust account by means of extensions of credit by the bank. The proposal was not intended to limit this practice. Two commenters requested a delay in the implementation of the changes to allow institutions to make system changes in order to comply with the regulation.

The Board has adopted proposed interpretation § 204.136 with revisions to clarify its application to suspense accounts and other issues raised by the commenters. The Board is deferring the effective date of this interpretation for 120 days to permit depository institutions to adapt their internal systems to the interpretation.

Technical Amendments

In April 1991, the Board made several technical amendments to Regulation D concerning reserve deficiency charges. 56 FR 15483, April 17, 1991. Two conforming amendments are included in this rule to substitute the term "reserve deficiency charges" for "penalties" in § 204.3.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that these amendments and interpretations will not have a significant economic impact on a substantial number of small entities. With the exception of the amendment requiring sellers of teller's checks to maintain reserves against the outstanding balances of such checks, the Board does not believe that the amendments or interpretations would impose any additional reporting or recordkeeping requirements.

As a result of the teller's check amendments, depository institutions that sell teller's checks will be required to obtain outstanding teller's check balances from teller's check service providers and to include these balances in their reports of deposits. Currently, seller's of tellers checks generally obtain this information from teller's checks

service providers on a monthly basis. After adoption of the amendment, weekly reporters, that is, depository institutions with assets of over $44.8 million, will need to obtain the information from providers on a more timely basis in order to include teller's check balances in their reports. Smaller institutions, which are required to report only on a quarterly basis, should already be receiving sufficient information from service providers to include outstanding teller's check balances in their reports of deposit. The issues and alternatives considered by the Board in adopting this amendment are detailed in the Supplementary Information.

Although these amendments and interpretations may increase required reserves for some depository institutions, they should not have a disproportionally adverse impact on small institutions, as Regulation D provides an exemption from reserve requirements for the first $3.6 million of transaction account balances and a low reserve tranche for transaction account balances above this limit up to $42.2 million, on which a lower rate of three percent rather than the full 10 percent is required. Although one of the interpretations (§ 204.135) would reduce the use of the low reserve tranche in some circumstances, this interpretation relates to the use of the low reserve tranche by larger depository institutions affiliated with a small depository institution, and does not affect the ability of the small institution to use the low reserve tranche for their own deposits. The Board does not expect that the amendments and interpretations will have a significant negative impact on the ability of small institutions to attract deposits. Further, the Board believes that the amendments and interpretations will improve the ability of small institutions to compete in some areas, as many small institutions do not have the resources available to develop and maintain reserve avoidance practices of the kinds the proposals address. Negating the effect of these practices will therefore improve the ability of small institutions to compete with larger institutions that would otherwise be able to use these reserve avoidance techniques.

Notice and Public Participation

With the exception of the technical amendments to § 204.3, all amendments and interpretations included in this notice have been published for notice and comment. Notice and comment have not been provided for the amendments to § 204.3, as these are technical, conforming amendments that do not make any substantive change to the regulation.

List of Subjects in 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 USC 461 *et seq.*, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for Part 204 continues to read as follows:

Authority: Sections 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn St-Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. Section 204.2 is amended by revising paragraphs (a)(1)(iii), (b)(1)(ii), (e)(6), and (i)(1)(iii)(B), by adding the word "or" after the semicolon at the end of paragraph (b)(3)(iii), by removing paragraph (b)(3)(iv), by redesignating paragraph (b)(3)(v) as (b)(3)(iv), and by adding paragraph (u), to read as follows:

§ 204.2 Definitions.

* * *

(a)(1) * * *

(iii) an outstanding teller's check, or an outstanding draft, certified check, cashier's check, money order, or officer's check drawn on the depository institution, issued in the usual course of business for any purpose, including payment for services, dividends or purchases;

* * * * *

(b)(1) * * *

(ii) certified, cashier's, teller's, and officer's checks (including such checks issued in payment of dividends);

* * * * *

(e) * * *

(6) All deposits other than time and savings accounts, including those accounts that are time and savings deposits in form but that the Board has determined, by rule or order, to be transaction accounts.

* * * * *

(i)(1) * * *

(iii) * * *

(B) matured bonds and coupons (including bonds and coupons that have been called and are payable on presentation);

* * * * *

(u) *Teller's check* means a check drawn by a depository institution on another depository institution, a Federal Reserve Bank, or a Federal Home Loan Bank, or payable at or through a depository institution, a Federal Reserve Bank, or a Federal Home Loan Bank, and which the drawing depository institution engages or is obliged to pay upon dishonor.

3. Section 204.3 is amended by revising the second sentence in paragraphs (a) introductory text and (g) to read as follows:

§ 204.3 Computation and maintenance.

(a) * * * Reserve deficiency charges shall be assessed for deficiencies in required reserves in accordance with the provisions of § 204.7. * * * * *

* * * * *

(g) * * * If a depository institution draws against items before that time, the charge will be made to its reserve account if the balance is sufficient to pay it; any resulting impairment of reserve balances will be subject to the penalties provided by law and to the reserve deficiency charges provided by this part. * * *

* * * * *

4. Section 204.133 is added to read as follows:

§ 204.133 Multiple savings deposits treated as a transaction account.

(a) *Authority.* Under section 19(a) of the Federal Reserve Act, the Board is authorized to define the terms used in section 19, and to prescribe regulations to implement and prevent evasions of the requirements of that section. Section 19(b) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. Under section 19(b)(1)(F), the Board also is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account is used directly or indirectly for the purpose of making payments to third persons or others. This interpretation is adopted under these authorities.

(b) *Background.* Under Regulation D, 12 CFR 204.2(d)(2), the term "savings deposit" includes a deposit or an account that meets the requirements of § 204.2(d)(1) and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make up to six transfers or withdrawals per month or statement cycle of at least four weeks. The depository institution may authorize up to three of these six transfers to be made by check, draft, debit card, or similar order drawn by the depositor and payable to third parties. If more than six transfers (or more than three third party transfers by check, etc.)

are permitted or authorized per month or statement cycle, the depository institution may not classify the account as a savings deposit. If the depositor, during the period, makes more than six transfers or withdrawals (or more than three third party transfers by check, etc.), the depository institution may, depending upon the facts and circumstances, be required by Regulation D (Footnote 5 at § 204.2(d)(2)) to reclassify or close the account.

(c) *Use of multiple savings deposits.* Depository institutions have asked for guidance as to when a depositor may maintain more than one savings deposit and be permitted to make all the transfers or withdrawals authorized for savings deposits under Regulation D from each savings deposit. The Board has determined that, if a depository institution suggests or otherwise promotes the establishment of or operation of multiple savings accounts with transfer capabilities in order to permit transfers and withdrawals in excess of those permitted by Regulation D for an individual savings account, the accounts generally should be considered to be transaction accounts. This determination applies regardless of whether the deposits have entirely separate account numbers or are subsidiary accounts of a master deposit account. Multiple savings accounts, however, should not be considered to be transaction accounts if there is a legitimate purpose, other than increasing the number of transfers or withdrawals, for opening more than one savings deposit.

(d) *Examples.* The distinction between appropriate and inappropriate uses of multiple accounts is illustrated by the following examples:

Example 1. (i) X wishes to open an account that maximizes his interest earnings but also permits X to draw up to ten checks a month against the account. X's Bank suggests an arrangement under which X establishes four savings deposits at Bank. Under the arrangement, X deposits funds in the first account and then draws three checks against that account. X then instructs Bank to transfer all funds in excess of the amount of the three checks to the second account and draws an additional three checks. Funds are continually shifted between accounts when additional checks are drawn so that no more than three checks are drawn against each account each month.

(ii) Suggesting the use of four savings accounts in the name of X in this example is designed solely to permit the customer to exceed the transfer limitations on savings accounts. Accordingly, the savings accounts should be classified as transaction accounts.

Example 2. (i) X is trustee of separate trusts for each of his four children. X's Bank suggests that X, as trustee, open a savings deposit in a depository institution for each of his four children in order to ensure an independent accounting of the funds held by each trust.

(ii) X's Bank's suggestion to use four savings deposits in the name of X in this example is appropriate, and the third party transfers from one account should not be considered in determining whether the transfer and withdrawal limit was exceeded on any other account. X established a legitimate purpose, the segregation of the trust assets, for each account separate from the need to make third party transfers. Furthermore, there is no indication, such as by the direct or indirect transfer of funds from one account to another, that the accounts are being used for any purpose other than to make transfers to the appropriate trust.

Example 3. (i) X opens four savings accounts with Bank. X regularly draws up to three checks against each account and transfers funds between the accounts in order to ensure that the checks on the separate accounts are covered. X's Bank did not suggest or otherwise promote the arrangement.

(ii) X's Bank may treat the multiple accounts as savings deposits for Regulation D purposes, even if it discovers that X is using the accounts to increase the transfer limits applicable to savings accounts because X's Bank did not suggest or otherwise promote the establishment of or operation of the arrangement.

5. Section 204.134 is added to read as follows:

§ 204.134 Linked time deposits and transaction accounts.

(a) *Authority.* Under section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)), the Board is authorized to define the terms used in section 19, and to prescribe regulations to implement and prevent evasions of the requirements of that section. Section 19(b)(2) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. Under section 19(b)(1)(F), the Board also is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account is used directly or indirectly for the purpose of making payments to third persons or others. This interpretation is adopted under these authorities.

(b) *Linked time deposits and transaction accounts.* Some depository institutions are offering or proposing to offer account arrangements under which a group of participating depositors maintain transaction accounts and time deposits with a depository institution in an arrangement under which each depositor may draw checks up to the aggregate amount held by that depositor in these accounts. Under this account arrangement, at the end of the day funds over a specified balance in each depositor's transaction account are swept from the transaction account into a commingled time deposit. A separate time deposit is opened on each business day with the balance of deposits received that day, as well as the proceeds of any time deposit that has matured that day that are not used to pay checks or withdrawals from the transaction accounts. The time deposits, which generally have maturities of seven days, are staggered so that one or more time deposits mature each business day. Funds are apportioned among the various time deposits in a manner calculated to minimize the possibility that the funds available on any given day would be insufficient to pay all items presented.

(1) The time deposits involved in such an arrangement may be held directly by the depositor or indirectly through a trust or other arrangement. The individual depositor's interest in time deposits may be identifiable, with an agreement by the depositors that balances held in the arrangement may be used to pay checks drawn by other depositors participating in the arrangement, or the depositor may have an undivided interest in a series of time deposits.

(2) Each day funds from the maturing time deposits are available to pay checks or other charges to the depositor's transaction account. The depository institution's decision concerning whether to pay checks drawn on an individual depositor's transaction account is based on the aggregate amount of funds that the depositor has invested in the arrangement, including any amount that may be invested in unmatured time deposits. Only if checks drawn by all participants in the arrangement exceed the total balance of funds available that day (i.e. funds from the time deposit that has matured that day as well as any deposits made to participating accounts during the day) is a time deposit withdrawn prior to maturity so as to incur an early withdrawal penalty. The arrangement may be marketed as providing the customer unlimited access to its funds with a high rate of interest.

(c) *Determination.* In these arrangements, the aggregate deposit balances of all participants generally vary by a comparatively small amount, allowing the time deposits maturing on any day safely to cover any charges to the depositors' transaction accounts and avoiding any early withdrawal penalties. Thus, this arrangement substitutes time deposit balances for transaction accounts balances with no practical restrictions on the depositors'

access to their funds, and serves no business purpose other than to allow the payment of higher interest through the avoidance of reserve requirements. As the time deposits may be used to provide funds indirectly for the purposes of making payments or transfers to third persons, the Board has determined that the time deposits should be considered to be transaction accounts for the purposes of Regulation D.

6. Section 204.135 is added to read as follows:

§ 204.135 Shifting funds between depository institutions to make use of the low reserve tranche.

(a) *Authority.* Under section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)) the Board is authorized to define terms used in section 19, and to prescribe regulations to implement and to prevent evasions of the requirements of that section. Section 19(b)(2) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. In addition to its authority to define terms under section 19(a), section 19(g) of the Federal Reserve Act also give the Board the specific authority to define terms relating to deductions allowed in reserve computation, including "balances due from other banks." This interpretation is adopted under these authorities.

(b) *Background.* (1) Currently, the Board requires reserves of zero, three, or ten percent on transaction accounts, depending upon the amount of transaction deposits in the depository institution, and of zero percent on nonpersonal time deposits. In determining its reserve balance under Regulation D, a depository institution may deduct the balances it maintains in another depository institution located in the United States if those balances are subject to immediate withdrawal by the depositing depository institution (§ 204.3(f)). This deduction is commonly known as the "due from" deduction. In addition, Regulation D at § 204.2(a)(1)(vii)(A) exempts from the definition of "deposit" any liability of a depository institution on a promissory note or similar obligation that is issued or undertaken and held for the account of an office located in the United States of another depository institution. Transactions falling within this exemption from the definition of "deposit" include federal funds or "fed funds" transactions.

(2) Under section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)), the Board is required to impose reserves of three percent on total transaction deposits at or below an amount determined under a formula. Transaction deposits falling within this amount are in the "low reserve tranche." Currently the low reserve tranche runs up to $42.2 million. Under section 19(b)(11) of the Federal Reserve Act (12 U.S.C. 461(b)(11)) the Board is also required to impose reserves of zero percent on reservable liabilities at or below an amount determined under a formula. Currently that amount is $3.6 million.

(c) *Shifting funds between depository institutions.* The Board is aware that certain depository institutions with transaction account balances in an amount greater than the low reserve tranche have entered into transactions with affiliated depository institutions that have transaction account balances below the maximum low reserve tranche amount. These transactions are intended to lower the transaction reserves of the larger depository institution and leave the economic position of the smaller depository institutions unaffected, and have no apparent purpose other than to reduce required reserves of the larger institution. The larger depository institution places funds in a demand deposit at a small domestic depository institution. The larger depository institution considers those funds to be subject to the "due from" deduction, and accordingly reduces its transaction reserves in the amount of the demand deposit. The larger depository institution then reduces its transaction account reserves by 10 percent of the deposited amount. The small depository institution, because it is within the low reserve tranche, must maintain transaction account reserves of 3 percent on the funds deposited by the larger depository institution. The small depository institution then transfers all but 3 percent of the funds deposited by the larger depository institution back to the larger depository institution in a transaction that qualifies as a "fed funds" transaction. The 3 percent not transferred to the larger depository institution is the amount of the larger depository institution's deposit that the small depository institution must maintain as transaction account reserves. Because the larger depository institution books this second part of the transaction as a "fed funds" transaction, the larger depository institution does not maintain reserves on the funds that it receives back from the small depository institution. As a consequence, the larger depository institution has available for its use 97 percent of the amount transferred to the small depository institution. Had the larger depository institution not entered into the transaction, it would have maintained transaction account reserves of 10 percent on that amount, and would have had only 90 percent of that amount for use in its business.

(d) *Determination.* The Board believes that the practice described above generally is a device to evade the reserves imposed by Regulation D. Consequently, the Board has determined that, in the circumstances described above, the larger depository institution depositing funds in the smaller institution may not take a "due from" deduction on account of the funds in the demand deposit account if, and to the extent that, funds flow back to the larger depository institution from the small depository institution by means of a transaction that is exempt from transaction account reserve requirements.

7. Section 204.136 is added to read as follows:

§ 204.136 Treatment of trust overdrafts for reserve requirement reporting purposes.

(a) *Authority.* Under section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)), the Board is authorized to define the terms used in section 19, and to prescribe regulations to implement and prevent evasions of the requirements of that section. Section 19(b) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. Under section 19(b)(1)(F), the Board also is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account is used directly or indirectly for the purpose of making payments to third persons or others. This interpretation is adopted under these authorities.

(b) *Netting of trust account balances.* (1) Not all depository institutions have treated overdrafts in trust accounts administered by a trust department in the same manner when calculating the balance in a commingled transaction account in the depository institution for the account of the trust department of the institution. In some cases, depository institutions carry the aggregate of the positive balances in the individual trust accounts as the balance on which reserves are computed for the commingled account. In other cases depository institutions net positive balances in some trust accounts against negative balances in other trust accounts, thus reducing the balance in the commingled account and lowering the reserve requirements. Except in limited circumstances, negative balances in individual trust accounts should not be netted against positive

balances in other trust accounts when determining the balance in a trust department's commingled transaction account maintained in a depository institution's commercial department. The netting of positive and negative balances has the effect of reducing the aggregate of a commingled transaction account reported by the depository institution to the Federal Reserve and reduces the reserves the institution must hold against transaction accounts under Regulation D. Unless the governing trust agreement or state law authorizes the depository institution, as trustee, to lend money in one trust to another trust, the negative balances in effect, for purposes of Regulation D, represent a loan from the depository institution. Consequently, negative balances in individual trust accounts should not be netted against positive balances in other individual trust accounts, and the balance in any transaction account containing commingled trust balances should reflect positive or zero balances for each individual trust.

(2) For example, where a trust department engages in securities lending activities for trust accounts, overdrafts might occur because of the trust department's attempt to "normalize" the effects of timing delays between the depository institution's receipt of the cash collateral from the broker and the trust department's posting of the transaction to the lending trust account. When securities are lent from a trust customer to a broker that pledges cash as collateral, the broker usually transfers the cash collateral to the depository institution on the day that the securities are made available. While the institution has the use of the funds from the time of the transfer, the trust department's normal posting procedures may not reflect receipt of the cash collateral by the individual account until the next day. On the day that the loan is terminated, the broker returns the securities to the lending trust account and the trust customer's account is debited for the amount of the cash collateral that is returned by the depository institution to the broker. The trust department, however, often does not liquidate the investment made with the cash collateral until the day after the loan terminates, a delay that normally causes a one day overdraft in the trust account. Regulation D requires that, on the day the loan is terminated, the depository institution regard the negative balance in the customer's account as zero for reserve requirement reporting purposes and not net the overdraft against positive balances in other accounts.

(c) *Procedures.* In order to meet the requirements of Regulation D, a depository institution must have procedures to determine the aggregate of trust department transaction account balances for Regulation D on a daily basis. The procedures must consider only the positive balances in individual trust accounts without netting negative balances except in those limited circumstances where loans are legally permitted from one trust to another, or where offsetting is permitted pursuant to trust law or written agreement, or where the amount that caused the overdraft is still available in a settlement, suspense or other trust account within the trust department and may be used to offset the overdraft.

By order of the Board of Governors of the Federal Reserve System, August 19, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20269 Filed 8-24-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-63-AD; Amendment 39-8335; AD 92-17-06]

Airworthiness Directives; British Aerospace Model BAC 1-11-200 and -400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11-200 and -400 series airplanes, that requires repetitive inspections to detect cracks in the top and bottom corners of the passenger and service door apertures, and repair, if necessary. This amendment is prompted by recent reports of fatigue cracks in the fuselage skins at the top and bottom corners of the passenger and service door apertures. The actions specified by this AD are intended to prevent reduced structural integrity of the fuselage pressure vessel.

DATES: Effective September 29, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 29, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1-11-200 and -400 series airplanes was published in the **Federal Register** on May 1, 1992 (57 FR 18843). That action proposed to require repetitive inspections to detect cracks in the top and bottom corners of the passenger and service door apertures, and repair, if necessary.

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

The commenter supports the proposed rule.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

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

The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,400, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

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

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

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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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 airworthiness directive:

92-17-06. British Aerospace: Amendments 39-8335. Docket 92-NM-63-AD.

Applicability: Model BAC 1-11-200 and -400 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage pressure vessel, accomplish the following:

(a) For airplanes operated up to a maximum cabin pressure differential of 7.5 pounds per square inch, accomplish the following in accordance with British Aerospace Alert Service Bulletin 53-A-PM5989, Issue No. 1, dated October 3, 1991:

(1) For airplanes not having modification PM51 installed: Prior to the accumulation of 20,000 landings, or within 1,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual, dye penetrant, or eddy current inspection to detect cracks in the top and bottom corners of the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,600 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 3,200 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 5,000 landings, in accordance with the service bulletin.

(2) For airplanes having modification PM51 installed: Prior to the accumulation of 30,000 landings, or within 1,200 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual inspection, dye penetrant, or eddy current inspection to detect cracks in the top and bottom corners of the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,600 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 3,200 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 5,000 landings, in accordance with the service bulletin.

(3) For airplanes repaired in accordance with Structural Repair Manual Chapter 53-02-0, Figure 74: Prior to the accumulation of 20,000 landings (for airplanes not having modification PM51 installed), or prior to the accumulation of 30,000 landings (for airplanes having modification PM51 installed), from the date of installation of the repair; or within 1,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual inspection, dye penetrant, or eddy current inspection to detect cracks of the fuselage skin repair plates at the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,600 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 3,200 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 5,000 landings, in accordance with the service bulletin.

(b) For airplanes operated at a cabin pressure differential in excess of 7.5 pounds per square inch, but not exceeding 8.2 pounds per square inch, accomplish the following in accordance with British Aerospace Alert Service Bulletin 53-A-PM5989, Issue No. 1, dated October 3, 1991:

(1) For airplanes not having modification PM51 installed: Prior to the accumulation of 14,000 landings, or within 1,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual inspection, dye penetrant, or eddy current inspection to detect cracks in the top and bottom corners of the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,100 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 2,250 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 3,500 landings, in accordance with the service bulletin.

(2) For airplanes having modification PM51 installed: Prior to the accumulation of 20,000 landings, or within 1,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual, dye penetrant, or eddy current inspection to detect cracks in the top and bottom corners of the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,100 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 2,250 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 3,500 landings, in accordance with the service bulletin.

(3) For airplanes repaired in accordance with Structural Repair Manual Chapter 53-02-0, Figure 74: Prior to the accumulation of 10,000 landings (for airplanes not having modification PM51 installed), or prior to the accumulation of 15,000 landings (for airplanes having modification PM51 installed), from the date of installation of the repair; or within 500 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual dye penetrant, or eddy current inspection to detect cracks of the fuselage skin repair plates at the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,100 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 2,250 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 3,500 landings, in accordance with the service bulletin.

(c) If cracks are found as a result of any inspection required by paragraphs (a) or (b) of this AD, prior to further flight, repair any cracks found; and inspect the door surround structure for associated damage, and, prior to further flight, repair any damage found; in accordance with British Aerospace Alert Service Bulletin 53-A-PM5989, Issue No. 1, dated October 3, 1991.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) 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.

(f) The inspections and repair shall be done in accordance with British Aerospace Alert Service Bulletin 53-A-PM5989, Issue No. 1, dated October 3, 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, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 29, 1992.

Issued in Renton, Washington, on July 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20117 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-149-AD; Amendment 39-8348; AD 92-18-04]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Fokker Model F-28 series airplanes equipped with a certain horizontal stabilizer actuator. This action requires an inspection to detect free movement of the actuator servo-valve sub-assembly of the horizontal stabilizer actuator, and replacement, if necessary. This amendment is prompted by a report of a horizontal stabilizer malfunction and subsequent uncommanded stabilizer movement caused by a broken spool in the actuator servo-valve assembly of the horizontal stabilizer control unit. The actions specified in this AD are intended to prevent uncommanded trimming or failure of the trim system of the horizontal stabilizer.

DATES: Effective September 9, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 26, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-149-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdientst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F-28 series airplanes equipped with horizontal stabilizer actuators, Part No. 11100. The RLD advises that a case has been reported of a horizontal stabilizer malfunction and subsequent uncommanded stabilizer movement caused by a broken spool in the actuator servo-valve assembly of the horizontal stabilizer control unit. While a Model F-28 series airplane was in flight at 29,000 feet, the stabilizer received an uncommanded trim input, the autopilot disengaged, and the airplane started to pitch up and climb. Although both pilots held the control column fully forward, the airplane continued to climb to 31,000 feet. After the crew reduced engine power, the climb stopped and the airplane started to descend. At the same time, the center of gravity had been moved forward by reseating the passengers. The airplane was diverted to the nearest suitable airfield and a safe emergency landing was made. During this occurrence, trimming according to Airplane Flight Manual (AFM) procedures was not possible, due to the high load on the stabilizer. Subsequent investigation revealed that the spool in the horizontal stabilizer actuator servo-valve assembly was broken between the spherical end and the first land. When this occurs, the centering spring brings the spool to an approximate neutral position. However, some leakage will occur, which causes a slow stabilizer runaway. The spool failed because the servo-valve rod-end connector was torqued too tightly onto the spool spherical end. Failure of the servo-valve sub-assembly rod-end bearing could result in the same failure condition. This condition, if not corrected, could result in uncommanded trimming or failure of the trim system of the horizontal stabilizer.

Fokker has issued Service Bulletin F28/27-180, dated July 3, 1992, that describes procedures for an inspection to detect free movement of the actuator servo-valve sub-assembly of the horizontal stabilizer actuator, and replacement, if necessary. (Lack of free movement indicates overtorquing.) The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 92-077, dated July 13, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation

Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent uncommanded trimming or failure of the trim system of the horizontal stabilizer. This AD requires an inspection to detect free movement of the actuator servo-valve sub-assembly of the horizontal stabilizer actuator, and replacement, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, 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 shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." 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 action 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 for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-149-AD." The postcard will be date stamped and returned to the commenter.

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 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. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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 airworthiness directive:

92-18-04 Fokker: Amendment 39-8348. Docket 92-NM-149-AD.

Applicability: Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, excluding Mark 0100 series airplanes; equipped with horizontal stabilizer actuators, Part No. 11100; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded trimming or failure of the trim system of the horizontal stabilizer, accomplish the following:

(a) Within 20 days after the effective date of this AD, perform an inspection of the servo-valve sub-assembly rod-end bearing and the servo-valve sub-assembly for movement, in accordance with Fokker Service Bulletin F28/27-180, dated July 3, 1992.

(1) If the servo-valve sub-assembly rod-end bearing and servo-valve sub-assembly move freely within the load limits specified in the Service Bulletin, reassemble and conduct a functional test, in accordance with the Service Bulletin.

(2) If the servo-valve sub-assembly rod-end bearing or servo-valve sub-assembly require higher loads for movement than specified in the Service Bulletin, prior to further flight, remove and replace the horizontal stabilizer control unit with a serviceable horizontal stabilizer control unit that has been inspected and found to be within the load limits of the Service Bulletin, or that has been inspected and repaired in accordance with Chapter 27-42-4 of the Menasco Overhaul Manual (OHM), as revised by Temporary Revision Number 3, dated July 10, 1992.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report to Fokker of all inspection findings, including the condition and serial number of the horizontal stabilizer actuator when the inspection has revealed loads that exceed the specified limits, in accordance with Fokker Service Bulletin F28/27-180, dated July 3, 1992. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(c) As of the effective date of this AD, no person shall install a horizontal stabilizer control unit unless that horizontal stabilizer control unit has been inspected and found to be within the specified load limits of Fokker Service Bulletin F28/27-180, dated July 3, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then

send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) 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.

(f) The inspection and replacement shall be done in accordance with Fokker Service Bulletin F28/27-180, dated July 3, 1992. 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 9, 1992.

Issued in Renton, Washington, on August 7, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20334 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AEA-24]

Alteration of Control Zone and Transition Area; Westhampton Beach, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the existing Control Zone and 700 foot Transition Area at Westhampton Beach, NY, to reflect a name in the legal descriptions for both areas, and a new helicopter instrument approach procedure to the Southampton Heliport, Southampton, NY. This action revises that amount of controlled airspace deemed necessary by the FAA to contain aircraft operating under instrument flight rules.

EFFECTIVE DATE: 0901 u.t.c. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the legal descriptions of the Control Zone and 700 foot Transition Area at Westhampton Beach, NY, due to an airport name change and the establishment of a helicopter instrument approach procedure to the Southhampton Heliport, Southampton, NY (57 FR 20064). The proposed aciton would revise that amount of controlled airspace deemed necessary by the FAA to contain aircraft operating under instrument flight rules.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No written comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Control zones and transition areas are published in §§ 71.171 and 71.181 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone and transition area listed in this document are to be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Control Zone and 700 foot Transition Area established at Westhampton Beach, NY. This action is due to a name change for an airport contained in the legal description and the development of an instrument approach procedure for the Southampton Heliport, Southampton, NY.

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. Therefore, this 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

AEA NY CZ Westhampton Beach, NY [Revised]

Francis S. Gabreski Airport, Westhampton Beach, NY (lat. 40°50'37" N., long. 72°37'56" W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.8 mile radius of the Francis S. Gabreski Airport, excluding that portion within the Calverton, NY, Control Zone. This control zone is effective during the dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Section 71.181 Designation

* * * * *

AEA NY TA Westhampton Beach, NY [Revised]

Francis S. Gabreski Airport, Westhampton Beach, NY (lat. 40°50'37" N., long. 72°37'56" W.)

Southampton Heliport, NY (lat. 40°50'50" N., long. 72°27'52" W.)

SQUIR, NY, OM (lat. 40°54'16" N., long. 72°33'25" W.)

That airspace extending upward from 700 feet above the surface within a 7.9 mile radius of the Francis S. Gabreski Airport and within 4.4 miles either side of the Francis S. Gabreski Airport northeast localizer course, extending from the SQUIR OM to 10 miles northeast of the OM and within a 5 mile radius of the Southampton Heliport.

* * * * *

Issued, in Jamaica, New York, on August 6, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-20344 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AEA-25]

Change of Operating Hours of Control Zone; Chincoteague (Wallops Island), VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action advises of the increased operating hours of the NASA Wallops Flight Facility Air Traffic Control Tower, Wallops Island, VA. This action updates the times of the Control Zone operating hours to be established in advance by a Notice of Airmen (NOTAM) and published continuously in the Airport/Facility Directory. Additionally, this Control Zone is being renamed to coincide with the geographic location of the airport upon which the Control Zone is based, changes to the airport name, and updating of geographic coordinates.

EFFECTIVE DATE: 0901 u.t.c. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On April 21, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the legal description of the Chincoteague, VA, Control Zone by reflecting changes to the air traffic control tower operating hours, airport name, and geographic location (57 FR 19408). The proposed action would reflect the increased operating hours of the NASA Wallops Flight Facility Air Traffic Control Tower, and make updates to names and geographic locations contained in the legal description.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Control zones are published in § 71.171 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The Chincoteague, VA, Control Zone listed in this document will be removed subsequently from the Handbook. The Wallops Island, VA, Control Zone listed in this document will be added subsequently to the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the operating hours of the Chincoteague, VA, Control Zone, renames the area to the Wallops Island Control Zone, Wallops Island, VA, and updates information contained in the current legal description.

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. Therefore, this 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

AEA VA CZ Chincoteague, VA [Removed]

* * * * *

AEA VA CZ Wallops Island, VA [Added]

NASA Wallops Flight Facility, Wallops Island, VA (lat. 37°56'30" N., long. 75°27'45" W.)

Snow Hill VORTAC (lat. 38°03'23" N., long. 75°27'51" W.)

Within a 4.4-mile radius of NASA Wallops Flight Facility and within 1.8 miles each side of the Snow Hill, MD, VORTAC 181° radial, extending from the 4.4-mile radius to 2.2 miles south of the VOR. This control zone shall be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on August 6, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-20347 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AEA-22]

Alteration of Transition Area; Indiana, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the existing 700 foot Transition Area at Indiana, PA, due to the development and revision of instrument approach procedures to Runway 28 at the Indiana County (Jimmy Stewart Field) Airport, Indiana, PA. This action revises controlled airspace to contain aircraft operating under instrument flight rules.

EFFECTIVE DATE: 0901 u.t.c. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On April 9, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700 foot Transition Area at Indiana, PA (57 FR 15264). The proposed action would revise that amount of controlled airspace deemed necessary to contain aircraft operating under instrument flight rules.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Transition areas are published in § 71.181 of FAA Handbook 7400.7 effective November 1,

1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsquently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the 700 foot Transition Area established at Indiana, PA, due to the development and revision of instrument approach procedures to Runway 28 at the Indiana County (Jimmy Stewart Field) Airport, Indiana, PA.

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. Therefore, this 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) 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, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AEA PA TA Indiana, PA [Revised]

Indiana County (Jimmy Stewart Field) Airport, PA (lat. 40°38'00" N., long. 79°06'15" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Indiana County (Jimmy Steward Field) Airport and within 3.7 miles either side of the Indiana County (Jimmy Stewart Field) Airport localizer east course, extending from the 6.4-mile radius to 14.3 miles east of the threshold of Runway 28.

* * * * *

Issued in Jamaica, New York, on August 6, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92–20345 Filed 8–24–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AEA–02]

Alteration of Transition Area; College Park, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the 700 foot Transition Area established at College Park, MD, due to a pending revision of an instrument approach procedure to Runway 15 at the College Park Airport, College Park, MD. This action revises that amount of controlled airspace deemed necessary to contain aircraft operating under instrument flight rules.

EFFECTIVE DATE: 0901 u.t.c. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700 foot Transition Area established at College Park, MD, due to a pending revision to an instrument approach procedure to Runway 15 at the College Park Airport, College Park, MD (57 FR 19821). The proposed action would revise that amount of controlled airspace deemed necessary to contain aircraft operating under instrument flight rules.

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. Transition areas are published in § 71.181 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the 700 foot Transition Area established at College Park, MD, due to a pending revision to an instrument approach procedure to Runway 15 at the College Park Airport, College Park, MD.

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. Therefore, this 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) 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, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AEA MD TA College Park, MD [Revised]

College Park Airport, MD (lat. 38°58'50" N., long. 76°55'22" W.)

That airspace extending upward from the surface within a 6.4-mile radius of the College Park Airport and within 2 miles either side of a 303°(T) 313°(M) bearing extending from a point located at lat. 38°58'56" N., long. 76°55'29" W., extending northwest from said

point and the 6.4-mile radius to 9.1 miles northwest of said point.

* * * * *

Issued in Jamaica, New York, on August 6, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-20346 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASW-25]

Revision of Transition Area: Gruver, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the transition area located at Gruver, TX. The development of a new standard instrument approach procedure (SIAP) has made this action necessary. A very high frequency omnidirectional range/distance measuring equipment (VOR/DME-A) SIAP has replaced the previous nondirectional radio beacon (NDB) SIAP. This action also revises the coordinates that describe the location of the Gruver Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the VOR/DME-A SIAP.

EFFECTIVE DATE: 0901 u.t.c., December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5535.

SUPPLEMENTARY INFORMATION:

History

On October 29, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Gruver, TX (56 FR 55641).

Interested persons 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. Transition Areas are published in section 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will revise the 700-foot transition area located at Gruver, TX. The development of a VOR/DME-A to replace the previous NDB SIAP makes this action necessary. This action also revises the coordinates used to describe the location of the Gruver Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the VOR/DME-A SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments 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, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

Gruver, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Gruver Municipal Airport (latitude 36°14'01" N., longitude 101°25'54" W.), excluding that airspace within the Spearman, TX, transition area.

* * * * *

Issued in Fort Worth, TX, on June 30, 1992.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 92-19112 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is authorizing certain option contracts traded on the London Metal Exchange ("LME") to be offered or sold to persons located in the United States. This order is issued pursuant to Commission rule 30.3(a),[1] which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.[2]

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., Robert H. Rosenfeld, Esq., or Barney L. Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on London Metal Exchange To Be Offered or Sold in the United States Thirty Days After Notice to the Commission and Publication in the Federal Register of the Option Contracts To Be Traded

On July 23, 1987, the Commission adopted final rules governing the domestic offer or sale of commodity futures and option contracts traded on or subject to the rules of a foreign board

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[1] 17 CFR 30.3(a) (1992).

[2] See 52 FR 28980, 28998 (August 5, 1987). Notwithstanding the prohibition in Commission rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission rule 32.4(a), 17 CFR 32.4(a) (1992), may continue to be offered or sold.

of trade.[3] These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer or sale of foreign options to persons located in the United States.[4] Specifically, rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer or sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *

In view of the history of abuses in the options markets prior to the imposition of the options ban,[5] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding part 30, which provides a regulatory framework to govern transactions in both foreign futures and foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer or sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered or sold in the United States.[6] As a consequence, rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[7]

By letters dated December 13, 1991, as supplemented by letters dated July 6, and July 22, 1992,[8] the London Metal Exchange a Recognized Investment Exchange ("RIE") which is subject to regulatory oversight by the United Kingdom Securities and Investments Board ("SIB"), requested that the Commission authorize the offer or sale of option contracts traded on or subject to the rules of LME to persons located in the United States under Commission rule 30.3(a).

In issuing this Order, the Commission has considered: (1) The existence of information sharing arrangements relevant to preventing abuses in the trading of option contracts on LME; [9] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including that sales practice compliance audits commensurate with those which apply to domestic products will be conducted with respect to firms engaged in the offer or sale of LME option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer or sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded, including, among other things, the determination by the Commission under rule 30.10 to exempt specified firms in the United Kingdom from the application of certain of the Commission's rules governing foreign futures and option transactions based on the existence of a generally comparable regulatory system in effect in the United Kingdom.[10]

In determining the LME's showing with respect to the foregoing matters is sufficient to warrant the issuance of the Order herein, the Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer or sale of the products subject to this Order.[11]

Based upon the representations of LME contained in its letters dated December 13, 1991, as supplemented, the existence of information sharing arrangements with SIB and other relevant United Kingdom authorities,[12] the determination of the Commission to grant rule 30.10 relief to specified firms in the United Kingdom by Orders dated May 15, 1989, the memorandum from the Division of Trading and Markets to the Commission dated July 30, 1992 ("Staff Memorandum") recommending the approval of the Order herein, and pursuant to Commission rule 30.3(a), the Commission hereby authorizes the offer or sale in the United States of options traded on LME subject to the following conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any LME option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order;

(2) That SIB and LME represent that LME is an RIE under the Financial Services Act and, as such, is subject to regulatory obligations under that Act, that transactions on LME in the LME option(s) referenced in such notice [13] will be subject to the rules of LME and

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[3] 52 FR 28980 (August 5, 1987).

[4] Rule 30.1(b), 17 CFR 30.1(b) (1992), defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[5] Although the statutory prohibition on the offer or sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("CEA") has been removed, see Futures Trading Act of 1988, Pub. L. No. 99-641, section 102, 100 Stat. 3556 (1986), the regulatory prohibition in Commission rule 32.11, 17 CFR 32.11 (1982), adopted pursuant to section 4c(b) of the CEA, remains in effect.

[6] 52 FR 28980, 28998.

[7] 51 FR 12104, 12105.

[8] *See* letters dated December 13, 1991, from D.E. King, LME, to Jean A. Webb, CFTC; December 13, 1991 from D.E. King, LME, to Andrea M. Corcoran, CFTC; July 6, 1992, from D.E. King, LME, to Jean A. Webb, CFTC; and July 22, 1992, from Marshall E. Hanbury, counsel to LME, to Jane C. Kang, CFTC.

[9] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed. *See* 43 FR 16155 (April 17, 1978).

[10] 17 CFR 30.10 (1992). See Orders of the Commission dated May 15, 1989 granting rule 30.10 relief to the Securities and Investments Board, the Association of Futures Brokers and Dealers, The Securities Association and the Investment Management Regulatory Organisation, 54 FR 21599, 54 FR 21604, 54 FR 21609 and 54 FR 21614 (May 19, 1989). In issuing such Orders, the Commission determined that the requirements in appendix A to part 30, "Interpretative Statement with Respect to the Commission's Exemptive Authority Under Section 30.10 of Its Rules," which sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to rule 30.10, had generally been satisfied. *Id.*

[11] The Commission has not sought to analyze the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. See 17 CFR 33.4 (1992), and 57 FR 3518 (January 30, 1992). The Commission has plenary authority with respect to option products. See section 4c of the CEA.

[12] See, *e.g.*, "Memorandum of Understanding on Mutual Assistance and Exchange of Information," entered into on September 25, 1991, by the CFTC, the Securities and Exchange Commission, the Department of Trade and Industry and the SIB, which encompasses, among other matters, cases involving fraud in the sale of foreign futures and option contracts and prohibited off-exchange futures and option contracts to U.S. customers, and the "Side Letter Relating to UK/US MOU" signed on May 15, 1989 which provides for information sharing relevant to part 30 of the Commission's rules.

[13] See letter dated July 28, 1989 from M.B. Gittins, SIB, to Andrea M. Corcoran, CFTC. The option contracts which will initially be offered or sold pursuant to this Order, the terms and conditions for which are attached hereto are options on High Grade Primary Aluminum, Copper-Grade A, Special High Grade Zinc, Standard Lead, Primary Nickel and Tin futures contracts.

cleared on the London Clearing House and that SIB and/or LME provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indices [14] and options on futures on foreign government debt securities [15] will not be permitted to be offered or sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on LME or another market with respect to which the Commission has issued an order under Commission rule 30.3(a) authorizing its option products to be offered or sold in the United States;

(5) That options traded pursuant to the Order herein may only be offered or sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under rule 30.10 based on comparability of regulation, provided such persons also provide customers resident in the United States with the options risk disclosure statement in Commission rule 33.7, 17 CFR 33.7 (1992);

(6) If experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangements to service existing positions will be made.

This Order is issued based on the information provided to the Commission and its staff as set forth herein and in the Staff Memorandum. Any changes or material omissions might require the Commission to reconsider the authorization granted in this Order.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign commodity options.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry alphabetically:

Appendix B—Option Contracts Permitted To Be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
* * *	* * *	* * *
London Metal Exchange	Option Contracts on High Grade Primary Aluminum, Copper-Grade A, Special High Grade Zinc, Standard Lead, Primary Nickel and Tin futures contracts.	_____, 1992; _____ FR _____.
* * *	* * *	* * *

Editorial note: These contracts will not appear in the Code of Federal Regulations.

LME High Grade Primary Aluminum Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME High Grade Primary Aluminum Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 27 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11:10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11:40 a.m. on Exercise day. Options not exercised automatically expire.

Last Trading Day—Up to close of business of the business day preceding the last Exercise day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

Trading Hours—11:55–12:00, 12:55–13:00, 13:05–13:25, 15:35–15:40, 16:15–16:20 and 16:30–17:00 for Ring Trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME High Grade Primary Aluminum Futures Contract of 25 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 25 up to strike USD 1750, then USD 50 up to strike USD 3000, then USD 100 over strike USD 3000
STG Options—STG 25
DEM Options—DEM 100 up to strike DEM 5000, then DEM 200 over strike DEM 5000
YEN Options—YEN 10000 up to strike YEN 400000, then YEN 20000 over strike YEN 400000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorized to issue LME Futures and Options—contracts to counterparties. All LME Futures and Options—contracts are issued on a Principal to Principal basis.

LME Copper Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Copper Grade A Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 27 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11.10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11.40 a.m. on Exercise day. Options not exercised automatically expire.

Last Trading Day—up to close of business of the business day preceding the last Exercise Day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

[14] See 52 FR 28980, 28982 n.6 and section 2a(1) of the CEA.

[15] See section 2a(1) of the CEA, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

Trading Hours—12:00–12:05, 12:30–12:35, 13:05–13:25, 15:30–15:35, 16:10–16:15 and 16:30–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Copper Grade A Futures contract of 25 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 25 up to strike USD 1750, then USD 50 up to strike USD 2000, then USD 100 over strike USD 3000
STG Options—STG 25 gradations
DEM Options—DEM 100 up to strike DEM 5000, then DEM 200 over strike DEM 5000
YEN Options—YEN 10000 up to strike YEN 400000, then YEN 20000 over strike YEN 400000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorised to issue LME Futures and Options contracts to counterparties. All LME Futures and Options contracts are issued on a Principal to Principal basis.

LME Zinc Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Special High Grade Zinc Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 27 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11.10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11.40 a.m. on the Exercise day. Options not exercised automatically expire.

Last Trading Day—up to close of business of the business day preceding the last Exercise Day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

Trading Hours—12:10–12:15, 12:50–12:55, 13:05–13:25, 15:25–15:30, 16:05–16:10 and 16:30–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Special High Grade Zinc Futures contract of 25 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 20 up to strike USD 2000, then USD 50 up to strike USD 2000
STG Options—STG 20
DEM Options—DEM 100 up to strike DEM 5000, then DEM 200 over strike DEM 5000
YEN Options—YEN 10000 up to strike YEN 400000, then YEN 20000 over strike YEN 400000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorised to issue LME Futures and Options contracts to counterparties. All LME Futures and Options contracts are issued on a Principal to Principal basis.

LME Nickel Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Primary Nickel Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 15 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11:10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11:40 a.m. on the Exercise day. Options not exercised automatically expire.

Last Trading Day—up to close of business of the business day preceding the last Exercise Day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

Trading Hours—12:15–12:20, 13:00–13:05, 13:05–13:25, 15:45–15:50, 16:25–16:30 and 16:30–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Primary Nickel Futures contract of 6 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 100
STG Options—STG 50
DEM Options—DEM 200
YEN Options—YEN 20000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorised to issue LME Futures and Options contracts to counterparties. All LME Futures and Options contracts are issued on a Principal to Principal basis.

LME Lead Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Standard Lead Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 15 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11:10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11:40 a.m. on Exercise day. Options not exercised automatically expire.

Last Trading Day—up to close of business of the business day preceding the last Exercise Day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

Trading Hours—12:05–12:10, 12:45–12:50, 13:05–13:25, 15:20–15:25, 16:00–16:05 and 16:30–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Standard Futures contract of 25 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 20
STG Options—STG 20
DEM Options—DEM 50 up to strike DEM 2500, then DEM 100 over strike DEM 2500
YEN Options—YEN 5000 up to strike YEN 250000, then YEN 10000 over strike YEN 250000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring

Dealing and Associate Broker members are authorised to issue LME Futures and Options contracts to counterparties. All LME Futures and Options contracts are issued on a Principal to Principal basis.

LME Tin Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Tin Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery Expiry Month—Every month up to 15 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11.10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11.40 a.m. on the Exercise day. Options not exercised automatically expire.

Last Trading Day—up to close of business of the business day preceding the last Exercise Day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

Trading Hours—11:50–11:55, 12:40–12:45, 13:05–13:25, 15:40–15:45, 16:20–16:25 and 16:30–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Tin Futures contract of 5 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 100
STG Options—STG 50
DEM Options—DEM 200
YEN Options—YEN 20000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorized to issue LME Futures and Options contracts to counterparties. All LME Futures and Options contracts are issued on a Principal to Principal basis.

Issued in Washington, DC, on August 18, 1992.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 92-20299 Filed 8-24-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Producil® (Efrotomycin)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Research Laboratories (formerly Merck Sharp & Dohme Research Laboratories), Division of Merck & Co., Inc. The NADA provides for the use of an efrotomycin Type A medicated article to make Type B and Type C medicated swine feeds for increased rate of weight gain and improved feed efficiency. The regulations are also amended to reflect a change of sponsor name from Merck Sharp & Dohme Research Laboratories to Merck Research Laboratories.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8602.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, filed NADA 140-818, which provides for the use of a 14.5 grams (g) per pound Producil® (efrotomycin) Type A medicated article to make Type B and Type C medicated swine feeds for increased rate of weight gain when fed at 3.6 to 14.5 g per ton and for improved feed efficiency when fed at 3.6 g per ton. Efrotomycin is a new animal drug used in a Type A medicated article to make Type B and Type C medicated feeds. As provided in 21 CFR 558.4(a), efrotomycin is a Category I drug, which as a sole ingredient, does not require an approved Form FDA 1900 for making Type B or Type C medicated feeds as in approved NADA 140-818.

In addition, Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., has advised FDA of a change of sponsor name to Merck Research Laboratories, Division of Merck & Co., Inc. Accordingly, the regulations in 21 CFR 510.600(c)(1) and (c)(2) are amended to reflect that change.

The NADA is approved as of July 24, 1992, and new § 558.235 is added to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning July 24, 1992, because no active ingredient (including any ester or salt thereof) has been previously approved in any other application filed under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of*

approved applications is amended in paragraph (c)(1) in the entry for "Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc." and in paragraph (c)(2) in the entry for "000006" by revising the sponsor name to read "Merck Research Laboratories, Division of Merck & Co., Inc."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

4. Section 558.4 is amended in paragraph (d) in the "Category I" table by alphabetically adding a new entry to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent[1] type A	Type B maximum (200X)	Assay limits percent type B/C[2]
* *	*	*	*
Efrotomycin	94–113	1.45 g/lb (0.32%)	80–120
* *	*	*	*

[1] Percent of labeled amount.
[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

5. New § 558.235 is added to subpart B to read as follows:

§ 558.235 Efrotomycin.

(a) *Approvals*. Type A medicated article: 14.5 grams per pound to 000006 in § 510.600(c) of this chapter.

(b) *Conditions of use*—(1) *Swine*. (i) *Amount*. 3.6 grams per ton.

(A) *Indications for use*. For improved feed efficiency.

(B) *Limitations*. Feed continuously as sole ration. Not to be used in swine weighing more than 250 pounds.

(ii) *Amount*. 3.6 to 14.5 grams per ton.

(A) *Indications for use*. For increased rate of weight gain.

(B) *Limitations*. Feed continuously as sole ration. Not to be used in swine weighing more than 250 pounds.

(2) [Reserved]

Dated: August 17, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92–20208 Filed 8–24–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AF86

Rules of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Interim rules.

SUMMARY: The Department of Veterans Affairs (VA) is publishing amendments to Board of Veterans' Appeals Rules of Practice relating to the fees and expenses of representatives who practice before VA. This action is required in order that these regulations may properly reflect changes in procedure which are necessitated by decisions of the United States Court of Veterans Appeals. The intended effect of this action is to bring these regulations into compliance with the Court's decisions and to prevent any unnecessary delay in benefit payments to veterans and their dependents or survivors.

DATES: The amendments to these regulations are effective on August 25, 1992. Comments must be submitted on or before September 24, 1992. Comments will be available for public inspection until October 5, 1992.

ADDRESSES: Send written comments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170 at the address above, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Counsel to the Chairman (01C), Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–233–2978.

SUPPLEMENTARY INFORMATION: VA will consider public comment submitted to the address above, but it has not published a notice of proposed rulemaking on the amendment of these regulations, as allowed by 5 U.S.C. 553(b)(A) and (B). The affected regulations are rules of agency procedure and practice. In addition, the agency for good cause finds that notice and public procedure thereon would be unnecessary and contrary to the public interest because these changes are necessitated by decisions of the United States Court of Veterans Appeals.

The United States Court of Veterans Appeals has rendered decisions in two cases which have had a substantial impact upon VA's practice and procedure dealing with the review of representatives' charges for fees and expenses relating to their services in matters pending before VA; *Nagler* v. *Derwinski*, 1 Vet. App. 297 (1991) and *In the Matter of the Fee Agreement of William G. Smith in Case Number 90–58*, 1 Vet. App. 492 (1991). These decisions have had the effect of invalidating an expedited administrative fee and expense review process contemplated by VA when the Board of Veterans' Appeals current Rules of Practice were drafted. In *Nagler*, the Court held, in part, that the Board could not review fee agreements at a time when no representation has been provided before VA or BVA. In *Smith*, the Court held that the Chairman of the Board has no authority to review attorney-fee agreements for representation at the administrative level.

The current Rules of Practice include provisions for payment of an attorney's share of any past-due benefits awarded to a VA claimant at the same time that any such benefits are paid to the claimant. With the demise of expedited administrative review, this could result in a lengthy delay in the payment of benefits to disabled veterans or their dependents or survivors when the reasonableness of a representative's fees is being contested. Accordingly, these provisions are being removed. References to the now invalidated authority of the Chairman of the Board to rule on fee and expense review motions are also being removed so that the Rules of Practice will not be misleading in that regard.

The following changes have been made in part 20:

Section 20.102(d) has been amended to remove references to the delegation of the Chairman's authority to rule on fee and expense review motions.

Section 20.609 has been amended to remove provisions from paragraphs (h)(3)(i) and (h)(4) requiring payment of an attorney's share of any past-due benefits at the same time that benefits are paid to the claimant/appellant and to remove a provision from paragraph (i) indicating that rulings on motions for the review of fee agreements will be made by the Chairman.

Section 20.610, paragraph (d), has been amended to remove a provision indicating that rulings on motions for the review of representatives' expenses will be made by the Chairman.

VA has determined that these regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The regulations will not have a $100 million annual effect on the economy and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that the regulations will have only a limited effect on individual VA claimants and their representatives. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers associated with these regulatory amendments.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: July 6, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—[AMENDED]

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

Authority: 38 U.S.C. 501(a).

2. In subpart B, § 20.102 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 20.102 Rule 102. Delegation of authority—Rules of practice.

* * * * *

(d) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 606(e), 711(e), 711(h), and 1304(b) (§§ 20.606(e), 20.711(e), 20.711(h), and 20.1304(b) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board. * * *

(Authority: 38 U.S.C. 512(a), 7102, 7104)

§ 20.609 [Amended]

3. In subpart G, § 20.609 is amended by removing the words "at the time that the appellant is paid retroactive benefits" from the last sentence of paragraph (h)(3)(i), by removing the last sentence of paragraph (h)(4) and by removing the following sentence from paragraph (i): "The ruling on the motion will be by the Chairman." The authority citation and Office of Management and Budget approval information for § 20.609 continue to read as follows:

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Approved by the Office of Management and Budget under control number 2900–0085.)

§ 20.610 [Amended]

4. In subpart G, § 20.610 is amended by removing the following sentence from paragraph (d): "The ruling on the motion will be by the Chairman." The authority citation and Office of Management and Budget approval information for § 20.610 continue to read as follows:

(Authority: 38 U.S.C. 5904)

(Approved by the Office of Management and Budget under control number 2900–0085.)

[FR Doc. 92–20359 Filed 8–24–92; 8:45 am]

BILLING CODE 8320–01

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to close a gap in postal regulations. Rules concerning conduct on postal property already allow the Postal Service to inspect purses, briefcases, and other containers brought into, while on, or being removed from postal property, to protect the health and safety of employees and the public, and to assure the integrity of the mails and the postal system. Adding vehicles and their contents to the list of property subject to inspection closes a loophole in the inspection provision of the existing regulation. The vehicle inspection zone is limited to restricted nonpublic areas where there is a reduced expectation of privacy.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: H.J. Bauman, (202) 268–4415.

SUPPLEMENTARY INFORMATION: As amended, 39 CFR 232.1 will provide that an individual will be warned in advance of entry into the inspection zone by a prominently displayed sign. This will afford the individual a choice, prior to entry into the inspection zone, to not enter the restricted nonpublic area and avoid inspection. At the point and time of entry the individual may object to such inspection, but entry may be denied. Having been warned of the possibility of inspection, once the individual makes the choice to enter the restricted nonpublic area without objection to such inspection, consent to inspect shall be implied (prominently displayed warning signs will afford constructive notice).

Restricted nonpublic areas would not include the areas where mailers proceed to drop off mail shipments, even though access to these areas may be restricted. These areas would be considered restricted "public" areas as opposed to restricted "nonpublic" areas where the public normally does not have access, including, but not limited to employee parking lots, and postal vehicle lots.

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service.

Accordingly, 39 CFR part 232 is amended as follows:

PART 232—CONDUCT ON POSTAL PROPERTY

1. The authority citation for part 232 continues to read as follows:

Authority: 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; sec. 613, Treasury, Postal Service, and General Government Appropriations Act, 1992, Pub. L. 102–141, 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844.

2. Section 232.1 is amended by redesignating existing paragraph (b)(2) as paragraph (b)(3), and by adding a new paragraph (b)(2) to read as follows:

§ 232.1 Conduct on postal property.

* * * * *

(b) * * *

(2) Vehicles and their contents brought into, while on, or being removed from restricted nonpublic areas are subject to inspection. A prominently displayed sign shall advise in advance that vehicles and their contents are subject to inspection when entering the restricted nonpublic area, while in the confines of the area, or when leaving the area. Persons entering these areas who object and refuse to consent to the inspection of the vehicle, its contents, or both, may be denied entry; after entering the area without objection, consent shall be implied. A full search of a person and

any vehicle driven or occupied by the person may accompany an arrest.

* * * * *

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-20255 Filed 8-24-92; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 91-1654]

Reorganization of the Office of Managing Director

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the Commission's Rules to incorporate the reorganization of the Office of Managing Director. The reorganization was necessary in order to promote a more efficient and effective organizational structure.

EFFECTIVE DATE: October 21, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Sullivan, Office of Managing Director, (202) 632-0923.

SUPPLEMENTARY INFORMATION:

Order

Adopted: October 21, 1991.
Released: June 30, 1992.

By the Managing Director:

1. The Commission has before it for consideration proposed changes in the organization of the Office of Managing Director. Implementation of the proposed changes requires amendments to § 0.231 of the Commission's Rules and Regulations.

2. To promote a more efficient and effective organizational structure, the Commission is hereby approving the realignment of the functions and elements of the Internal Control and Security Office within the Office of Managing Director. The physical, personnel and information security functions as well as the ethics function of the Internal Control and Security Office will remain intact, and will be placed within the Operations Support Division of the Office of Managing Director as a separate unit. The non-security functions of the Internal Control and Security Office will be transferred to offices within the Office of Managing Director which are already performing related tasks.

3. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of section 4 of the Administrative Procedure Act are therefore inapplicable. Authority for the amendments adopted herein is contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. *It is ordered,* effective October 21, 1991 that part 0 of the Rules and Regulations is amended as set forth below.

List of Subjects in 47 CFR Part 0

Authority delegations, Organization and functions.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

47 CFR part 0 is amended as follows:

2. 47 CFR 0.231 is amended by revising paragraph (h) to read as follows:

§ 0.231 Authority delegated.

* * * * *

(h) The Chief of the Operations Support Division, Office of the Managing Director, is delegated authority to act as the "designated agency ethics official" within the meaning of sections 206 and 209 (10) of the Ethics in Government Act of 1978, Public Law 95-521, 92 Stat. 1824 (1978).

* * * * *

[FR Doc. 92-20197 Filed 8-24-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1004

[Ex Parte No. 55 (Sub-No. 68)]

Interpretations and Routing Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is removing a longstanding rule of interpretation that no specific operating authority is necessary for the return transportation of shipping containers if the carrier performed the outbound movement as obsolete. This rule is intended to make the Commission's regulations up to date.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking, issued May 27, 1992 (57 FR 22205), we proposed to eliminate 49 CFR 1004.1 (former 49 CFR 1041.10), which codifies a longstanding rule of interpretation that no specific operating authority is necessary for the return transportation of shipping containers if the carrier performed the outbound movement. The section has been superseded by 49 U.S.C. 10526(a)(11) and no longer reflects the law. No comments were received opposing the proposed elimination, and it will be adopted.

This proposal does not change existing law. Thus, we concluded that it will not have a significant impact upon a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1004

Administrative practice and procedure, Motor carriers.

For the reasons stated in the preamble, Title 49, Chapter X, Part 1004 of the Code of Federal Regulations is amended as follows:

PART 1004—INTERPRETATIONS AND ROUTING REGULATIONS

1. The authority citation for part 1004 continues to read as follows:

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553. Subpart C also issued under 49 U.S.C. 10922(h)(I)(A).

§ 1004.1 [Removed]

2. Section 1004.1 is removed.

Decided: August 18, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmitt. Commissioner Simmons dissented with a separate expression.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-20303 Filed 8-24-92; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 57, No. 165
Tuesday, August 25, 1992

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 915

[Docket No. FV-92-062PR]

Avocados Grown in South Florida; Proposed Relaxation of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would relax grade requirements for avocados grown in Florida by permitting handlers to ship fresh avocados seriously damaged, but not very seriously damaged, by Cercospora Spot in certain containers to destinations within the production area, during the period November 2, 1992, through March 31, 1993. This proposed action is expected to result in the shipment of small amounts of avocados damaged by Cercospora Spot during the latter part of the growing season to secondary markets within the production area.

DATES: Comments must be received by September 24, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5331.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Marketing Agreement and Marketing Order No. 915, as amended [7 CFR part 915], regulating the handling of avocados grown in South Florida. The 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 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.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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 proposal 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 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production are in South 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 services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee) met April 8, 1992, and recommended this proposed action. The committee works with the Department in administering the marketing agreement and order. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

This proposed rule would amend § 915.306 [7 CFR 915.306] to permit handlers to ship fresh avocados seriously damaged, but not very seriously damaged, by Cercospora Spot to destinations within the production area in containers other than those authorized under § 915.305 [7 CFR 915.305], during the period November 2, 1992, through March 31, 1993. Cercospora Spot is a surface blemish which affects the rind tissue but not the edible portion of the fruit, and is classified as a defect under the United States Standards for Grades of Florida Avocados. Serious damage caused by Cercospora Spot, but not very serious damage, is permitted in shipments of U.S. No. 3 grade avocados, but not in shipments of U.S. No. 2 grade fruit.

Under the U.S. No. 2 grade, avocados may be damaged by Cercospora Spot, but not seriously damaged. Currently, all fresh avocados grown in Florida shipped to destinations within the production area must grade at least U.S. No. 2, except that avocados may be placed in containers with avocados of dissimilar varietal characteristics.

This proposed rule is expected to result in the shipment of small amounts of avocados damaged by Cercospora Spot during the latter part of the growing season to secondary markets within the production area. This should provide avocado growers and handlers with an opportunity to sell in the fresh market certain avocados which are being culled out during the packing process under the current grade requirements. In Florida, Cercospora Spot becomes more prevalent in the latter part of the growing season, particularly in the late fall and winter.

The committee recommended that this relaxation be made effective for the 1992–93 season only. The committee plans to evaluate this relaxation at the end of the 1992–93 season to see if a viable market exists for this lower quality fruit.

Currently, avocados imported into the United States must grade at least U.S. No. 2, as provided in § 944.28 [7 CFR 944.28]. Since this action does not change the minimum grade requirement of U.S. No. 2 specified in § 915.306 for avocados handled to points outside the production area, there is no need to change the avocado import regulation. Section 8e of the Act [7 U.S.C. 608e-1] requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

Maturity requirements for Florida avocados handled to points both within and outside the production area are specified in § 915.332 [7 CFR 915.332]. These requirements, based on minimum weights and diameters, would not be effected by this proposed rule.

The proposal herein reflects the committee's and the Department's appraisal of the need to relax the grade requirements for certain Florida grown avocados shipped to destinations within the production area.

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

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 915 is proposed to be amended as follows;

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

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

2. In § 915.306, paragraph (a) introductory text is republished and paragraph (a)(1) is revised to read as follows:

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a) No handler shall handle any variety of avocados grown in the production area unless:

(1) Such avocados grade at least U.S. No. 2, except that avocados handled to destinations within the production area may be placed in containers with avocados of dissimilar varietal characteristics: *Provided,* That during the period November 2, 1992, through March 31, 1993, avocados may be handled to destinations within the production area in containers other than those authorized under § 915.305 affected by serious damage, but not very serious damage, caused by Cercospora Spot.

* * * * *

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20316 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 948

[Docket No. FV-92-044]

Irish Potatoes Grown in Colorado; Proposed Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would suspend, for an indefinite period, a provision of the marketing order requiring the Colorado Potato Committee (Committee) to be composed of two members and alternate members from each of three area committees. The production area is divided into three regulatory areas and provision is made for the are committees to act as administrative agencies for each of the areas. Area 1 has not been regulated for years, and is not expected to begin commercial interstate potato marketing in the foreseeable future. Because of this, the Committee has had to operate with only four members and alternate members. To allow the Committee to operate at its maximum membership level of six members and alternate members, this proposal would also reapportion Committee membership by adding one member and alternate member each to the active Area 2 and 3 committees and not provide representation for the inactive Area 1 committee. In addition, the paragraphs concerning the definition of Area 1 and the composition of the area committee for Area 1 would also be suspended in the marketing order. This action would improve the efficiency of the Committee, and allow it to remain functional if some members are absent.

DATES: Comments must be received by September 9, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC. 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC. 20090–6456, telephone (202) 690–0464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Order No. 948 [7 CFR part 948], regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by 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 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.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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 proposal 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 120 handlers of Colorado potatoes subject to regulation under the marketing order, and approximately 400 producers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000, and 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. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

The production area under Marketing Order No. 948 is divided into three separate regulatory areas. Area 1, also called the Western Slope, consists of the northwestern portion of the State of Colorado. Area 2, known as the San Luis Valley, is located in the southwestern part of the State. Area 3, referred to as the Northern Colorado or the Greeley area, covers most of the eastern part of the State. Section 948.50 establishes area committees as administrative agencies for each of the three areas.

The Committee is established, pursuant to § 948.51, consisting of six members, with alternates. Section 948.51 further specifies that two members and alternates for the Committee shall be selected by the Secretary from each area committee. The Committee coordinates activities and affairs of mutual interest among the area committees.

For years, the primary cash crops of Area 1 have been relatively high-value tree fruit crops. As fruit production has increased, potato production has decreased. The small volume of potatoes still produced there is being consumed locally. As a result of such changes in potato production, rising costs of equipment and crop inputs, the potato industry in Area 1 has diminished significantly.

Consequently, handling regulations have not been implemented and an area committee has not been selected for years. Because of this, the Committee has had no representatives from Area 1 and has had to operate with only four members (two members and alternates each from the Area 2 and 3 committees). The Committee believes that it could function more effectively and obtain a broader cross-section of industry views with six members and alternates, as provided under section 948.51. Industry representatives believes it unlikely that Area 1 will again increase potato production to significant levels. Thus, it is unlikely that Area 1 will be able to provide the membership necessary to allow the Committee to operate with six members.

In light of this situation, the Committee met November 8, 1991, and unanimously passed a motion requesting the Area 2 and 3 committees to recommend reapportionment of the Committee. It requested that the two member and alternate member positions currently allocated to the Area 1 committee be allocated to the Area 2 and 3 committees so that each committee would have three members and alternates, rather than two members and alternates. On November 21, 1991, the Area 2 committee recommended this reapportionment action, and on December 5, 1991, the Area 3 committee recommended the same action.

In order to so reapportion Committee membership, the second sentence of § 948.51 would be suspended. That sentence specifies that, "Two members and alternates shall be selected from each area committee." With that sentence suspended, § 948.51 specifies that, "The Colorado Potato Committee is hereby established consisting of six members, with alternates. Committeemen shall be selected by the Secretary from nominations of area committee members or alternates." This language would permit the Committee to be composed of an equal number of members from each active area committee currently regulating shipments. This would make use of all six authorized member positions. The Committee believes that an additional member and alternate member from each active area would provide increased input, interest, and guidance in operating the marketing order. In the unlikely event that Area 1 again becomes a commercially important producer of potatoes, the Committee could again be reapportioned to reflect such changes in production. Such action would be considered by the Secretary at the request of the industry. In addition, paragraph (a) of §§ 948.4 and 948.50 of the order would also be suspended. Paragraph (a) of the definition of the term "area" describes Area 1. Paragraph (a) of § 948.50 establishes the composition of Area 1 (Western Slope) with the selection of four producers and handlers.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities, and that the reapportionment of the Committee would benefit Colorado potato producers and handlers.

A comment period of 15 days after publication of this proposal in the **Federal Register** is deemed appropriate so that any reapportionment of the Committee can be made effective as soon as possible. The Committee and both area committees believe that it is important for the industry to have the reapportioned Committee in operation during the coming shipping season. The shipping season for Area 2 is expected to begin in late September and the shipping season for Area 3 is expected to begin in August. Finally, the proposal has been discussed at open meetings of the Committee and both area committees and the proposed reapportionment is fully supported.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

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

§ 948.4 [Amended]

2. In section 948.4, paragraph (a) is suspended.

§ 948.50 [Amended]

3. In section 948.50, paragraph (a) is suspended.

4. In section 948.51, the second sentence is suspended. With that sentence suspended, § 948.51 reads as follows:

§ 948.51 Colorado Potato Committee.

The Colorado Potato Committee is hereby established consisting of six members, with alternates. Committeemen shall be selected by the Secretary from nominations of area committee members or alternates.

5. A new section 948.151 is added to Subpart- Rules and Regulations (7 CFR 948.100–948.150) to read as follows:

§ 948.151 Colorado Potato Committee membership.

The Colorado Potato Committee shall be comprised of six members and alternates selected by the Secretary. Three members and three alternates shall be selected from nominations of Area 2 committee members or alternates, and three members and three alternates shall be selected from nominations of Area 3 committee members or alternates.

Dated: August 19, 1992.

Daniel Haley,

Administrator, Agricultural Marketing Service.

[FR Doc. 92–20317 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 90–013P]

RIN 0583–AA78

Use of Tocopherol and Citric Acid in Various Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to permit the use of tocopherol and citric acid in the preparation of various meat food products. Tocopherol acts as an antioxidant and citric acid acts as a synergist to increase the effectiveness of antioxidants. It is proposed that tocopherol be allowed in various meat products at a level not to exceed 0.03 percent based on the fat content, and that citric acid be allowed in various meat food products at a level not to exceed 0.01 percent based on the fat content. This proposed rule is in response to a joint petition submitted by Akzo Salt, Inc., and Henkel Corporation.

DATES: Comments must be received on or before September 24, 1992.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under "Supplementary Information".

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205–0080.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or 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 export or domestic markets.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule would permit the use of tocopherol and citric acid in the preparation of various meat products.

This proposed rule concerns the use of substances in meat products. States are precluded from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 678). States may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in case of the imported articles which are not at such an establishment, after their entry into the United States. States that conduct meat inspection programs must impose requirements at least equal to those imposed on federally inspected products and establishments under the FMIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect is to be given to this proposed rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this proposed rule. Prior to any judicial challenge to the application of its provisions, administrative procedures set forth in 9 CFR 306.5 must be exhausted.

Effects on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal would allow the use of tocopherol as an alternative antioxidant in various meat food products, and the use of citric acid in various meat food products as a synergist. Manufacturers, both large and small, opting to use tocopherol as an antioxidant would be required to revise the ingredients statement on the labels to show the presence of tocopherol and citric acid. However, the use of these substances would be voluntary and any costs associated with new label applications would be covered under existing approved paperwork burdens of FSIS's prior label approval system. Thus, this proposed rule would not impose new paperwork requirements on the industry. Decisions by individual manufacturers on whether to use tocopherol as an alternative antioxidant and citric acid as a synergist in various meat food products would be based on their conclusions that the benefits would outweigh the costs of including these substances in their formulations.

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent to the Policy Office at the address shown above and should refer

to Docket Number 90–013P. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Joint Petition

FSIS has been jointly petitioned by Akzo Salt, Inc., Clarks Summit, Pennsylvania, and Henkel Corporation, Ambler Pennsylvania, to approve the use of tocopherol as an antioxidant and citric acid as a synergist in various meat food products. The petitioners requested that tocopherols be allowed to be added to dry sausage, semi-dry sausage, dried meats, uncooked fresh pork sausage, uncooked Italian sausage products, uncooked fresh sausage made from beef or beef and pork, uncooked meatballs and uncooked meat pizza toppings at a level of 0.05 percent based on fat content. They aslo requested that these products, when cooked, as well as brown-and-serve sausage, pregrilled beef patties, and restructured meats, be permitted to contain 0.1 percent tocopherol based on fat content. Tocopherols would not be used in combination with butylated hydroxyanisole (BHA), butylated hydroxytoluene (BHT), tertiary butylhydroquinone (TBHQ) or propyl gallate, which are other antioxidants permitted in various meat products in accordance with restrictions set forth in 9 CFR 318.7(c)(4). The use of tocopherols would be an effective alternative antioxidant to BHA and BHT in such meat food products.

The petitioners also requested that citric acid be permitted as a synergist in various products to increase the effectiveness of antioxidants, at a level of 0.01 percent based on the fat content.

Current Regulations

Section 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7(c)(4)) currently allows the use of tocopherols as antioxidants and oxygen interceptors in rendered animal fat or a combination of such fat and vegetable fat at a level of 0.03 percent. Section 318.7(c)(4) also allows the use of citric acid as a synergist in lard, shortening, fresh pork sausage and dried meats at 0.01 percent and in dry sausage at 0.003 percent. Citric acid may also be used as an acidifier, an anticoagulant, a curing accelerator, and a flavoring agent at various levels in various meat food products (9 CFR 318.7(c)(4)). Section 317.2(j)(10) of the Federal meat inspection regulations (9 CFR 317.2(j)(10)) requires that when antioxidants are added to products as permitted under part 318, a statement must appear on the product label identifying the specific antioxidant used and the purpose of such use, such as "BHA, BHT, and propyl gallate added to help protect flavor."

Section 381.147(f)(4) of the poultry products inspection regulations (9 CFR 381.147(f)(4)) permits the use of tocopherols as antioxidants and oxygen interceptors in various poultry products at a level of 0.03 percent based on the fat content. Prominent labeling is also required for poultry products containing antioxidants (9 CFR 381.120). Citric acid is allowed as a synergist in poultry fats at 0.01 percent, and as a curing accelerator and flavoring agent in various poultry products at various levels (9 CFR 381.147(f)(4)).

The Food and Drug Administration lists tocopherols in 21 CFR 182.3890 and citric acid in 21 CFR 182.1033 as generally recognized as safe (GRAS) for use in foods with no limitations other than good manufacturing practices.

The Proposal

After reviewing the petitioners' technical data, FSIS believes that the requested use levels for tocopherols were greater than needed to perform the intended purpose. FSIS believes that use levels not exceeding 0.03 percent, based on fat content, are sufficient for the intended purpose. This level parallels the use level allowed in 9 CFR 381.147(f)(4) of the poultry products inspection regulations. Over a period of years, this level has been found to be sufficient for the intended purpose. Therefore, FSIS proposes to permit the use of tocopherols as antioxidants at levels not to exceed 0.03 percent, based on the fat content, in various meat food products as requested by the petitioners.

The petitioners' requested 0.01 percent use level for citric acid is consistent with present use levels permitted in the regulations (9 CFR 318.7 and 381.147) for the use of such substance as a synergist, except use is limited to 0.003 percent in dried sausage and 0.01 percent of the total weight when used in dried meats. FSIS is proposing that citric acid be allowed as a synergist at the level of 0.01 percent, based on the fat content, since the use of citric acid does not present any safety issues and can be used in unlimited quantities for other purposes as prescribed in 9 CFR 318.7(c)(4).

Currently, the presence and purpose of any antioxidant added to meat and poultry products must be shown in prominent lettering on the product label and contiguous to the product name 9 CFR 317.2(j)(10) and 381.120). The Agency is reassessing its overall policy regarding prominent labeling and intends to issue a proposed rule in the near future to eliminate unnecessary product qualifiers that identify the presence of a substance that does not significantly alter the identify of the finished product. Such proposed rule would include the elimination of required product qualifiers on products containing antioxidants, including tocopherol. FSIS believes that such action would not deprive consumers of informative labeling because all substances used in the preparation of a product are required to be listed in the ingredients statement (9 CFR 317.2(f)(1) and 381.118). Today's consumer relies upon the ingredients statement as the source of information on the composition of a food product.

Because of the format of the chart of substances in 9 CFR 318.7(c)(4), this proposal would also revise the manner in which the entry for malic acid is presented in the chart. Malic acid follows citric acid under the Class of substance "Synergists" and shows "do" (or "ditto") under the amount column meaning the same amount of malic acid is used and calculated as specified in the last entry for citric acid. The proposed amendment for citric acid would change the basis for calculating the use level of citric acid, thus requiring that the chart specify the use level (amount) and basis of calculation for malic acid.

For reasons discussed in the preamble, FSIS is proposing to amend 9 CFR part 318 of the Federal meat inspection regulations to read as follows:

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENT; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–895; 7 CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4) under the Class of substance "Antioxidants and oxygen interceptors," the Substance "Tocopherols" would be amended by adding the following at the end thereof:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Antioxidants and oxygen interceptors..	Tocopherols	* * *		
		do	Dry sausage, semidry sausage, dried meats, uncooked or cooked fresh sausage made with beef and/or pork, uncooked or cooked Italian sausage products, uncooked or cooked meatballs, uncooked or cooked meat pizza toppings, brown and serve sausage, pregrilled beef patties, and restructured meats.	Not to exceed 0.03 percent based on fate content. Not used in combination with other antioxidants.
*	*	*	*	*

3. In the chart in § 318.7(c)(4) under the Class of substance "Synergists," the entries under the Substances "Citric acid" and "Malic acid" would be revised to read as follows:

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Synergists (used in combination with antioxidants).	Citric acid	To increase effectiveness of antioxidants.	Any product permitted to contain antioxidants as provided in this Part.	Not to exceed 0.01 percent based on fat content.
	Malic acid	do	Lard and shortening	0.01 percent based on total weight in combination with antioxidants.
*	*	*	*	*

Done at Washington, DC, on: June 15, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92-20267 Filed 8-24-92; 8:45 am]

BILLING CODE 3410-DM-M

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9 CFR Part 381

[Docket No. 89-008P]

RIN 0583-AB09

Use of Tricalcium Phosphate in Mechanically Deboned Chicken

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal poultry products inspection regulations to permit the use, in accordance with current good manufacturing practices, or tricalcium phosphate in mechanically deboned chicken during the dehydration process to preserve the color of such dehydrated products. Use of tricalcium phosphate at a proposed level not to exceed 2 percent of the weight of the mechanically deboned chicken would sequester the iron present in the blood of mechanically deboned chicken during the dehydration process, thus preventing discoloration (browning) of the product. The proposed regulation is in response to a petition submitted by Henningsen Foods, Inc.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments provided under the Poultry Products Inspection Act to: Charles Edwards, (202) 205-0080. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205-0080.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or 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 export or domestic markets.

Executive Order 12778

This proposed rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. This proposed rule would permit the use of tricalcium phosphate in mechanically deboned chicken. This proposed rule concerns the use of substances in poultry products. States are precluded from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 457e). States may, however, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA, or, in the case of imported articles which are not at such an establishment, after their entry into the United States. States that conduct poultry inspection programs must impose requirements at least equal to those imposed on federally inspected products and establishments under the PPIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect is to be given to this proposed rule. Thee are no

administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this proposed rule. Prior to any judicial challenge to the application of its provisions to an inspector's decision relating to any inspection, applicable administrative procedures set forth in 9 CFR 381.35 must be exhausted.

Effects on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposal would permit the use of an additional substance at the manufacturer's option. Approximately, 505 manufacturers produce mechanically deboned chicken. Manufacturers, both large and small, opting to use tricalcium phosphate in this manner would be required to revise the ingredients statement on product labels to show the presence of such substances (9 CFR 381.118). However, the use of tricalcium phospate would be voluntary and any costs associated with new label applications would be covered under existing approved paperwork burdens of FSIS's prior label approval system. Thus, this proposed rule would not impose new paperwork requirements on the industry.

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 89-008P. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. Charles Edwards so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Henningsen Foods Petition

On March 4, 1988, FSIS received a petition from Henningsen Foods, Inc., Omaha, Nebraska, to amend the poultry products inspection regulations to allow the use of tricalcium phosphate in mechanically deboned chicken during dehydration to avoid discoloration of the dehydrated product. During the process of dehydrating mechanically deboned chicken, the product becomes dark brown, resulting in a dehydrated product that is aesthetically unacceptable to the petitioner's customers who purchase the product for use in further processed products such as gravies, sauces, and dehydrated soups.

The petitioner claims that the addition of tricalcium phosphate to mechanically deboned chicken sequesters the iron present in the blood of the poultry product during dehydration and prevents discoloration of the mechanically deboned poultry product.

Supporting data submitted by the petitioner was based on a series of color tests of samples of dehydrated mechanically deboned chicken with variable amounts of tricalcium phosphate added before dehydration ranging from 0 to 3 percent of the weight of the mechanically deboned chicken. The data show that the color of the mechanically deboned chicken was fully preserved during dehydration with the addition of tricalcium phosphate at the 2 percent level. A copy of the petition and supporting data are included in this rulemaking record.

Current Regulations

The Food and Drug Administration (FDA) lists tricalcium phosphate as generally recognized as safe (GRAS) in 21 CFR 182.1217 when used in accordance with current good manufacturing practices. The poultry products inspection regulations currently do not permit the use of tricalcium phosphate in any poultry product.

The Proposal

After reviewing the petitioner's data and information, the Administrator of FSIS believes that the use of tricalcium phosphate at 2 percent of the weight of the mechanically deboned chicken would be in compliance with applicable FDA requirements, would not render dehydrated mechanically deboned chicken adulterated or misbranded, and would be in accordance with the provisions of the Poultry Products Inspection Act. Therefore, FSIS is proposing to amend the table of approved substances in 9 CFR 381.147(f)(4) to allow the use of tricalcium phosphate to preserve the color of mechanically deboned chicken during dehydration by preventing the development of a brown color. This proposal would permit tricalcium phosphate in such product at a level not to exceed 2 percent of the ingoing weight of the product, i.e., before dehydration. FSIS believes that the petitioner has presented technical data that demonstrate the efficacy of tricalcium phosphate for the intended purpose at a level not to exceed 2 percent.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR part 381 to read as follows:

List of Subjects in 9 CFR Part 381

Food additives, Food labeling, Poultry inspection.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

2. In the table in § 381.147(f)(4), the Class of substance "Miscellaneous" would be amended by adding at the end thereof the following:

§ 381.147 Restriction on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Miscellaneous	Tricalcium phosphate	To preserve product color during dehydration process.	Mechanically deboned chicken to be dehydrated.	Not to exceed 2 percent of the weight of the mechanically deboned chicken prior to dehydration, in accordance with 21 CFR 182.1217.
*	*	*	*	*

Done at Washington, DC, on:

Donald L. White,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 92-20266 Filed 8-24-92; 8:45 am]

BILLING CODE 3410-DM-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Advertising Services Industries

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to revise its size standard for four advertising services industries: Standard Industrial Classification (SIC) code 7311, Advertising Agencies; SIC code 7312, Outdoor Advertising Services; SIC code 7313, Radio, Television, and Publishers' Advertising Representatives; and SIC code 7319, Advertising, N.E.C. from $3.5 million in annual receipts (defined to include all revenue in whatever form received or accrued from whatever source) to $6.0 million in annual receipts, but excluding amounts remitted to other firms, usually a provider of media services. Businesses in these industries typically reimburse more than half of their total revenues to media providers. As such, measuring the size of firms in these industries to exclude these remittances better measures the activities performed by these firms to generate revenues. A size standard of $6.0 million based on adjusted total revenues for each advertising industry would better define small businesses within these industries by more closely matching the size standards of these industries with their structure.

DATES: Comments must be received September 24, 1992.

ADDRESSES: Send comments to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street SW., suite 8150, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Economist, Size Standards Staff, Tel: (202) 205-6618.

SUPPLEMENTARY INFORMATION: This notice proposes to revise the small business size standard of $3.5 million for the advertising services industries to $6.0 million and to modify the calculation of annual receipts for firms in the advertising services industries.

A significant issue concerning the size standard for these industries is how a firm's annual receipts should be calculated for determining the size of a firm. Prior to 1989 the SBA's treatment for an advertising agency (at least in terms of formal size appeals adjudication) had been to exclude from the average annual receipts calculation media charges that were collected by the agency and paid to a third party media provider on behalf of its clients. A 1989 regulatory change established a pass-through exclusion for real estate and travel agencies, but not for advertising agencies, thus requiring an advertising agency to include media charges in its calculation of average annual receipts. A recent court decision reinstated that previous agency practice of excluding pass-through for advertising agencies on administrative procedure grounds (C.A. No. 91-1569 TAF (D.C. D.C. 21992)). SBA has since analyzed the advertising agencies industry to ascertain whether it should reaffirm its pre-1989 treatment, or develop a new regulation to include media charges. SBA is proposing that it past practice of excluding certain monies from the calculation of annual receipts for advertising agencies should be followed and also extended to other advertising services industries.

SBA's research of the advertising services industries reveals that a large percentage of total revenues collected by firms is passed through to another firm, such as an advertising agency collecting money from client firms, typically for a media provider. In this respect, the advertising agency's revenue is similar to a commission based on the value of the media booking.

SBA allows exclusions from annual receipts to amounts collected as an agent for another for two other industries—Travel Agencies, SIC code 4724 (See 53 FR 18820) and Real Estate Agents and Managers, SIC code 6531 (See 54 FR 6267). These two industries share several characteristics that led SBA to believe it appropriate to exclude from total revenues funds received on behalf of an unaffiliated third party. First, a broker or agent-like relationship between a firm and a third party provider exists that represents a dominant or crucial activity of firms in these industries. Second, the pass-through funds associated with the broker or agent-like relationship is a significant proportion of total receipts. Third, as the normal business practice of firms in the industry, a firm's income remaining after the pass-through funds are remitted to a third party is typically derived from a standard commission or fee. Fourth, firms in these industries do not usually consider billings that are reimbursed to other firms as their own income, preferring instead to count only those receipts that are retained for their own use. Finally, Federal government agencies which engage in the collection of statistics and other industry analysts typically represent receipts of the firms on an adjusted total receipts basis.

Firms in the advertising services industries share a number of these general characteristics with the travel agents and the real estate agents and managers industries. An advertising services firm typically performs a broker or agent-like activity on behalf of its clients. Client firms typically have the firm prepare an advertisement and purchase advertising time or space with a media provider, such as a broadcaster or newspaper. Although not mandatory, this is a common practice in the industry. The client's bill from the advertising services firm will usually include the charges of the media provider's services that are temporarily held in trust by the firm for remittance to the media provider. Moreover, these remitted monies are typically much larger in magnitude than the firm's own earnings for preparing an advertisement and providing other services for the client, which usually are stated as a commission or fee from the total billings. Also, in these industries, more than half of billings are usually passed through to media service firms. In addition, receipts of firms in the advertising services

industries are typically viewed as revenues composed of commissions or fees from billing and charges for other services performed. For example, in 1977 the U.S. Bureau of the Census began collecting receipts data from firms in these industries based on commissions on media billings, fees and other income. *Advertising Age*, a trade industry publication, produces an annual report on advertising agencies that ranks firms by size on both a gross billings basis and a gross income basis, the latter term excluding amounts passed through to media providers.

Accordingly, SBA believes it is appropriate to exclude amounts collected on behalf of another firm for firms in the advertising services industries as it presently does for the travel agencies and the real estate agents and managers industries. SBA invites comments on the appropriateness of its intended treatment of annual receipts of advertising agencies, its application of this treatment to three other advertising services industries, and comments on its view of the industry practice of reporting receipts of advertising service firms. If a continuation of this treatment of receipts is supported by comments from the public, the definition of annual receipts will be revised as proposed in this notice. If not, SBA is willing to reassess its view of how receipts of advertising services firms should be measured for size standards purposes.

Factors Influencing the Size Standard Decision Process

In reviewing the appropriateness of a size standard, SBA generally evaluates an industry using five primary industry factors. These primary factors include: Industry competition, average firm size, start-up costs, distribution of firms by size and the impact on SBA's programs. Each of these factors were reviewed using various indexes relating to that factor.

As an indicator of industry competition, SBA first looks at competition within the industry as measured by the share of industry sales controlled by producers above a certain size, in this case $25.0 million in annual receipts. This size break was selected due to the availability of industry data from the U.S. Bureau of the Census at this size break.

If an industry's output is controlled by relatively large firms, especially when compared to other similar industries, the influence of this factor is to move the size standard upward. The result is to provide assistance to firms in a broad range of sizes that are competing with dominant firms in an industry. If an industry's output is more evenly distributed, however, SBA tends to set a lower size standard to assist relatively small firms in the industry.

Average firm size is the second factor considered by the SBA. To account for industry differences, SBA tends to set high size standards in industries with high average firm size relative to other industries in its division and low size standards in industries with relatively low average firm size. Average firm size can be expressed in terms of either receipts or employees, but the usual pattern is to compare industries by average receipts per firm if a receipts-based size standard is being evaluated and average employment per firm if an employee-based size standard is under review.

Indexes of start-up costs are the third factor affecting the appraisal of size standards. High start-up costs affect a firm's initial size because potential entrants into an industry must have sufficient capital to start a business. These costs often extend beyond expenditures on production equipment and the physical establishment itself to include non-capital equipment, marketing, research, distribution and follow-up services. High average start-up costs within an industry suggest the need for a relatively high size standard, while low average start-up costs are usually associated with a relatively low size standard. In this instance, SBA is using receipts per employee as an indicator of start-up costs relationships between industries, since there are no comprehensive data available on capitalization on a 4-digit SIC code basis in the service industries. Receipts per employee are generally correlated within industry groups with estimates of imbedded capital, and this is used as a "second best" indicator of capitalization and ease of entry differences between industries since other, more desirable indicators are not available.

The fourth factor—firm size distribution—describes the proportion of sales, employment and other economic activity accounted for by firms of different sizes within an industry, and relates these proportions to a size standard. For example, if the preponderance of an industry's output is by smaller firms, this would tend to support a low size standard. The opposite would be the case for an industry in which firm size distribution indicates that output is concentrated among large firms.

The fifth and final factor to be considered is the impact of the proposed size standard revision on SBA's programs. These usually involve a calculation of small business shares of Federal procurement, and often the average size of Federal contracts in an industry. In general, the lower the small business share of Federal procurement activity and the higher the average size of Federal contracts in an industry, the greater would be the justification for a relatively high size standard. Patterns of SBA lending guarantees by industry have also been used by the SBA in the past to evaluate the necessity of a size standard revision relating to SBA's program objectives.

Table 1 presents data for these five industry structure factors. Each measurement for these five factors was specifically calculated such that if an industry or an industry group had a larger index for any factor, that larger index would point to a higher size standard and vice versa. (The industry data used for the analysis of the advertising services industries are based on adjusted total revenue. Adjusted total revenue permits the exclusion of amounts collected for others upon which commissions or fees are earned.)

TABLE 1.—SELECTED INDUSTRY STRUCTURE FACTORS FOR ADVERTISING INDUSTRIES

SIC	Industry	Size standard	Percent of receipts by firms of—		Average receipts		Percent Federal procurement to large firms
			$5.0M or more in size	$25.0M or more in size	per employee (in thousands)	Per firm (in million)	
7311	Advertising	$3.5m	52.6	37.7	$76.8	$1.00	93.0
7312	Outdoor Advertising service	$3.5m	72.3	63.0	113.0	1.86	79.0
7313	Radio, TV, Publishers Rep	$3.5m	56.5	39.8	72.2	1.09	92.0
7319	Advertising, N.E.C.	$3.5m	28.7	14.3	78.8	.85	96.0
731	Advertising (weighted average)	$3.5m	55.2	40.0	82.6	1.13	94.0

TABLE 1.—SELECTED INDUSTRY STRUCTURE FACTORS FOR ADVERTISING INDUSTRIES—Continued

SIC	Industry	Size standard	Percent of receipts by firms of—		Average receipts		Percent Federal procurement to large firms
			$5.0M or more in size	$25.0M or more in size	per employee (in thousands)	Per firm (in million)	
	All Service Ind. (Division I) excluding hospital services (unweighted averages).	$2.5m—$14.5m range.	36.3	21.6	54.0	.99	61.0

Source: 1987 Census of Service Industries, U.S. Bureau of the Census. Small business share of Federal procurements calculated from Federal Procurement Data System, 1989.

The indicators shown in table 1 for the advertising industries clearly indicate that these industries are significantly different than most of the service industries and thus would merit higher size standards than the average service industry. Among all advertising services industries aggregated together, every indicator points to a higher size standard than for most service industries. Both the percent of sales by firms in excess of $25.0 million in size and the average firm size of advertising firms, for example, exceed the size of the average service industry; and other indicators are all in about a three to two ratio to the average service firm.

Given that all review indicators for the advertising services industries point to a relatively high size standard, the question which arises is how much higher than the anchor size standard of $3.5 million would be appropriate. Table 2 addresses this question by comparing each indicator with industries grouped by size standard within the service industries. These indicators are compared in the same table with the indicators for the grouped advertising services industries in an attempt to compare the structural factors for these industries with those of service industries in general.

TABLE 2.—STRUCTURED INDICATORS OF ADVERTISING INDUSTRIES CONTRASTED WITH SERVICE INDUSTRIES (ALL OF DIVISION 1) GROUPED BY SIZE STANDARD

Industry	Percent of receipts by firms of—		Average receipts		percent Federal procurement to nonsmall firms
	$5.0M or more in size	$25.0M or more in size	Per employee (in thousands)	Per firm (in million)	
(7311-7319) Advertising	55.2	40.0	$82.8	$1.126	94.0
Size Standard of $2.5M	8.9	1.0	27.3	.212	88.0
Size Standard of $3.5M (Except Hospitals)	32.1	16.6	50.9	1.127	64.0
Average for Size Standards, $6.0M to $8.0M Range	56.2	38.1	39.8	1.211	48.0
Size Standard of $12.5M	66.7	49.5	68.2	.993	69.0
Size Standard of $14.5M	78.8	67.3	118.1	2.236	23.0
Size Standard of 500 emp.	79.7	59.7	77.9	2.753	83.0

Source: 1987 Census of Service Industries, U.S. Bureau of the Census. Small business share of Federal procurements calculated from data provided by the Federal Procurement Data System, 1989.

The indicators for the advertising services industries clearly pointed to a higher size standard than $3.5 million. Four of the five major indicators are larger for the advertising services industries than for service industries with $3.5 million size standard and the fifth indicator (average firm size) is equivalent. The pattern of these indicators suggested to SBA that it focus on size standards in the $6.0 to $8.0 million range.

In comparing the advertising services indicators with those of service industries with $6 to $8 million size standards, the size distribution of firms indicator (percent of sales in an industry by firms of $5.0 million or more in sales), the concentration indicator (percent of sales in an industry by firms of $25.0 million or more sales), and the average size of firm in an industry all indicate a close match. However, both the average receipt per employee indicator (an approximate indicator of the difficulty of entering an industry) and the share of Federal procurement to nonsmall firms in an industry suggest that the size standards for the advertising services industries should be even higher than the $6.0 to $8.0 million range. Complicating the analysis, however, is the fact that the average firm size for the advertising industries is virtually identical to the average firm size of service firms with a $3.5 million size standard, a factor which would continue against a size standard at the higher end of the $6.0 to $8.0 million range under consideration.

In weighing these factors together, SBA is proposing a size standard at the lower end of the $6.0 to $8.0 million range under consideration—$6.0 million. This proposed standard takes into consideration the level of average firm size compared to most service industries and SBA's reluctance to put significant weight on "receipts per employee" as an indicator of entry barriers in an industry. (This indicator substitutes of capitalization indexes such as asserts per firm data which are not available for the service industries at the four digit SIC code level.)

SBA specifically invites comment on the appropriateness of defining receipts in terms of adjusted gross revenues for the advertising services industries. This definition is similar to its definition for travel agents and real estate agents, but differs from other industries (in which all revenues are counted). SBA also invites comments on the appropriateness of these proposed size standards or on alternatives size standards (either higher or lower). Comments suggesting other standards should address the questions of:

(1) The interaction of these size standards with SBA's programs;
(2) The relative levels of participation at different size standards;
(3) The effect of these proposed size standards or other alternative size standards on business firms within these industries; and,
(4) The prospect of significant new entries into these industries in response to this program.

SBA is publishing this notice to elicit information from the public prior to the issuance of a final rule. However, SBA is not suggesting that either the size standard or the definition of receipts outlined in this proposal will necessarily be adopted as final for the advertising services industries. Rather, SBA is seeking input from the public in the formulation of final size standards which will reflect a more suitable definition of small business in these industries. As such, any final rule on this issue adopted by SBA will be the logical outgrowth of Agency research in conjunction with public comment to this notice.

Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612 and 12778, and the Paperwork Reduction Act

General

SBA considers that this proposed rule, if promulgated in final for, will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*). However, if this rule is promulgated in final form, it would not constitute a major rule for the purpose of Executive Order 12291, since its annual economic effect is less than $100 million. Immediately below SBA has set forth an initial regulatory flexibility analysis of this proposal.

(1) *Description of entities to which the rules applies.* SBA estimates that 3600 additional firms out of a total of 14,000 firms active in the advertising services industries would be considered small if this proposed rule is adopted in final form. This constitutes about a third of the total net receipts of the advertising services industry. These firms will become eligible to seek assistance offered by SBA programs, provided they meet other program requirements for assistance. However, the proposed size standards do not impose a regulatory burden because they do not regulate or control business behavior.

Firms which would be newly considered small business if the proposed rule became final would be eligible for a variety of business development, financial assistance and procurement assistance programs offered by SBA. The impacts of the business development program help a small business to improve its competitiveness in the market. While it is difficult to precisely quantify the impacts of this proposed rule, estimates of the beneficial effect on SBA's financial and procurement programs can be made from statistics for earlier years; these impacts total less than $100 million, and therefore this rule is not considered a major rule.

During the 1989 fiscal year, there were a total of 30 guaranteed business loans totalling $4.0 million made to firms in the advertising services industries under the 7(a) Loan Program. Assuming a proportional relationship in loan demand based on a market share shift from 12 percent of industry activity under a $3.5 million size standard expressed in gross revenues to 46 percent under a $6.0 million size standard based on adjusted total revenues, the number of loans and the dollar volume of SBA guaranteed loan activity could quadruple under the proposed increase to approximately 120 loans and $16 million (an increase of 90 loans and $12 million).

A somewhat greater impact is anticipated in the Government contracting programs reserved for small business. Firms ranging from $0.5 million to $6.0 million in adjusted total income (the area of the proposed size standard increase) account for 34 percent of advertising sales. If the newly designated small firms were as successful in Federal contracting as they are in the industry in general, they would be awarded an additional 34 percent of $133 million, or about $45 million in additional Federal outlays to firms newly defined as small by the SBA. Of these, about $25 million are projected to be awarded under SBA's two procurement preference programs—the set-aside program for prime contracts and the contracting component of the 8(a) program for minority small businesses.

(2) *Description of reasons why this action is being taken and objectives of proposed rule.* SBA has provided above in the supplementary information a description of the reasons why this action is being taken and a statement of the reasons for and objectives of this proposed rule.

(3) *Legal basis for the proposed rule.* The legal basis for this proposed rule is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

(4) *Federal rules.* There are no Federal rules which duplicate, overlap or conflict with this proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(5) *Significant alternatives to proposed rule.* The changes set forth in this proposed rule from the current size standard attempt to establish the most appropriate definition of small businesses eligible for SBA's assistance programs. There are no significant alternatives to defining a small business other than developing an alternative size standard. These were discussed in the supplementary information.

SBA certifies that this proposed rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

SBA certifies that this proposed rule, if promulgated as final will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

PART 121—[AMENDED]

(1) The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

§ 121.601 [Amended]

(2) In § 121.601, the table of "Size Standards by SIC Industry", Major Group 73, is amended by revising SIC codes 7311, 7312, 7313, and 7319 to read as follows:

SIC (* = New SIC Code in 1987, not used in 1972)	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
7311	Advertising agencies	$6.0 [10]
7312	Outdoor advertising services	6.0 [10]
7313	Radio, television, and publishers' advertising representatives	6.0 [10]
7319	Advertising, N.E.C	6.0 [10]

* * * * *

(3) In § 121.601, Standard Industrial Classification Table, Footnote 10 is revised to read as follows:

[10] SIC codes 4724, 6531, 7311, 7312, 7313, and 7319: As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions or directed to be reimbursed to a third party such as a media service for an advertising firm. The Commission received would be included as revenue.

(4) Section 121.402 (b)(2) is revised to read as follows:

§ 121.402 Annual receipts.

* * * * *

(b) * * *

(2) *Receipts* is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions reduced by returns and allowances. However, the term "receipts" excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, amounts collected for another by a travel agent, an advertising agency, a real estate agent, and taxes collected for remittance to a taxing authority.

* * * * *

Dated: July 6, 1992.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 92-20224 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASW-08]

Proposed Revision of Transition Area: Lawton, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Lawton, OK. The development of a new standard instrument approach procedure (SIAP) to the Henry Post AAF, utilizing the Lawton very high frequency omnidirectional range/distance measuring equipment (VOR/DME), has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME Runway (RWY) 17 SIAP to the airport.

DATES: Comments must be received on or before October 15, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92-ASW-08, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone (817) 624-5535.

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, 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 containing the following statement: "Comments to Airspace Docket No. 92-ASW-08." 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 office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, 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 Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Lawton, OK. The development of a new VOR/DME RWY 17 SIAP to the Henry Post AAF, utilizing the Lawton VOR/DME, has necessitated this proposal. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME RWY 17 SIAP.

Transition areas are published in section 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant 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, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is proposed to be amended as follows:

Section 71.181 Designation

* * * * *

Lawton, OK. [Revised]

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Lawton Municipal Airport (latitude 34°34'04" N., longitude 98°24'59" W.), and within 4 miles east and 8 miles west of the 358° and 178° radials of the Lawton VOR (latitude 34°29'46" N., longitude 98°24'46" W.), extending from the 6.8-mile radius to 19.6 miles south of the airport and within 4 miles east and 8 miles west of the Lawton ILS Localizer south course extending from the 6.8-mile radius to 20.6 miles south of the airport and within a 6.5-mile radius of the Henry Post AAF (latitude 34°39'03" N., longitude 98°24'00" W.), and within 1.9 miles each side of the 003° radial of the Lawton VOR extending from the 6.5-mile radius to 7.6 miles north of the Henry Post AAF, excluding that airspace within R-5601 A and B when that restricted area is activated and excluding that airspace within the Wichita Falls, TX, Transition Area.

* * * * *

Issued in Fort Worth, TX on July 7, 1992.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 92-17357 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA-55-90]

[RIN 1545-AO79]

Clarification of Period During Which Interest Is Allowed With Respect to Certain Overpayments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to § 301.6611-1 on Procedure and Administration. The proposed amendments clarify the period during which interest is allowed on overpayments credited against a taxpayer's liability for interest and certain additions to the tax. The proposed amendments are necessary as a result of changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Deficit Reduction Act of 1984. The proposed regulations affect all taxpayers that have overpayments credited against underpayments.

DATES: Written comments and requests for a public hearing must be received by October 26, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA-55-90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Forest Boone of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 111 Constitution Avenue, NW., Washington, DC 2204 (Attention: CC:IT&A:Br06) or telephone 202-622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the regulations on Procedure and Administration (26 CFR part 301) under section 6611 of the Internal Revenue Code (Code) to clarify the period during which interest is allowed on overpayments that are credited against a taxpayer's liability for interest and certain additions to the tax. These proposed amendments will conform the regulations to section 344 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97-248, 96 Stat. 635), and section 158 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98-369, 98 Stat. 696). The regulations are proposed to be effective for credits made on or after August 25, 1992.

Explanation of Provisions

Interest on Overpayments That Are Credited Against Interest on Underpayments

Section 6611(a) of the Code provides that interest shall be allowed and paid on any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621. Under section 6402(a), the Secretary may credit any overpayment (including any interest allowed thereon) against any liability imposed under the Code on the taxpayer. Under section 6611(b)(1), interest is allowed on an overpayment that is so credited from the date of the overpayment to the due date of the taxpayer's liability against which the overpayment is credited. For purposes of this interest computation, specific due dates are provided in § 301.6611-1(h) of the regulations.

Generally, section 6601(f) provides that once an overpayment is credited to satisfy a taxpayer's liability, interest no longer accrues on that liability. Section 344 of TEFRA added section 6622 of the Code, which requires interest imposed by the Code to be compounded daily. The effect of section 6601(f) on the compounding requirement of section 6622 is that once an overpayment is credited to satisfy the taxpayer's liability for interest, that credit cuts off any further compounding of that interest (*i.e.*, interest no longer accrues on the taxpayer's interest liability against which the credit has been made).

Similarly, it is appropriate that no interest liability to the taxpayer accrues on the overpayment once the overpayment is credited to satisfy the taxpayer's liability for interest. Thus, the proposed regulations amend § 301.6611-1(h)(2)(v) to clarify that interest does not continue to accrue on any portion of an overpayment that is credited against the taxpayer's liability for interest.

Interest on Governments That Are Credited Against Certain Additions to the Tax

Prior to DEFRA, interest only accrued on additions to the tax from the date of notice and demand, and then only if not paid within 10 days from the date of notice and demand. In section 158 of DEFRA, Congress added Code section 6601(e)(2)(B) to the Code, which requires taxpayers to pay interest on certain additions to tax from the due date of the relevant return (including any extensions) until the addition to the tax is paid. The number of additions to the tax that bear interest from the due date of the return was increased by Congress in 1988 and again in 1989. The proposed regulations amend § 301.6611-1(h)(2)(vi) of the regulations to clarify that no interest is allowed on any portion of an overpayment that is credited against certain additions to the tax for any period after the due date of the return (including extensions) to which the addition to the tax relates.

Prior Regulations Obsolete

These regulations are proposed to be effective on the date they are published. It should be noted that, since the enactment of section 6622 of the Code in TEFRA, the Service has treated § 301.6611(h)(2)(v) of the existing regulations as obsolete. Likewise, the Service has treated § 301.6611-1(h)(2)(vi) of the existing regulations as obsolete with respect to certain additions to the tax since the enactment of section 6601(e)(2)(B) in DEFRA. Thus, the Service has computed and is currently computing interest in a fashion consistent with these proposed rules.

Effect on Other Documents

On October 9, 1984, the Service published in the **Federal Register** (49 FR 39566 (LR-280-82, 1984-2 C.B. 860)) proposed amendments to § 301.6611-1 and § 301.6601-1 on Procedure and Administration. The proposed amendments revised § 301.6611-1 to reflect section 346 of TEFRA and section 714(n) of DEFRA, eliminated certain

deadwood provisions, and reorganized § 301.6611–1. The proposed amendments did not, however, include revisions to take into account section 344 of TEFRA or section 158 of DEFRA because those sections were beyond the scope of that regulation project. The proposed amendments have not been adopted as final regulations. If the proposed amendments are adopted as final regulations, their rules (and, to the extent necessary, their effective dates) will be modified to be consistent with these proposed regulations.

Special Analyses

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

Written Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Forest Boone of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 301.6611–1 is proposed to be amended by:

a. Revising paragraphs (h)(2)(v) and (h)(2)(vi) as set forth below.

b. Adding paragraph (k) to read as set forth below.

§ 301.6611–1 Interest on overpayments

* * * * *

(h) * * *

(2) * * *

(v) *Interest.* In the case of a credit against interest that accrues for any period ending prior to January 1, 1983, the due date is the earlier of the date of assessment of such interest or December 31, 1982. In the case of a credit against interest that accrues for any period beginning on or after December 31, 1982, such interest is due as it economically accrues on a daily basis, rather than when it is assessed.

(vi) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an additional amount, addition to the tax, or assessable penalty, the due date is the earlier of the date of assessment or the date from which such amount would bear interest if not satisfied by payment or credit.

* * * * *

(k) *Effective date.* Paragraphs (h)(2)(v) and (h)(2)(vi) of this section are effective for credits made on or after August 25, 1992.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–20256 Filed 8–24–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900–AF59

Veterans Education; Change of Program for Post-Vietnam Era Veterans

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Proposed regulation.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 contains a section which affects most of the educational programs VA (Department of Veterans Affairs) administers. The section revises the rules for determining whether an individual can change programs of education. The regulation governing changes of programs of education for veterans receiving benefits under VEAP (Post-Vietnam Era Veterans Educational Assistance Program) must be changed in order to bring it into agreement with the law. This proposal will effect this change.

DATES: Comments must be received on or before September 24, 1992. Comments will be available for public inspection until October 5, 1992.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until October 5, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233–2092.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs Nurse Pay Act (Pub. L. 101–366) liberalizes the rules for determining whether a veteran or eligible person can change a program of education. On page 865 of the **Federal Register** of January 9, 1992, VA published a notice of intent to amend 38 CFR 21.4234 in order to implement this provision of law. 38 CFR 21.5232, which governs changes of program of education under VEAP, contains a reference to 38 CFR 21.4234 which will no longer be accurate once the proposed 38 CFR 21.4234 becomes final. This

revision will eliminate that inaccuracy. 38 CFR 21.4234, as proposed in the **Federal Register** of January 9, 1992, will be used in the administration of VEAP.

The Department of Veterans Affairs and the Department of Defense have determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA and the Department of Defense find that good cause exists for making the amendments to § 21.5232, like the provision of law they implement, retroactively effective on June 1, 1991. This amended regulation is intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law; and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 16, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 17, 1992.

Robert M. Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary (Military Manpower & Personnel Policy), Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a)

2. Section 21.5232 and its authority citation are revised to read as follows:

§ 21.5232 Change of program.

In determining whether a change of program of education may be approved for the payments of educational assistance, VA will apply § 21.4234 of this part.

(Authority: 38 U.S.C. 3241[, 3691]; Pub. L. 94–502[, Pub. L. 101–366] (June 1, 1991)

[FR Doc. 92–20360 Filed 8–21–92; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[GEN Docket No. 89–116, 89–117 and 89–118, FCC 92–341]

Procedure for Measuring Electromagnetic Emissions From Intentional Radiators, Unintentional Radiators, and Digital Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Further Notice of Proposed Rule Making (FNPRM) proposes to adopt the American National Standards Institute's (ANSI) test procedure C63.4–1992 as the standard the Commission will use for measuring electromagnetic emissions from intentional and unintentional radiators, including digital devices, regulated under the FCC Rules. C63.4–1992 would be used instead of TP–3, TP–4, and TP–6, the test procedures proposed in the Notices of Proposed Rule Making (NPRMs) in this proceeding. This new procedure is a revision of ANSI test procedure C63.4–1991, incorporating additional instructions specific to the testing of intentional and unintentional radiators. C63.4–1992 also includes new criteria for site attenuation in a measurement facility description filing required by the FCC Rules.

DATES: Comments are due on or before November 9, 1992 and Reply Comments are due on or before December 8, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh L. Van Tuyl, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD, 21046, telephone number: 301–725–1585, extension 221.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making in General Dockets 89–116, 89–117 and 89–118, adopted July 22, 1992, and released August 17, 1992.

The complete text of this FNPRM is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036.

The following collection of information contained in the proposed rules has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contract or, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt (202) 395–3785, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information, contact Judy Boley, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0398.

Title: Equipment Authorization Measurement Standards 2.948, 15.117(g)(2), 15.117(g)(3).

Action: Revision.

Respondents: Businesses (including small businesses) and other for-profit organizations.

Frequency of Response: On occasion or every three years, and record keeping requirement.

Estimated Annual Response: 320 respondents; 20 record keepers; 9,350 hours total annual burden; 27.5 hours average burden per respondent or record keeper.

Needs and Uses: Proposed revision to Rule 2.948 is needed to ensure repeatable test results by establishing additional test site performance criteria. This NPRM will not affect the burden or requirements of Rules 15.117(g)(2) and 15.117(g)(3). The data will be used by the FCC staff to ensure that data that accompanies requests for equipment authorization is valid, and that proper testing procedures have been utilized.

OMB Number: 3060–0428.

Title: Reporting and Recordkeeping Requirements for Radio Frequency Device Test Procedures 15.31(a).

Action: Revision.

Respondents: Businesses (including small businesses) and other for-profit organizations.

Frequency of Response: On occasion and record keeping requirement.

Estimated Annual Response: 8,600 respondents; 5,675 record keepers; 214,125 hours total annual burden; 15 hours average burden per respondent or record keeper.

Needs and Uses: Proposed revision to Rule 15.31(a) is needed to upgrade a well-established measurement procedure with a more current, state-of-the-art procedure. The new measurement procedure is essential for controlling radio frequency (RF) interference.

Synopsis of Further Notice of Proposed Rule Making

1. The NPRMs in this proceeding proposed to adopt three new measurement procedures, designated TP–3, TP–4, and TP–6 as the procedures the Commission will use for measuring electromagnetic emissions from intentional radiators and unintentional radiators authorized under part 15 of the rules. The Commission is now proposing to adopt the American National Standard Institute's (ANSI) measurement procedure, C63.4–1992, as its procedure for testing these devices, rather than TP–3, TP–4, and TP–6. ANSI C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," sets forth uniform methods for testing these devices for compliance with the technical standards in part 15 of the Rules.

2. We recently completed the proceeding addressing measurement procedures for digital devices. In this proceeding, the Commission, after initially proposing to adopt its own test procedure for measuring RF emissions from digital devices (TP–5), ultimately adopted instead a measurement procedure developed jointly by the FCC and industry. Specifically, the Commission incorporated by reference ANSI C63.4–1991 into part 15 as the procedure the Commission will use for testing digital devices.

3. The procedures we proposed for measuring RF emissions from intentional and unintentional radiators were similar to those for digital devices. This is due to the fact that the same basic test equipment and procedures are used for measuring radiated and line conducted emissions from any device. Consistency in test procedures for different devices ultimately saves time and money by eliminating multiple test set-ups required by differing test procedures or requirements. The Accredited Standards Committee, C63, recognized the opportunity to broaden the applicability of its standard, and thus proceeded to modify ANSI C63.4–1991 by incorporating additional sections for measurements on intentional and unintentional radiators (including transmitters with periodic operation and superregenerative receivers). To ensure adequate representation from manufacturers of intentional and unintentional radiators, the C63 Committee invited all parties commenting in the instant proceedings to participate. This effort culminated in a new standard, ANSI C63.4–1992, that was recently approved under ANSI's public review process.

4. In developing the new standard, the C63 Committee considered the issues raised in the comments on the FCC proposals. The test methods contained in the new standard represent a balanced state-of-the-art measurement procedure that appears to have broad-based industry support. In order to broaden the scope of ANSI C63.4–1991, two new sections containing specific information on testing intentional and unintentional radiators were added. The new section on intentional radiators specifies procedures for measuring AC powerline conducted and radiated emissions, transmitter operating frequency, and frequency variation with respect to voltage and temperature. For intentional radiators that transmit pulsed emissions and are subject to average limits, a procedure is provided for measuring the transmitter duty cycle. The new section on unintentional radiators specifies procedures for measuring AC powerline conducted and radiated emissions, output signal levels from TV interface devices, and isolation between antenna transfer switch ports.

5. In view of these considerations, we are proposing to amend Part 15 of the Rules to incorporate by reference ANSI C63.4–1992 as the procedure to be used by the Commission for performing radio-noise emission measurements on intentional and unintentional radiators, as well as digital devices. However, consistent with the actions we have taken earlier with regard to digital devices, there are three sections of ANSI C63.4–1992 that we are not proposing to adopt in determining compliance of devices with the FCC Rules. We are not proposing to adopt Section 5.7, which specifies the use of an artificial hand when measuring hand-held equipment. We believe that the use of an artificial hand adds complexity to testing, and there is insufficient evidence to show that it allows an accurate of repeatable measurement of the emission levels from a device. We also would not accept absorbing clamp measurements as a substitute for measuring radiated emissions as provided in Section 9. The Commission's limits are based on measurements of radiated emissions. There is no evidence to show that the results obtained with an absorbing clamp can be correlated with radiated emissions from electronic equipment. Finally, we do not propose the relaxation of the limits for "click" or short duration emissions as provided in section 14. Short duration emissions can produce as much nuisance to radio communications as continuous emissions.

6. Currently the Commission requires the filing of a measurement facility description pursuant to Section 2.948 of the Rules, including measurements of site attenuation showing compliance with the horizontal test site attenuation values specified in FCC Office of Engineering and Technology Bulletin 55 (OET 55). ANSI C63.4–1992 contains vertical site attenuation measurement requirements as well as the horizontal site attenuation measurement requirements contained in OET 55. We are proposing to require site attenuation data to be taken pursuant to C63.4–1992.

7. We recognize that a time period is needed for transition to the new measurement procedure and test site requirements. We propose to implement the use of C63.4–1992 for equipment authorizations filed on or after two years from the date C63.4–1992 is incorporated into the rules by reference.

8. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rule, 47

CFR 1.1231 for the rules governing permissible ex parte contacts.

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rules, if adopted, will not have a significant economic impact on a substantial number of small entities because it provides guidance and procedures consistent with the needs of industry. Public comment is requested on this initial regulatory flexibility analysis.

10. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to the approval of the Office of Management and Budget as prescribed by the Act.

11. Pursuant to the applicable procedures set out in § 1.415 of the Commission's Rules, interested persons may file comments with the Secretary of the FCC on or before November 9, 1992 and reply comments on or before December 8, 1992. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects

47 CFR Part 2

Description of measurement facility, Reporting and recordkeeping requirements.

47 CFR Part 15

Digital device measurement procedure, Intentional radiator measurement procedure, Reporting and recordkeeping requirements, Unintentional radiator measurement procedure.

Proposed Rule Changes

Part 2 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

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

Authority: Sec. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.948 is amended by revising paragraph (b)(8) to read as follows:

§ 2.948 Description of measurement facilities.

* * * * *

(b) * * *

(8) A plot of site attenuation data.

(i) For a measurement facility that will be used for testing radiated emissions from a digital device for certification or verification on or after May 1, 1994, or for testing intentional and other unintentional radiators authorized under part 15 of the rules for certification or verification on or after 2 years from effective date of final rule, the site attenuation data shall be taken pursuant to the procedures contained in Sections 5.4.6 through 5.5 of the following procedure: American National Standards Institute (ANSI) C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on July 17, 1992 as document number SH15180. 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 of ANSI C63.4–1992 may be obtained from: IEEE Standards Department, 455 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, Telephone 1–800–678–4333. Copies of ANSI C63.4–1992 may be inspected at the following locations: (1) Federal Communications Commission, 1919 M Street NW., Dockets Branch (room 239), Washington, DC, (2) Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD, or (3) Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(ii) For a measurement facility that will be used for testing radiated emissions from a digital device prior to May 1, 1994, or from intentional and other unintentional radiators authorized under part 15 prior to 2 years from effective date of final rule, or for devices authorized under part 18 of the rules, the site attenuation data shall be taken pursuant to either ANSI C63.4–1992, Sections 5.4.6 through 5.5, or FCC/OET Bulletin 55. See above paragraph (Section 2.948(b)(8)(i)) for more information on ANSI C63.4–1992.

(iii) This requirement does not apply to equipment that is not measured on an open field test site.

* * * * *

Part 15 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

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

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.31(a) is revised to read as follows:

§ 15.31 Measurement standards.

(a) The following measurement procedures are used by the Commission to determine compliance with the technical requirements in this Part. Except where noted, copies of these procedures are available from the Commission's current duplicating contractor whose name and address are available from the Commission's Consumer Assistance Office at 202–632–7000.

(1) FCC/OET MP–2: Measurement of UHF Noise Figures of TV Receivers.

(2) FCC/OET MP–4 (1987): FCC Procedure for Measuring RF Emissions from Computing Devices.

Note: This procedure may be used only for testing digital devices for which verification is obtained or an application for certification is filed before May 1, 1994. For compliance testing of digital devices on or after May 1, 1994, see § 15.31(a)(3) below.

(3) Digital devices for which verification is obtained, or an application for certification is filed, on or after May 1, 1994, and intentional and other unintentional radiators, for which verification is obtained, or an application for certification filed, on or after two years from effective date of final rule are to be measured for compliance using the following procedure excluding § 5.7, section 9 and section 14: American National Standards Institute (ANSI) C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on July 17, 1992, as document number SH15180. 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. The Commission encourages the use of this procedure for testing digital devices, intentional radiators, and other unintentional radiators as soon as practical. Copies of ANSI C63.4–1992 may be obtained from: IEEE Standards Department, 455 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, Telephone 1–800–678–4333. Copies of C63.4–1992 may be inspected during normal business hours at the following locations: (1) Federal Communications Commission, 1919 M Street NW., Dockets Branch (room 239), Washington, DC, (2) Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD, or (3) Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-20194 Filed 8-24-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Petition for Rulemaking; Denial

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Petition for rulemaking; denial.

SUMMARY: The purpose of this notice is to announce the denial of a rulemaking petition to amend Standard No. 208, *Occupant Crash Protection*, to prohibit the installation of passenger side air bags. The Intermodal Surface Transportation Efficiency Act of 1991 requires NHTSA to mandate air bags at all front outboard seating positions. Therefore, this petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4911.

SUPPLEMENTARY INFORMATION: On February 26, 1992, Shelness Productions (Shelness) petitioned this agency to amend Federal motor vehicle safety standard No. 208, *Occupant Crash Protection*, to prohibit the installation of passenger side air bags until evidence is available that deploying air bags pose no danger to infants in rear-facing child seats. (Shelness also petitioned for a recall of all vehicles which have already been manufactured with passenger side air bags. This notice only addresses the petition for rulemaking.)

NHTSA's ongoing child safety seat program includes the evaluation of the interaction between air bags and child safety seats. As part of this evaluation, the agency completed 30 mph dynamic sled tests with top and mid mounted air bags in December, 1991. No vehicles with low mounted air bags were tested at that time. (For interested parties, the data from these tests are available in Docket No. 74-09, Notice 21.) The agency's preliminary findings regarding these tests showed safety concerns related to the interaction between rear-facing child seats and air bags. The concerns arise because rear-facing child seats, unlike forward-facing child seats, extend so far forward that they may rest against that part of the instrument panel from which the air bag deploys. Accordingly, the agency issued a "Consumer Advisory" on December 10, 1991. In the Consumer Advisory, the agency stated that rear-facing child seats should not be used in the front seat of a car equipped with an airbag or airbags. If a rear-facing child seat must be used in the front seat, the agency advised that the seat should be moved as far back as possible to maximize the distance from the instrument panel and lessen the possibility of injury. In addition, the agency is contemplating rulemaking to require warnings about the potential adverse interaction of rear-facing child seats and air bags to be included in vehicle owner manuals and/or on rear-facing child seats.

Data available to the agency indicate that the facts do not warrant a rulemaking action to prohibit the installation of passenger air bags. Notwithstanding the agency's concerns about air bags. Notwithstanding the agency's concerns about air bags and rear-facing child seats, the agency cannot prohibit the installation of passenger side air bags as the petitioner recommends. The Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) requires NHTSA to mandate air bags at all front outboard seating positions. Therefore, this petition is denied. However, the agency will continue to monitor the issue of child seats, especially rear-facing child seats, and air bags to determine if further public education or the other potential agency action indicated above is warranted.

Issued on August 18, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-20284 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 89-22; Notice 4]

RIN 2127-AD13

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to delay for one year the effective date of a final rule amending Federal motor vehicle safety standard No. 216, *Roof Crush Resistance*, to extend its requirements to light trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. The agency believes that this delay would ease the economic burden of this regulation on the manufacturers of these vehicles, many of whom are small businesses, with minimal impact on occupant safety.

DATES: Comments must be received by October 5, 1992. If adopted, the proposed amendments would become effective September 1, 1994.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Flanigan, NRM-01.01, Special Projects Staff, Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4918.

SUPPLEMENTARY INFORMATION: On April 17, 1991, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 216, *Roof Crush Resistance*, to extend its requirements to multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) of 6,000 pounds or less (hereinafter referred to as light trucks) (56 FR 15510). NHTSA extended Standard No. 216 to light trucks because of their increased use as passenger vehicles and the desire to ensure that those vehicles offer safety protection comparable to that offered passenger car occupants. This final rule adopted the same test procedure as that for passenger cars, except that there is no 5,000 pound ceiling on the force. This test force is applied to either side of the forward edge of the roof of the vehicle. That notice specified an effective date of September 1, 1993.

NHTSA is proposing to delay the effective date of the April 1991 final rule to September 1, 1994. During the rulemaking process which led to the April 1991 final rule, NHTSA learned that approximately 95 percent of the affected vehicles already voluntarily comply with Standard No. 216. Many of the remaining vehicles are manufactured in more than one stage, primarily by small business. NHTSA believes that allowing an additional year leadtime for compliance would allow the affected small businesses some flexibility in determining the most cost effective method to achieve compliance and to certify their vehicles are complying.

A November 14, 1991, letter to the agency from the Recreation Vehicle Industry Association (RVIA) spoke of the difficulties it foresaw for some of its members, most of which are small businesses, in meeting the Standard No. 216 requirements. This is because of the varying physical characteristics and configurations of the second stage units in van and motor home conversions. The agency, in promulgating the rule did consider the effect of these configurations, and it determined compliance could be achieved nonetheless. However, we believe that, by extending the rule's effective date, NHTSA can better accommodate RIVA's concerns and the special needs of small businesses because of their lesser financial resources. This can be done without compromising safety, since here is already widespread voluntary compliance among single stage light truck manufacturers, which constitute approximately 95 percent of the population.

In the case of van conversions, many of these vehicles include models equipped with raised roofs, which are installed by final stage manufacturers. In some cases these small, final stage manufacturers may have to redesign and strengthen the raised roofs in order to certify compliance to the new requirement. An additional year would give these manufacturers more time to determine the method of compliance with the standard.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

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

NHTSA has examined the impact of this rulemaking action and determined that it is neither "major" within the meaning of E.O. 12291, however, it is "significant" within the meaning of the Department of Transportation regulatory policies and procedures. Based on the April 1991, Final Regulatory Evaluation, the agency estimates that a delay of the effective date would result in a cost savings of $3–$32 million and that $1–$30 million of this would be associated with vehicles produced by multi-stage manufacturers. The agency also estimates that this delay would not have a significant adverse impact on safety.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this proposal under the Regulatory Flexibility Act. I hereby certify that this rule would not have a significant economic impact on a substantial number of small entities. As explained above, the agency does not anticipate a significant economic impact as a result of this proposed rule.

National Environmental Policy Act

NHTSA has also analyzed this proposal under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; and the delegations of authority at 49 CFR 1.50 and 501.8.

Issued on August 20, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–20285 Filed 8–21–92; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 57, No. 165
Tuesday, August 25, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Radio and Television Broadcast Use Fee Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Radio and Television Broadcast Use Fee Advisory Committee will meet in San Francisco, California, on September 21, 22, and 23, 1992, from 8 a.m. to 5 p.m. The Committee is comprised of eleven members. The purpose of the meeting is for the Committee to review information pertaining to fees for radio and television broadcast use on public and National Forest System lands. The designated Federal official on the Committee is Gordon H. Small, Director of Lands, USDA Forest Service. Richard Spight, Diablo Communications, Inc., Point Richmond, California, will chair the meeting, which is open to public attendance; however, participation is limited to Committee members and Forest Service and Bureau of Land Management personnel. Persons who wish to bring communications use fee matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

DATES: The meeting will be held September 21, 22, and 23, 1992.

ADDRESSES: The meeting will be held at the Holiday Inn—Financial District, Emerald Room, 750 Kearny Street, San Francisco, California 94108.

Send written comments to J. Kenneth Myers, Executive Secretary, Radio and Television Broadcast Use Fee Advisory Committee, c/o Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1248.

FOR FURTHER INFORMATION CONTACT: Brent Handley, Lands Staff, (202) 205-1264.

Dated: August 18, 1992.

George M. Leonard,

Associate Chief.

[FR Doc. 92-20214 Filed 8-24-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Partially Closed Meeting

A meeting of the Material Technical Advisory Committee will be held September 17, 1992, 10:30 a.m., Herbert C. Hoover Building, room 1617-M2, 14h Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda: General Session

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of Category 1 Proliferation Controls.
5. Discussion of Proposed Revision of Current Dual Use CW Equipment List.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs 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 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, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: U.S. Department of Commerce/BXA Office of Technology & Policy Analysis, 14th & Constitution avenue, NW., Room 1621, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 12, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(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. For further information or copies of the minutes call 202-377-4959.

Dated: August 18, 1992.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit Office of the Assistant Secretary, for Export Administration.

[FR Doc. 92-20356 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DT-M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held September 17, 1992, 1 p.m. at the U.S. Department of Commerce, Herbert C. Hoover Building, room 6808, 14th and Constitution Avenue, NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session

Status reports by Task Force Chairmen, and update on Export Administration initiatives.

Executive Session

Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved Sept. 27, 1991, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Ms. Betty A. Ferrell (202) 377-2583.

Dated: August 18, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92-20355 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-557-805]

Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Gary Bettger, or Margo Lanouette, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815, 377-2239, or 377-0160, respectively.

Final Determination

The Department of Commerce (the Department) determines that extruded rubber thread from Malaysia is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of our preliminary determination in the **Federal Register** on April 2, 1992, (57 FR 11287), the following events have occurred. From April 5 through June 15, 1992, we verified questionnaire responses. We received briefs from interested parties on July 27, 1992, and rebuttal briefs on August 3, 1992.

Scope of the Investigation

The product covered by this investigation is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Standing

The International Trade Commission (ITC) has preliminarily determined in this proceeding that there is one like product, which includes all of the merchandise defined by the scope of this investigation, including food grade rubber thread. We have analyzed the information on the record concerning this issue and have concluded that we are in agreement with the ITC's "like product" determination. Accordingly, we determine that petitioner produces a product like the imported product and, hence, has standing to file on behalf of the U.S. industry.

Period of Investigation

The period of investigation (POI) is March 1, 1991, through August 31, 1991.

Such or Similar Comparisons

We have determined that extruded rubber thread comprises a single category of such or similar merchandise. Comparisons were made on the basis of the following criteria: Gauge, type of finish, color and other special qualities. We made adjustments for differences in the physical characteristics of the merchandise, where appropriate, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We found that more than ten percent of respondents' third country sales were at prices below the total cost of production (COP) and that less than 90 percent were below cost. Respondents provided no indication that these costs would be recovered over a reasonable period of time. Therefore, we have disregarded the below-cost sales in calculating FMV.

In order to compare sales of comparable quantities, we compared direct container sales for export to the United States with direct container sales for export to Hong Kong, and we compared sales from U.S. branch office warehouses to sales from Hong Kong branch office warehouses, in accordance with 19 CFR 353.58. We did not make fair value comparisons on U.S. sales of second quality merchandise or samples, since the volume of seconds and samples sold in the U.S. market during the POI was negligible.

On warehouse sales made by related overseas branch offices in both the United States and Hong Kong, we used invoice date as the date of sale because that date was either the same as the order confirmation date or followed it by one to three days. Moreover, respondents did not retain any record of the order confirmation date on warehouse sales.

On direct container sales the order confirmation date may precede the invoice date by as much as a month or more. Whereas order confirmation date frequently serves as the date of sale, we found, during verification, that the price and/or quantity frequently changed between the order confirmation date and the bill of lading date (for Rubberflex) or the invoice date (for Heveafil). Therefore, we are using the invoice date or the bill of lading date as the date of sale on direct container shipments.

United States Price

A. Heveafil Sdn. Bhd./Filmax Sdn. Bhd.

Heveafil Sdn. Bhd. (Heveafil) and Filmax Sdn. Bhd. (Filmax) are related companies, each producing extruded rubber thread. Heveafil also performs the selling an administrative functions for both companies. Filmax is solely a production company. For purposes of this fair value investigation, we are treating these two companies as one company.

For container sales made directly to unrelated U.S. customers by Heveafil and Filmax, we based USP on purchase price in accordance with section 772(b) of the Act because all container sales were made directly to unrelated parties prior to importation into the United States. Exporter's sales price (ESP) methodology was not appropriate for

direct container sales because the subject merchandise was not introduced into the inventory of the U.S. branch and the branch office acted essentially as a processor of sales-related documentation and as a communications link with unrelated U.S. customers.

We calculated purchase price based on packed, c.i.f. delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, containerization, ocean freight, marine insurance, U.S. brokerage, and inland freight, in accordance with section 772(d)(2) of the Act. In addition, where appropriate, we made deductions for rebates and discounts.

For sales made from the U.S. warehouse by Heveafil's U.S. branch office, we based USP on ESP, in accordance with section 772(c) of the Act, because the first sales to unrelated parties occurred after importation into the United States.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight and brokerage, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage, entry fees and, where appropriate, rebates. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for advertising, credit, and indirect selling expenses. Indirect selling expenses consist of warehouse costs, inventory carrying costs and general indirect selling expenses incurred in Malaysia and the United States with respect to U.S. sales.

B. Rubberflex

For container sales made directly to unrelated U.S. customers by Rubberflex, we based USP on purchase price in accordance with section 772(b) of the Act, because all container sales were made directly to unrelated parties prior to importation into the United States. ESP methodology was not appropriate for direct container sales because the subject merchandise was not introduced into the inventory of Rubberflex's U.S. distributor and the distributor acted only as a processor of sales-related documentation and as a communications link with unrelated U.S. customers.

We calculated purchase price based on packed, c.i.f. delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, ocean freight, marine insurance, U.S. brokerage, entry fees, and inland freight, in accordance with section 772(d)(2) of the Act. In addition, where appropriate, we made deductions for rebates.

For sales made from the U.S. warehouse by Rubberflex's U.S. branch, we based USP and ESP, in accordance with section 772(c) of the Act, because the first sales to unrelated parties occurred after importation into the United States.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, handling and brokerage, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage, U.S. entry fees and, where appropriate, rebates. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for advertising, credit, and indirect selling expenses. Indirect selling expenses consist of warehouse costs, inventory carrying costs and general indirect selling expenses incurred in Malaysia and the United States with respect to U.S. sales.

Foreign Market Value

In order to determine whether there were sufficient sales of extruded rubber thread in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1)(B) of the Act. None of the respondents had viable home markets during the POI. In selecting which third country market to use for comparison purposes, we first determined which third-country markets had "adequate" volumes of sales, within the meaning of 19 CFR 353.48(a). We determined that the volume of sales to a third country market was adequate if the sales of such or similar merchandise to that country exceeded or was equal to five percent of the volume sold to the United States. In selecting which of the third country markets with adequate sales volumes was the most appropriate for comparison purposes, we selected Hong Kong, the third country market to which Heveafil and Rubberflex had their largest volumes of sales, in accordance with 19 CFR 353.49(b)(2).

Based on petitioner's allegations, we investigated whether Heveafil's or Rubberflex's sales to Hong Kong were made at less than the COP.

A. Heveafil

In order to determine whether third country prices were above COP, we calculated the COP based on the sum of Heveafil's cost of materials, labor, other fabrication costs, and general expenses. As discussed above, we disregarded below-cost sales in calculating FMV. Where all the sales of a specific product were below cost, we based FMV on constructed value (CV), calculated in accordance with section 773(e) of the Act.

We relied on the submitted COP and CV information, except in the following instances, where the costs were not appropriately quantified or valued:

1. For COP and CV, we adjusted direct materials to account for an increase in certain chemical costs.

2. For COP and CV, we recalculated labor and other fabrication costs, allocating them based on standard production hours rather than actual production hours. We also adjusted direct labor and variable overhead to account for certain expenses which had been deducted twice from labor and incorrectly included in variable overhead. We adjusted cost of manufacturing (COM) to include royalty payments that were made for product line research and development (R&D).

3. For COP and CV, we revised the variable and fixed overhead of Heveafil by reclassifying certain expenses from variable overhead to fixed overhead#.

4. For COP and CV, we revised Heveafil's general and administrative expenses (G&A) and cost of goods sold to include the auditor's adjustments to the financial statements which were not available at the time the costs were submitted.

5. For COP and CV, we revised Heveafil's net interest expense to reflect the auditor's adjustments to the financial statements which were not available at the time the costs were submitted.

In accordance with section 773(e)(1)(B)(i) of the Act, we calculated CV using Heveafil's reported general expenses, adjusted as detailed above, because they exceeded the statutory minimum of ten percent of the COM. For profit on CV, we used the statutory minimum of eight percent of the total of COM and general expenses because Heveafil's actual profit on third country sales was less than eight percent.

Where CV was compared to purchase price transactions, we made a circumstance of sale adjustment for credit expenses. Where CV was compared to exporter sales price transactions, we deducted direct and indirect selling expenses, including credit and inventory carrying costs. The deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses

incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Where FMV was based on third country prices, we based FMV for purchase price transactions on c.i.f. port prices to unrelated Hong Kong customers purchasing full container loads shipped direct. We based FMV for ESP transactions on delivered prices for sales from the Hong Kong branch warehouse to unrelated customers in accordance with section 773(a)(1)(B) of the Act.

We made deductions, where appropriate, for Malaysian inland freight, brokerage and handling charges, ocean freight, marine insurance and rebates. We made circumstance of sale adjustments, where appropriate, for differences in credit, pursuant to 19 CFR 353.56. We deducted third country packing costs and added U.S. packing costs. When FMV was compared with ESP, we also deducted freight-in and freight-out charges, inland insurance, and indirect selling expenses including inventory carrying expenses, warehousing expenses, and other indirect selling expenses. The deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses with respect to sales in the U.S. market, in accordance with 19 CFR 353.56(b).

Because Heveafil failed to report manufacturing cost for all items as requested in the cost questionnaire, we used the highest weighted-average margin, excluding aberrations, for those U.S. sales without appropriate cost information.

B. Rubberflex

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of Rubberflex's cost of materials, labor, other fabrication costs, and general expenses. As discussed above, we disregarded below-cost sales in calculating FMV. Where all the sales of a specific product were below cost, we based FMV on CV, calculated in accordance with section 773(e) of the Act.

We relied on the submitted COP and CV information, except in the following instances where the costs were not appropriately quantified or valued:

1. For COP and CV, Rubberflex originally submitted fabrication costs based on normalized production time because of what it termed an "extraordinary event" which occurred during the POI. Rubbeflex complied with the Department's request to revise costs based on actual production time. We calculated fabrication costs based on actual production hours and included only the offsets which related to the costs of production. We also adjusted COM to include royalty payments that were made for product line R&D.

2. For COR and CV, we revised Rubberflex's G&A to include the auditor's adjustments to the financial statements which were not available at the time the costs were submitted. We also reclassified certain expenses from G&A to fixed overhead.

3. For COP and CV, we revised Rubberflex's net interest expense to reflect the auditor's adjustments to the financial statements which were not available at the time the interest expense was submitted.

In accordance with section 773(e)(1)(b)(i) of the Act, we calculated CV using Rubberflex's reported general expenses, adjusted as detailed above, because they exceeded the statutory minimum of ten percent of the COM. For profit on CV, we used the statutory minimum of eight percent of the total of COM and general expenses because Rubberflex's actual profit on third country sales was less than eight percent.

Where CV was compared to purchase price transactions, we made a circumstance of sale adjustment for credit expenses. Where CV was compared to exporters sales price transactions, we deducted direct and indirect selling expenses, including credit and inventory carrying costs. The deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Where FMV was based on third country prices, we based FMV for purchase price transactions on c.i.f. port prices for direct shipments to unrelated Hong Kong customers purchasing full container loads. We based FMV for ESP transactions on delivered prices for sales made from the Hong Kong branch warehouse to unrelated customers, in accordance with section 773(a)(1)(B) of the Act.

We made deductions, where appropriate, for Malaysian inland freight, brokerage and handling charges, ocean freight and marine insurance. We made circumstance of sale adjustments, where appropriate, for differences in credit costs pursuant to 19 CFR 353.56(a). We deducted third country packing costs and added U.S. packing costs. When FMV was to be compared with ESP, we also deducted indirect selling expenses including inventory carrying expenses, warehousing expenses, and other indirect selling expenses. This deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses with respect to sales in the U.S. market, in accordance with 19 CFR 353.56(b).

Because Rubberflex failed to report manufacturing cost for all items as requested in the cost questionnaire, we used the highest weighted-average margin, excluding aberrations, for those U.S. sales without appropriate cost information.

Currency Conversion

In accordance with 19 CFR 353.60, we converted foreign currency into the equivalent amount of United States currency using the official exchange rates in effect on the appropriate dates. All currency conversions were made at rates certified by the Federal Reserve Bank.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of extruded rubber thread from Malaysia. Section 735(a)(3) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect that:

(1) There is a history of dumping in the United States or elsewhere of the same class or kind of merchandise which is the subject of the investigation, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair market value; and

(2) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on respondents' shipment data for equal periods immediately preceding and following the filing of the petition.

Pursuant to section 735(a)(3)(B) of the Act, and 19 CFR 353.16(f), we examined a period beginning in the month in which the petition was filed and ending three months later. Thus, we selected the period from August 29, 1991 (the day the "proceeding began") to November 29, 1991 as the comparison period.

We then compared the quantity of imports during the comparison period for each respondent to the quantity of imports during the immediately preceding period (the "base period") of comparable duration. Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during

the base period, we will not consider the imports "massive." Our analysis indicates that shipments from Filmax and Rubberflex have increased by considerably more than 15 percent.

Because these companies show evidence of massive imports over a relatively short period of time, we need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. We examined past antidumping investigations and found no findings of dumping in the United States or elsewhere on the subject merchandise by Malaysian producers.

We then examined the magnitude of the dumping margins in this investigation, since it is our standard practice to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act, when the estimated margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, in purchase price sales, we consider estimated margins of 25 percent or greater to be sufficient, and in exporter's sales prices sales, margins of 15 percent or greater to be sufficient to impute knowledge of dumping. See, *e.g.*, Preliminary Determination of Sales at Less than Fair Value: Oscillating and Ceiling Fans from the People's Republic of China, 56 FR 66834 (December 26, 1991). In this investigation, there were both purchase price sales and exporter's sales price sales. Accordingly, we weight-averaged the 25 percent and 15 percent benchmarks by the volume of PP and ESP sales, respectively, to arrive at a weighted-averaged benchmark percentage for imputing knowledge. Because the weight-averaged dumping margin for Rubberflex exceeds the weight-averaged benchmark, we found that importers either knew or should have known that this company was selling the subject merchandise at less than its fair value.

Therefore, based on the imputation of knowledge on behalf of importers of sales at less than fair value and massive imports, we determine that critical circumstances exist with respect to imports of Malaysian extruded rubber thread from Rubberflex.

Verification

Pursuant to section 776(b) of the Act, we verified information used in reaching our final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original documents provided by respondents. Our verification results are outlined in detail in the public version of our verification reports, which are on file in the Central Records Unit (room B–099) of the Main Commerce building.

Interested Party Comments

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

Comment 1: Respondents claim that food grade rubber thread is a separate like product, and that petitioner does not have standing to file an antidumping petition on food grade rubber thread because the petitioner does not produce or wholesale a like product in the United States. Respondents base their claim on each of the factors considered by the ITC in making like product determinations. Respondents assert that: Food grade thread has a different chemical composition than other types of rubber thread; food grade thread is sold to different customers than rubber thread used in the textile industry; and, other types of rubber thread cannot be used interchangeably with food grade rubber thread. Respondents also assert that customers perceive food grade as a distinct market segment.

Petitioner claims that respondents originally testified at the ITC that extruded rubber thread, including food grade rubber thread, constitutes a single like product. Respondents testified that the basic physical characteristics of food grade rubber thread are the same as those of other rubber thread, that they are sold through the same channels of distribution, and that all rubber thread is manufactured on the same machinery using the same basic manufacturing process. Therefore, the product under investigation constitutes one like product. The ITC agreed with petitioner's analysis. Further, Globe Manufacturing, another U.S. producer of rubber thread, produces food grade rubber thread and supports the petition.

DOC Position: After reviewing the ITC's preliminary determination and respondents' submissions, the Department agrees with the ITC's preliminary like product determination. Therefore, we determine that food grade rubber thread does not constitute a separate like product for purposes of this investigation, and that the petitioner properly has standing to file the petition on behalf of the industry producing the domestic like product.

Comment 2: Respondents have reported second quality sales and sample sales for export to the United States, but have requested that we exclude these sales from the analysis because they are in negligible quantities and are not in the ordinary course of trade. Rubberflex did not have any second quality sales in Hong Kong and Heveafil had a very small number.

DOC Response: The purpose of a less than fair value investigation is to estimate whether dumping exists and, if so, the extent of the dumping, in order to establish a cash deposit rate. No actual assessment of antidumping duties occurs until the Department has either completed its first administrative review or has ordered liquidation at the prevailing cash deposit rate because no review has been requested. As a result, for purposes of the less than fair value investigation, the Department need not investigate each and every U.S. sale. Because we found the volume of second quality and sample sales to be very small, we have disregarded respondents' second quality and sample U.S. sales for purposes of our analysis.

Comment 3: Respondents claim that in developing product matching criteria, the Department should not have included color as one of the criteria because the cost differences for color are negligible and have no effect on price. Further, respondents contend that the Department should not calculate separate costs for products with different colors but, instead, should determine separate costs for products with different finishes and gauges.

Petitioner disagrees with respondents' claim that differences in color are insignificant and should not be a factor in selecting model matches for comparison purposes. Petitioner states that it is not the Department's practice to consider cost or price as a basis for selecting the product matching criteria. Even if the Department were to consider these bases as appropriate, petitioner claims that the cost and price differences relating to variations in color clearly exceed the *de minimis* level. Respondents concede the importance of the color criterion by recognizing the dramatic effect the elimination of this criterion has on the product matches. Thus, because customer preference for particular colors is an important factor in marketing rubber thread, it would be inappropriate to disregard color as one of the model matching criteria.

DOC Position: The Department arrived at its model matching criteria on the basis of comments submitted by all of the parties, as well as its own assessment of the various factors that could affect product comparability. Because color can materially affect cost and can be important to the customer and to the use of the product, the

Department determined at an early stage of this investigation that color should be included among the several product matching criteria. At the time of this decision, respondents expressed no objection.

Comment 4: Respondents claim that the DOC properly treated direct sales to unrelated customers as purchase price sales and sales from U.S. warehouses made by the related branch offices as ESP sales. Direct sales were made prior to importation, never entered the inventory of a branch office, and required less involvement on the part of the branch office. Branch office participation in these sales was limited to processing of sales-related documentation and serving as a communication link between the unrelated buyer and the Malaysian producer. Therefore, purchase price should clearly apply to these sales.

Petitioner claims that direct sales in container lots made for export to the United States should be treated as ESP sales because the U.S. branches function as more than processors of sales-related documentation and a communication link. Petitioner argues that evidence in the record indicates that responsibilities of the U.S. branches do not differ on direct sales and sales from the warehouse.

DOC Position: We agree with respondents. On direct sales, the goods are purchased prior to importation, and shipped directly to the unrelated buyer without ever entering a branch office warehouse. In addition, during verification, we found no evidence that the branch office's role in direct sales went beyond that of processing sales-related documents and serving as a communication link.

The statement in the verification report referred to by petitioner was intended as an explanation of why the Department verified direct sales at the branch office rather than at the head office in Malaysia. The U.S. branch office executes and maintains all of the paperwork with respect to these sales, except the bill of lading and the order confirmation. Therefore, the source documents necessary for verification were located at the branch office rather than at the head office in Malaysia.

Comment 5: Petitioner argues that if the U.S. branch office devotes little time or resources to direct sales, as claimed by respondents, then the Department should not allocate U.S. branch office selling expenses to these sales.

Respondents claim that the U.S. branch offices process documents and serve as communications links on all sales. As such, it would be incorrect and unwarranted to allocate all of the administrative and general selling expenses associated with these offices only to warehouse sales. Respondents also note that petitioner fails to make a similar argument with respect to the allocation of third country selling expenses.

DOC Position: The functions performed by the branch offices include receiving orders, preparing and executing order confirmations, invoices, packing lists, and other sales-related documentation, and receiving and processing payments from customers. Because the branch offices in both the United States and Hong Kong are staffed by just a few people, their roles on both direct sales and sales from warehouse generally don't extend beyond the functions described above. The one exception is warehousing, which applies only to ESP sales. Warehousing expenses, however, as a percent of total warehouse sales, were so small as to have no effect on the less than fair value margin calculation. Therefore, we have allocated branch offices' expenses across all sales.

Comment 6: Petitioner argues that the errors in Heveafil's and Rubberflex's responses are so serious that their questionnaire responses should be rejected, and the best information available (BIA) used. According to petitioner, one of these errors occurred when respondents erroneously used purchase price during the POI to value rubber latex and chemicals consumed in production instead of the actual cost of materials consumed during the POI. Petitioner claims that this is directly contrary to Department practice. Petitioner maintains that this situation is similar to the situation in the Preliminary Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Korea, 57 FR 27731, 27734 (June 22, 1992). In that case, petitioner claims, the Department disregarded the respondent's data and used BIA where Department practice was not followed. Petitioner maintains that materials, particularly latex, are the major cost components in producing rubber thread.

Petitioner also claims that Rubberflex misrepresented the date of sale as the invoice date when, in fact, the order confirmation date should have been reported as the date of sale.

Respondents disagree with petitioner's claims. Both Rubberflex and Heveafil argue that they have consistently reported actual latex costs on a consumption basis.

DOC Position: We disagree with petitioner that errors in the responses were serious enough that they should be rejected. With respect to latex costs, both Rubberflex and Heveafil calculated the cost based on consumption during the POI and the price of the latex actually consumed, consistent with Department practice. Although Rubberflex valued its chemicals using end of the month prices, instead of average monthly prices, the difference between the two methods is insignificant. Heveafil reported its chemical costs based on the price paid for purchases rather than on chemicals consumed. The Department noted, however, that during the POI the average consumption cost was less than the average purchase cost. This is in contrast to the situation in the Preliminary Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Korea, 57 FR 27731, 27734 (June 22, 1992), where the respondent not only valued its direct materials using the price of steel purchased during the POI, but also based material cost on one type of steel rather than averaging the two types of steel used to produce the subject merchandise. In Heveafil's case, the difference between the average purchase cost and the average consumption cost of chemicals was insignificant and does not warrant a BIA adjustment.

Regarding the frequency of price and quantity changes on Rubberflex's sales after order confirmation, we note that in the limited time available during verification we were not able to establish precisely the number of times these changes occurred. However, it was clear that changes in price and quantity between order confirmation date and bill of lading date were not uncommon. After the bill of lading date, however, we found no evidence of price or quantity changes. Because we found clear evidence that price and quantity changes were not uncommon after the order confirmation date, we concluded that the bill of lading date should be treated as the date of sale.

Comment 7: Petitioner claims that respondents misreported G&A expenses because they failed to report large royalty expenses. Respondents state that they reported royalty expenses in their respective responses are direct selling expenses because these expenses are based on sales value.

DOC Position: We agree with respondents that royalty costs were reported as direct selling expenses. However, we disagree with this treatment. Although the royalty is calculated based on sales revenue, these payments are not a cost of selling. Instead, the royalty is a payment for production technology and, hence, is

properly treated as a cost of manufacturing. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain All-Terrain Vehicles from Japan, 54 FR 5864 (January 31, 1989) (ATVs). R&D activities carried out by a related party were reimbursed based on the period sales results. The respondent argued that R&D should be allocated to the subject merchandise based on the sales value. In ATVs, the Department stated that the R&D activities by nature are associated with the manufacturing process rather than the sales process. Therefore, we recalculated respondents' royalty cost per product by dividing total royalty payments by each company's cost of goods sold and applied the percentage to each product's COM. We included the resulting amount in the COM. See, Final Determination of Sales at Less Than Fair Value: Flat Panel Displays from Japan, 56 FR 32376, 32384 (July 16, 1991).

Comment 8: Petitioner claims that respondents misclassified fixed manufacturing costs as variable costs, precluding difference in merchandise adjustments.

Respondents disagree, claiming that they reported various overhead items using their normal accounting systems. They note that the Department did not find any material problems with the cost classification at verification.

DOC Position: Rubberflex's accounting system distinguishes between variable and fixed overhead costs. We found that this company reported its costs consistent with its accounting system. Moreover, the costs were classified appropriately.

With respect to Heveafil, the company classified depreciation as fixed overhead and all other overhead items as variable because it stated that it was too time consuming to determine the fixed or variable nature of each overhead expense. The Department analyzed all overhead items and determined that maintenance expense should be reclassified as fixed overhead because it is the type of expense which remains fixed over a relevant range of production. This reclassification is reflected in the final determination.

Comment 9: Petitioner alleges that Rubberflex ignored its own accounting practices and treated certain material costs (*e.g.*, acetic acid) as variable overhead expenses instead of as direct materials costs.

Rubberflex counters that petitioner misunderstands the proper classification of costs. Rubberflex argues that its accounting system considers many items such as packing boxes, diesel fuel and tubing to be direct materials, even though the Department has never considered them as such. According to Rubberflex, acetic acid is not part of the finished good and, therefore, is properly classified as a variable overhead expense (*i.e.*, something which is consumed during the production process but is not physically incorporated into the final product).

DOC Position: We agree with Rubberflex that acetic acid is properly treated as variable overhead rather than as a direct cost because it is not part of the finished good. The Department normally considers such consumable items to be variable overhead expenses.

Comment 10: Petitioner claims that Rubberflex understated fixed factory over head and that the Department should use BIA in making the adjustment.

Rubberflex claims that it inadvertently failed to report the write-off of replacement belts in its submission. It argues that the Department should account for this write-off only once in the cost calculations, either as a G&A expense because that is where Rubberflex recorded it in accordance with its normal accounting system, or else as a fixed overhead expense. Rubberflex argues that the omission has only minimal effect because fixed overhead is a relatively small part of the COP.

DOC Position: We agree with Rubberflex that the write-off should be included only once in the cost calculations. Although Rubberflex claims that it included the write-off in G&A as part of its normal accounting system, the company had reclassified the expense from its fixed overhead accounts to G&A. The Department considers this expense to be fixed overhead and, therefore, we have added it back to fixed overhead and deducted it from G&A.

Comment 11: Petitioner alleges that Heveafil incorrectly allocated fabrication costs using actual rather than standard production hours. Additionally, petitioner claims that Heveafil reported standard color costs rather than actual costs.

DOC Position: We agree with petitioner that Heveafil incorrectly allocated fabrication costs using actual production hours in its cost response. Heveafil allocated its fabrication costs to specific products using standard production hours. However, it determined per-hour fabrication costs based on actual production hours. As a result of using two different bases for allocation, it understated fabrication costs. Therefore, the Department adjusted hourly costs using total standard production hours for the final determination.

We also agree with petitioner's assertion that Heveafil incorrectly used standard costs for color. Heveafil submitted color costs based on the standard cost for black, white white, super white threads and two specialty products—food grade and heat resistant threads. The Department verified actual color costs based on consumption and made adjustments to the chemical costs for the threads.

Comment 12: Petitioner claims that Heveafil's misreporting of variable overhead warrants the use of BIA by the Department when making adjustments to the costs.

Heveafil acknowledges a clerical error with respect to its variable overhead. Heveafil claims that it inadvertently reported the fixed overhead value in the variable overhead field in its submitted summary COP and CV tables for the talc-finished threads and agrees that the error should be corrected.

DOC Position: The Department discovered this clerical error at verification, verified the correct amount and made the appropriate adjustment. The Department rejects the petitioner's argument that the Department should use BIA because the error was inadvertent and easily corrected.

Suspension of Liquidation

In accordance with section 735(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of extruded rubber thread from Malaysia, as defined in the "Scope of Investigation" section of this notice. The U.S. Customs Service shall require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Heveafil/Filmax Sdn. Bhd.	10.68
Rubberflex Sdn. Bhd.	22.00
All Others	15.16

This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1671(d)).

Dated: August 17, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20212 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-604]

Industrial Phosphoric Acid From Israel; 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 June 3, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on industrial phosphoric acid from Israel (57 FR 23377). The review covers one manufacturer/exporter of this merchandise to the United States and the period August 1, 1990 through July 31, 1991. We have now completed the review and determine the dumping margin to be 6.82 percent *ad valorem* for Haifa Chemicals.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1992, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on industrial phosphoric acid from Israel (57 FR 23377) covering the period August 1, 1990 through July 31, 1991. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA). This product is classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter to the United States of the subject merchandise, Haifa Chemicals, and the period August 1, 1990 through July 31, 1991. Haifa did not respond to the Department's questionnaire. Therefore, we used best information available for assessment of antidumping duties and cash deposit purposes. Best information is the highest margin for a company under the order, 6.82 percent.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of the Review

We determine the following dumping margin for the period August 1, 1990 through July 31, 1991:

Manufacturer/exporter	Margin (percent)
Haifa Chemicals	6.82

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 directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) cash deposits for all other manufacturers or exporters will be zero. This rate represents the highest rate for any firm (whose shipments to the United States were reviewed) in this, or the most recent administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-20230 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-603]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Italy; 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 May 29, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished from Italy (57 FR 22715). The review covers one manufacturer/exporter of the subject merchandise, Gnutti Carlo, S.p.A. (Gnutti), and the period August 1, 1990 through July 31, 1991.

We did not receive any comments; therefore, we have not changed the final

results from those presented in our preliminary results of review.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Peter Knapp or Jean C. Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On September 18, 1991, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order (52 FR 30417) on tapered roller bearings and parts thereof from Italy for the period August 1, 1990 through July 31, 1991 (56 FR 47185). On May 29, 1992, we published the preliminary results of this administrative review (57 FR 22715). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are tapered roller bearings and parts thereof (TRBs), finished and unfinished, including flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. TRBs are currently classified under subheadings 8483.90.30, 8483.90.80, 8482.20.00, 8482.99.30, 8483.20.40, 8483.20.80, and 8483.90.20 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter, Gnutti, and the period from August 1, 1990 through July 31, 1991.

Final Results of the Review

We gave interested parties an opportunity to comment on our preliminary results; we received no comments. Therefore, the antidumping duty margin is 36.85 percent for merchandise produced by Gnutti entered during the period August 1, 1990 through July 31, 1991.

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.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 36.85 percent. This rate normally represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

In addition, this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-20211 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-806]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Vincent Kane, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2239 or 377-2815, respectively.

FINAL DETERMINATION: Since the publication of the preliminary determination (56 FR 67276; December 30, 1991), the following events have occurred. On December 30, 1991, petitioner, the North American Rubber Thread Company, requested that the final determination in the countervailing duty investigation be aligned with the final determination in the antidumping duty investigation of extruded rubber thread from Malaysia. We published our notice to align these determinations on January 28, 1992 (57 FR 3163). At the request of respondents, on April 2, 1992, we published our notice postponing the final determination in the antidumping duty investigation (and, therefore, also the countervailing duty investigation) to August 17, 1992 (57 FR 11288).

We verified questionnaire responses in Malaysia between June 8 and June 16, 1992. On June 17, 1992, the International Trade Commission ("ITC") published notice of its decision to discontinue its injury investigation with respect to this countervailing duty investigation because the President terminated the duty free status under the Generalized System of Preferences ("GSP") of extruded rubber thread from Malaysia effective March 31, 1992. Finally, case briefs were filed on July 28 and July 30, 1992, and rebuttal briefs were filed on August 5, 1992.

Scope of Investigation

The product covered by this investigation is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the

Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants (the period of investigation ("POI")) is calendar year 1990, which corresponds to the fiscal year of four of the five respondent companies. These findings are based upon our analysis of the petition, responses to our questionnaires, verification and written comments from respondents and petitioner.

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* benefit received by each firm weighted by each firm's share of exports to the United States. The program rates were then summed to arrive at a country-wide rate for all programs.

Pursuant to 19 CFR 355.20(d), we compared the total *ad valorem* benefit received by each firm to the country-wide rate for all programs. The rate for Rubfil was significantly different from the country-wide rate. Therefore, this firm received an individual company rate. For the remaining four firms, we recalculated the country-wide rate, based solely on the benefits received by these four firms. We then assigned the recalculated overall country-wide rate to these four firms, and all other manufacturers, producers, and exporters, with the exception of Rubfil.

A. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Malaysia of extruded rubber thread under the following programs:

1. Rubber Discount Program

The Rubber Discount Scheme was implemented in January 1985 in order: (1) To increase the domestic consumption of natural rubber, (2) to develop downstream rubber product applications in Malaysia, and (3) to reduce the cost of production in order to allow manufacturers to compete with manufacturers in other countries with access to low rubber latex prices. Under this program, the Government of Malaysia (GOM) provides a rebate of 20 Malaysian sen per kilogram on natural rubber latex purchased to manufacture products for export. Because this program is limited to exporters, we have determined that it is counteravailable.

The natural rubber latex is typically purchased through designated sellers (*i.e.*, the Malaysian Rubber Development Corporation (MARDEC), the Federal Land Development Authority (FELDA), or the Rubber Industry Smallholder Development Authority (RISDA)). If rubber latex is purchased from non-designated sellers (*i.e.*, small, local sellers), companies can still receive the discount; however, they must pay an endorsement fee to MARDEC to receive it. Subsequent to the purchase of the rubber, an "authorization letter" from the Malaysian Department of Treasury directs these suppliers to provide the discount in the form of a cash rebate.

A firm can precisely calculate the rubber discount rebate for each export transaction at the moment the transaction is made. Therefore, we have focused on rebates earned during the POI. (See, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails From New Zealand* 52 FR 37196; October 5, 1987). We verified that all companies earned rubber discounts during the POI.

To calculate the benefit from this discount, we first deducted the amount of fees paid in order to qualify for receipt of the discounts, in accordance with section 771(6)(A) of the Act. Similarly, we reduced the discount amount to account for its delayed receipt. Because the GOM has mandated that companies may apply for the discount only every six months, we have assumed an average deferral of three months before the discount may be received. In accordance with section 771(6)(B) of the Act, we have allowed an offset for this deferral, basing the offset on the opportunity cost to the company, measured at the three-month fixed deposit rate.

We then divided the net discounts earned by each company in 1990 by that company's total exports, because the discounts apply to all exports. We then applied the calculation methodology for significantly different companies outlined above. On this basis, we determine the net bounties or grants from this program to be 2.78 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil whose net bounty or grant is 3.16 percent.

2. Export Credit Refinancing (ECR) Program

The ECR program was established in order to promote: (1) Exports of manufactured goods and agricultural food products that have significant value-added and high local content, (2) greater domestic linkages in export industries, and (3) easy access to credit facilities. In order to accomplish this, the Bank Negara Malaysia, the central bank of Malaysia, provides order-based and pre- and post-shipment financing of exports through commercial banks for periods of up to 120 and 180 days, respectively, and certificate of performance (CP)— based pre-shipment financing. Order-based financing is provided for specific sales to specific markets. CP-based financing is a line of credit based on the previous 12 months' export performance, and cannot be tied to specific sales in specific markets.

We verified that all five companies used the ECR program during the POI. We also verified that all of the pre-shipment financing received during the period was CP-based.

Because only exporters are eligible for ECR loans, we determine that the loans are counteravailable to the extent that they are provided at preferential rates. In order to determine whether these loans were provided at preferential rates, we compared the interest rate charged to a benchmark interest rate.

In past cases involving Malaysia, we have used banker's acceptances as the most comparable source of short-term commercial financing. (See, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod From Malaysia* (53 FR 18303; April 22, 1988) (*Wire Rod*).) Since *Wire Rod*, however, our practice has been to select the predominant source of short-term financing in the country as our benchmark for short-term loans. (See *Final Affirmative Countervailing Duty Determination, New Steel Rails, Except Light Rails, from Canada* (54 FR 31991; August 3, 1989), *Final Affirmative Countervailing Duty Determination, Steel Wire Rope from Thailand* (56 FR 46299; September 11, 1991) and § 355.44(b)(3) of the *Department's Proposed Substantive Countervailing Duty Regulations* (54 FR 23366; May 31, 1989). Because banker's acceptances account for only a small portion of short-term financing in Malaysia, we have determined that it would no longer be appropriate to use these loans as a benchmark.

In Malaysia, term loans offered by commercial banks are the most predominant form of short-term financing, with overdraft loans being the second most predominant form. The average interest rates for these types of financing, however, are not individually

available. Therefore, we have used as our benchmark for ECR loans the average commercial bank lending rate as an estimate of these predominant short-term lending rates because at least 80 percent of the loans made by commercial banks were either term loans or overdrafts.

Based on a comparison of the ECR rates and the benchmark rate, we find that ECR loans are provided at preferential rates and, therefore, are countervailable. To calculate the benefit from ECR loans on which interest was paid in 1990, we used our short-term loan methodology which has been applied consistently in previous determinations. (See *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Dutt-Weld Pipe Fittings from Thailand* (55 FR 1695; January 18, 1990); *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Ceramic Tile from Mexico* (53 FR 15290; April 28, 1988); see also *Alhambra Foundry* v. *United States*, 626 F. Supp. 402 (CIT, 1985).) This methodology is also described in more detail under § 355.44(b)(3) of the Department's Proposed Substantive Countervailing Duty Regulations (54 FR 23366; May 31, 1989).) Because the post-shipment ECR loans were shipment specific, we included in our calculations only those loans used to finance exports of extruded rubber thread to the United States. Because the CP-based, pre-shipment loans were not shipment-specific, we included all CP loans on which interest was paid during the POI.

We compared the amount of interest actually paid during the POI to the amount that would have been paid at the benchmark rate. We then divided each company's interest savings by that company's total exports, in the case of CP-based loans, or by its exports to the United States, in the case of post-shipment loans. We then applied the calculation methodology for significantly different companies outlined above.

On this basis, we determine the net bounties or grants from this program to be 1.86 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, whose net bounty or grant is 1.06 percent.

3. Electricity Discount Program for Exporters

The Electricity Discount Program provided a reduction in the electricity rates charged to qualifying companies. The program was originally implemented in 1985 as a discount for rubber-based manufacturers. That program, however, was terminated and replaced by a new Electricity Discount Program in 1989.

The program in effect during our investigation provided discounts to companies that produced a manufactured product covered by the Industrial Coordination Act of 1975, and which exported at least 50 percent of their production. The amount of the discount was calculated by computing 20 percent of the ratio of export to total sales and multiplying the resulting amount by the total electricity charge. We verified that Heveafil and Rubberflex received discounts under this program during the POI. Because this program is limited to exporters, we determine it to be countervailable.

To calculate the benefit from this program, we divided the total amount of discounts received by each company by that company's total exports, because the benefits are not shipment-specific. We then applied the calculation methodology for significantly different companies as outlined above. On this basis, we determine the net bounties or grants from this program to be 0.02 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits. This firm did not receive electricity discounts during the POI.

We verified that this program was terminated on March 1, 1990. Consistent with our policy of taking into account measurable program-wide changes that occur before the preliminary determination, we will not include the net bounties or grants determined for this program in our calculation of the estimated countervailing duty cash deposit rate.

4. Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales

The Investment Incentives Act of 1968 provided for an abatement of income tax based on the ratio of export sales to total sales. This law was repealed effective January 1, 1986, and replaced by the Promotion of Investments Act of 1986. Among other incentives, the new law also provides an abatement of income tax based on export performance. Specifically, a portion of income, equal to 50 percent of the ratio of export sales to total sales is exempt from income tax. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986. Because this program is limited to exporters, we determine it to be countervailable.

We verified that only Heveafil used this program during the POI. In addition to the export abatement, we verified that Heveafil used several other tax allowances available to offset taxable income during the POI. As discussed below, we have found certain of these allowances to be countervailable.

During the POI, the combination of countervailable and non-countervailable allowances substantially exceeded taxable income. Because we countervail only that portion of the available allowances actually used to offset taxable income in the POI, we had to determine which of the allowances were used and to what extent. Given the manner in which tax returns are prepared, it is not possible to document which of the allowances were actually used to offset taxable income. However, we have determined that it is reasonable to assume that a company would use the export abatement before any of the other allowances available in this case, because, unlike the other allowances, the export abatement could not be carried forward for use in future tax years.

To calculate the benefit, we determined the total income and development tax savings for Heveafil during the POI and divided them by the company's total exports, because these benefits applied to all exports. We verified that the applicable development tax rate for our POI was four percent, not three percent as reported in the response. We then applied the calculation methodology for significantly different companies as outlined above. On this basis, we determine the net bounties or grants for this program to be 0.75 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits. This firm did not use the export tax abatement during the POI.

For Heveafil, the export abatement did not fully offset taxable income and, hence, other allowances were used. Therefore, it is necessary to decide which of the remaining countervailable and non-countervailable allowances were used for tax abatement purposes. In making this decision, we took into account that one purpose of the countervailing duty law is to encourage foreign governments not to provide distortive subsidies to their exporting industries, and that the law also requires that countervailing duties offset

the full amount of the net subsidy. To ensure that these objectives are fulfilled in this investigation, and in the absence of evidence which would permit us to identify which allowances were in fact used, we have determined that it is appropriate to assume the remaining countervailable allowances were used before the non-countervailable allowances in computing net taxable income.

5. Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports

In addition to the Export Abatement discussed above, the Promotion of Investments Act of 1986 provided for an abatement of income tax in the amount of five percent of the ratio of export sales to total sales times the value of indigenous Malaysian materials used in the manufacture of exported products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1986, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

We verified that natural rubber latex is included on the list of indigenous Malaysian materials qualifying for this abatement. Furthermore, we verified that Heveafil used this program during the POI.

Because this program is limited to exporters, we determine it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program during the POI for Heveafil and divided them by the company's total exports, because these benefits applied to all exports. We then applied the calculation methodology for significantly different companies as outlined above. On this basis, we determine the net bounties or grants from this program to be 0.09 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits. This firm did not use this abatement during the POI.

6. Industrial Building Allowance

Sections 63 through 66 of the Income Tax Act of 1967, as amended, allow an income tax deduction for a percentage of the value of constructed or purchased buildings used in manufacturing. In 1984, this allowance, which had been limited to manufacturing facilities, we extended to include buildings used as warehouses to store finished goods ready for export or imported inputs to be incorporated into exported goods. This program includes a ten percent initial and a two percent annual tax allowance (*i.e.*, 12 percent in the first year and 2 percent thereafter). The program effectively reduces taxable income and can be carried forward to future tax years. We verified that rubber-based exporters are eligible for this program. We also verified that Heveafil used this program during the POI.

Because this program, as it applies to warehouses or other buildings used to store finished goods ready for export or imported inputs to be incorporated into exported goods, is limited to exporters, we determine it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program during the POI for Heveafil and divided them by the company's total exports, because these benefits applied to all exports. We then applied the calculation methodology for significantly different companies as outlined above. On this basis, we determine the net bounties or grants from this program to be 0.0002 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits. This firm did not use the industrial building allowance during the POI.

7. Double Deduction for Export Promotion Expenses

Section 41 of the Promotion of Investments Act of 1986 allows companies to deduct expenses related to the promotion of exports twice, once in calculating net income on the financial statement and again in calculating taxable income. We verified that Heveafil used this program during the POI.

Because this program is limited to exporters, we determine it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program during the POI for Heveafil and divided them by the company's total exports, because these benefits applied to all exports. We then applied the calculation methodology for significantly different companies as outlined above.

On this basis, we determine the net bounties or grants from this program to be 0.03 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits. This firm did not take a double deduction for export promotion expenses during the POI.

8. Pioneer Status

Pioneer status is a tax incentive offered to promote investment in the manufacturing, tourist, and agricultural sectors. Pioneer status was first introduced under the Pioneer Industries (Relief from Income Tax) Ordinance, 1958. This ordinance was replaced by the Investment Incentives Act (IIA) in 1968, which was subsequently replaced by the Promotion of Investment Act (PIA) of 1986. Under the IIA and the PIA, the Minister of International Trade and Industry may determine products or activities to be pioneer products or activities.

Companies petition for pioneer status for products or activities that have already been approved and listed as pioneer products. Once a company receives pioneer status, its profits from the designated product or activity are exempt from the corporate income tax, the development tax, and the dividend tax for a period of five years, with the possibility of an extension for and additional five years. The five-year extension was abolished effective October 1, 1991. Furthermore, the computation of capital allowances, which are normally deducted against the adjusted taxable income is postponed to the post-tax holiday period.

In evaluating a project for pioneer status, the Malaysian Industrial Development Authority (MIDA) will consider whether:

(1) The product is being produced on a commercial scale suitable to the economic requirement or development of the country,

(2) There are prospects for further development, and

(3) The product or activity meets the national and strategic requirements of Malaysia.

Specifically, MIDA officials consider twelve essential criteria to evaluate whether a particular company should receive pioneer status. We verified that two of these twelve criteria specifically address the export potential of the proposed product or activity. Nevertheless, companies that produce only for the domestic market may also receive pioneer status. Furthermore, some companies may be rejected even though their export potential is high. Under certain conditions, however, companies must agree to an export commitment (*i.e.*, they must agree to export a certain percentage of their production) to receive pioneer status. Furthermore, an export requirement may sometimes be applied to certain

industries after it is determined that the domestic market is saturated and will no longer support additional producers. While we verified that Rubberflex satisfied a few of the twelve criteria, it also had to abide by an export commitment.

We verified that Rubberflex was the only company that used pioneer status during the POI. Rubfil, Filmax, and Filati qualified for the program, but have not yet used it.

In *Carbon Steel Wire Rod from Malaysia: Final Results of Administrative Review* (56 FR 14927; April 12, 1991) (*Wire Rod*), the Department found that pioneer benefits had been approved for over 2,000 companies and almost as many products cutting across numerous industrial sectors during the period 1980–1989. We concluded, therefore, based on this reason and others that no industry or group of industries used the program disproportionately and that the pioneer program was not countervailable. The *Wire Rod* determination, however, did not specifically address the case where companies were required to export a certain percentage of production to qualify for pioneer status.

After considering the implications of this criterion, the Department has decided to view the pioneer program as a two-faceted program. The first facet comprises those instances where one or more of the twelve criteria applies, including favorable prospects for export, but where the two export criteria do not carry preponderant weight. This facet of the program is what the Department found noncountervailable in *Wire Rod.*

In cases, however, where pioneer status is conferred on a company because it has been determined that the domestic market is saturated and will no longer support additional producers and because that company agrees to export a certain percentage of its production, the program conveys an export subsidy, regardless of the other "neutral" criteria the company is required to meet. This is because the company is clearly being approved due to the fact it will export and because receipt of benefits becomes contingent on export performance. Therefore, we have determined that this facet of the pioneer program bestows and export subsidy.

To calculate the benefit, we determined the total income and development tax savings from this program during the POI for Rubberflex and divided them by the company's total exports, because these benefits applied to all exports. We then applied the calculation methodology for significantly different companies as outlined above. On this basis, we determine the net bounties or grants from this program to be 4.12 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits and received no benefits under this program during the POI.

B. Program Determined Not To Be Countervailable

1. Research and Development Provided by the Malaysian Rubber Research and Development Board (MRRDB)

The MRRDB was established under the Laws of Malaysia Act 401 to oversee research, development and promotion in support of the Malaysian natural rubber industry. Its objective is to modernize the natural rubber industry through advanced agronomic techniques as well as to ensure that consumers worldwide are aware of the advantages of natural rubber. To support itself, the MRRDB collects a 3.85 sen/kg "cess" on natural rubber exported out of Malaysia.

The MRRDB operating units include the Rubber Research Institute of Malaysia (RRIM), the Malaysian Rubber Products Research Association (MRPRA), and the Malaysian Rubber Bureau (MRB). The RRIM typically conducts agronomic research, the MRPRA conducts consumer-oriented research, and the MRB provides technical advisory services and promotional activities worldwide. Research and development work that is of general interest to producers of rubber latex and rubber-based products (*e.g.*, new rubber production or testing techniques) is regularly published and made available to all companies through these units. Companies can purchase reports containing such information through a booklet order form made available by the various units of MRRDB. Furthermore, the RRIM and the MRPRA each maintain for-profit consultancy units—RRIM has the Technical Advisory and Consultancy Unit (TACU) and the MRPRA has Rubber Consultants.

We verified that Rubberflex contracted with Rubber Consultants (United Kingdom branch) for testing services. At that time, Rubber Consultants maintained one of the few laboratories in the world capable of performing the test required by Rubberflex and there was no equipment available in Malaysia to perform the test. Additional tests were performed by RRIM in Malaysia later as part of the same original contract.

We verified that this service was billed on a cost-plus basis, where the "plus" refers to the profit made on an individual transaction. At that time, the only competing organization to bid on this project was the Rubber and Plastics Research Association (RAPRA), a private organization in the United Kingdom. Malaysian officials explained that RAPRA quoted the same price for the test. Furthermore, we verified that it is the stated practice of Rubber Consultants to conduct similar tests for other companies upon request at the same price.

Additionally, officials explained that Filati contracted with TACU to perform some tests during the POI. We found that TACU was started in 1990 as an arm of the RRIM to generate income and commercialize research. We verified that TACU used the maximum hourly salary of the most senior technician in order to set the price of these tests. There were no competitors in Malaysia performing the same tests; however, any customer would receive the same price.

Because there is no restriction on who may contract for testing and all users pay the same fees, we determine that this program is not countervailable. This decision is consistent with our recent determination in the *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada* (57 FR 30946; July 13, 1992).

C. Programs Determined to be not Used

1. Abatement of Five Percent of Taxable Income Due to Location in a Promoted Industrial Area.
2. Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales.
3. Double Deduction of Export Credit Insurance Payments.
4. Investment Tax Allowance.
5. Abatement of Taxable Income of Five Percent of Adjusted Income of Companies Due to Capital Participation and Employment Policy Adherence.
6. Preferential Financing for Bumiputras.

D. Programs Determined Not To Exist

1. Preferential Land Pricing.
2. Five- To Ten-Year Tax Holidays.
3. Electricity Discount for Rubber Based Manufacturers.

Comments

Comment 1: Respondents argue that the Department initiated this investigation under the authority of section 303(a)(2) of the Tariff Act of 1930, and, therefore, a final order can only go into effect pursuant to a finding of injury. Respondents argue that

because the ITC has discontinued its injury investigation, the Department has no authority to issue a CVD order. Respondents further maintain that there is no authority under the statute to simply transfer, without notice, the jurisdiction for any investigation from section 303(a)(2) to section 303(a)(1). Respondents argue, however, that if the Department decides to make a final determination under section 303(a)(1), it must liquidate all duty-free entries prior to March 31, 1992, without regard to countervailing duties.

DOC Position: We disagree with respondents, in part. The Department initiated this investigation under section 303 of the Act, which gives the Department the authority to impose countervailing duties on merchandise from countries that are not signatories to the Agreement on the Interpretation and Application of articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the GATT Subsidies Code"). That authority is contingent on an ITC injury determination only if the merchandise enters duty-free and the United States has an international obligation to provide an injury test with regard to such merchandise. Because Malaysia is no longer eligible for duty-free entry of the subject merchandise into the United States under the GSP, an injury determination is no longer required in order for the Department to issue a countervailing duty order in this case.

With respect to those entries occurring before March 31, 1992, the effective date of revocation of GSP status, the Department agrees with respondents that pursuant to section 303 of the Act, countervailing duties may not be levied on such duty-free entries in the absence of an injury determination. However, no duties will be levied under this order until, at the earliest, the first annual anniversary date of the issuance of the order. Therefore, we have determined that it is appropriate to continue to order the suspension of liquidation of such duty-free entries until we are able to determine how they should be properly treated.

Comment 2: Respondents argue that the Department has no authority to continue its critical circumstances investigation because: (1) The ITC has discontinued its injury investigation and (2) Malaysia has not acceded to the Subsidies Code. With regard to the first argument, respondents state that countervailing duties may be imposed on merchandise subject to suspension of liquidation under section 703(e)(2) for critical circumstances only if both the Department and the ITC make final affirmative critical circumstances findings.

Concerning their second argument, respondents suggest that the Department may issue an affirmative critical circumstances determination only if the alleged subsidies are found to be "inconsistent with the Agreement." In order for subsidies to be inconsistent with the Agreement, they must be granted contrary to the granting country's commitments under the Subsidies Code. Respondents argue that since Malaysia is not a signatory to the Subsidies Code and, therefore, has no commitments under the Code, the subsidies under investigation cannot be held to be inconsistent with that Code.

Furthermore, respondents argue that the Subsidies Code does not *per se* prohibit the use of subsidies by a developing country, like Malaysia. Consequently, even in the abstract, respondents contend that it is impermissible to conclude that Malaysia could maintain any type of subsidy which is inconsistent with the Subsidies Code.

DOC Position: We agree that, under section 303(b)(3) of the Act, in the case of merchandise that is not duty free, a critical circumstances finding is unnecessary. However, until we have decided how we will address the pre-March 31st entries, it is not as clear as to whether we should continue the critical circumstances investigation. Nonetheless, we disagree with respondents' argument that Malaysia's export subsidies cannot be considered inconsistent with the Subsidies Code because Malaysia is not a signatory to the Code. In essence, respondents interpret "inconsistent" to mean "a violation of" the Code. We interpret the inconsistency requirement to mean that a critical circumstances investigation is limited to those types of subsidies that are inconsistent with the Subsidies Code. It does not limit critical circumstances investigations to countries that are signatories to the Subsidies Code. Our interpretation is consistent with section 303, which establishes the Department's authority to impose countervailing duties on merchandise from countries that are not signatories to the Subsidies Code. Subsection (b) of section 303 expressly prohibits a critical circumstances determination only if the merchandise is not duty free. Respondents' proposition that there can never be a critical circumstances determination for a non-signatory effectively reads the distinction between duty-free and non-duty free merchandise out of the statute.

Although the statute would prevail in the event of an inconsistency, we find no inconsistency between the GATT and the retroactive assessment of duties in critical circumstances. We disagree with respondents' argument that article 5, paragraph 9 of the Subsidies Code, which permits the retroactive assessment of countervailing duties in critical circumstances, is limited to signatories to the Code. The fact that the Code recognizes the retroactive assessment of duties as a permissible countermeasure in no way restricts the imposition of those measures to signatories.

Finally, we are not persuaded by respondents' argument that Malaysia's export subsidies are not inconsistent with the Code provisions relating to developing countries. Article 14 of the Subsidies Code states that "the commitment of article 9 (to not grant export subsidies) shall not apply to developing country signatories, *subject to the provisions of paragraphs 5 through 8 below.*" Subsidies Code, article 14(2) (emphasis added). Paragraphs 5 and 6 relate to commitments be developing countries to reduce or eliminate export subsidies. Thus, contrary to respondents' assertion, there is no blanket exemption from the prohibition on export subsidies for developing countries.

We, therefore, confirm our preliminary determination that critical circumstances exist with respect to Filmax, Rubberflex, and Filati. Under section 705(b)(4) of the Act, an injury determination by the ITC is a prerequisite to the retroactive application of duties to entries made within 90 days prior to the preliminary determination. As discussed above, no duties will be assessed under this order until, at the earliest, the first annual anniversary date of the issuance of the order. Therefore, we have determined that it is appropriate to continue suspension of liquidation of entries made within 90 days prior to the preliminary determination until the proper disposition of these entries can be determined.

Comment 3: Respondents argue that since petitioner does not have standing with regard to products it does not produce, the investigation should be terminated with respect to these products. Respondents argue that even though they made a timely request to the Department to exclude certain products not produced by petitioner, the Department has not taken action to determine whether the scope should be narrowed (*i.e.*, sending questionnaires to petitioner). Consequently, the

Department must rely on the information provided by respondents.

Specifically, respondents suggest that the U.S. producers do not produce, and may not have the technical capability to produce, several categories of rubber thread currently under investigation including talc finish, fine gauge and heat resistant, and most notably, food grade thread. With regard to food grade rubber thread, respondents provide information to support their argument that food grade rubber thread should be considered a separate like product under the five criteria used by the ITC (*i.e.*, it has different physical characteristics, different end uses, is not interchangeable, is produced using a unique production process, elicits different customer perceptions, and constitutes a different market segment).

Petitioner points out that before the ITC, respondents argued at length that all rubber thread should be treated as one like product based on the five criteria.

DOC Position: We disagree with respondents. After reviewing the ITC's preliminary determination and respondents' submissions, the Department agrees with the ITC's like product determination.

Therefore, we determine that food grade rubber thread, and the other types of rubber thread mentioned by respondents do not constitute separate like products for purposes of this investigation, and that the petitioner properly has standing to file the petition on behalf of the industry producing the domestic like product.

Comment 4: Respondents argue that the Department should terminate its investigation with respect to the electricity discount program because petitioner failed under § 355.12(b)(7) of the Department's regulations to provide documentary evidence regarding such a program, a copy of any law or regulation, the identity of the authority under which the subsidy is granted, and an estimate of the value of any benefits to the exporters.

DOC Position: We disagree with respondents. The Department's regulations state that petitioner should provide, to the extent that it is reasonably available, the type of information outlined by respondents. For the reasons outlined in a November 5, 1991 Memorandum to Susan Kuhbach, the Department determined that petitioner had satisfied the regulatory requirements.

Comment 5: Respondents argue that petitioner did not provide new information to the Department regarding pioneer status; therefore, the Department should not have initiated an investigation of the Pioneer Program. Specifically, respondents note that in the original initiation memorandum, the Department stated that petitioner has provided no new evidence of changed circumstances with regard to this program, which had been found not countervailable in the *Final Results of Administrative Review: Carbon Steel Wire Rod From Malaysia* (56 FR 23303; June 22, 1991). Respondents also suggest that the information submitted by petitioner in its October 25, 1991 letter was already included in the original petition allegation, which was deemed inadequate by the Department.

DOC Position: We disagree with respondents. In its petition, petitioner simply quoted from a Malaysian government brochure which states that pioneer status is available to companies producing a promoted product. Petitioner said it had reason to believe that extruded rubber thread is a promoted product. In support of this allegation, petitioner cited the *Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Malaysia* (53 FR 13304; April 22, 1988), where we found the program to be countervailable. However, in our initiation notice, we noted that in the *Final Results of Countervailing Duty Administrative Review: Carbon Steel Wire Rod From Malaysia* (56 FR 41649, August 22, 1991), the Department found the pioneer status program to be not countervailable because it was not limited to a specific industry or group of industries. Furthermore, we noted that petitioner had not provided any new evidence of changed circumstances with regard to the program.

In its October 25, 1991 letter to the Department, petitioner re-focused its allegation by highlighting information indicating that an 80 percent export "requirement" potentially had to be met before pioneer status was granted to producers/exporters in Malaysia. Petitioner stated that the Department had not fully investigated this requirement in the past. We agreed that this aspect of the program had not been fully considered before, and on November 5, 1991, we decided to include the pioneer program in our investigation.

Comment 6: Respondents contend that the Department has no authority to countervail the pioneer status and electricity discount programs because allegations concerning these programs were untimely filed. Respondents argue that the allegations were made 12 days late under the regulations which require new subsidy allegations to be filed no less than 40 days from the date of the "scheduled" preliminary determination. Respondents maintain that the allegations made on October 25, 1991, were only 28 days before the originally "scheduled" date for the Department's preliminary determination, November 22, 1991. Furthermore, respondents state that no valid 10-day extension was given to the petitioner in order to submit additional allegations. Finally, even if such an extension were given, petitioner filed its additional subsidy allegations two days past the maximum 10-day extension period.

DOC Position: We disagree with respondents. In an October 15, 1991 memorandum to the file, the Department indicated that a 10-day extension had been given to petitioner in order to file additional allegations. Further, on November 4, 1991, the Department extended the preliminary determination until December 13, 1991 (based on petitioner's October 25, 1991 request). Therefore, the additional allegations submitted to the Department on October 25th were filed more than 40 days prior to the newly scheduled preliminary determination.

Comment 7: Respondents argue that the Department erred by initiating investigations with respect to programs alleged by an unnamed affiant. Respondents maintain that the Department should not have relied on the unsupported allegations of such an individual. Additionally, the Department erred by not publicly disclosing the name of the affiant, thereby undermining respondents' ability to explain or clarify the relevant allegations.

DOC Position: In a December 16, 1991 letter to counsel to respondents, the Department stated that according to § 355.4(a)(8) of the Department's regulations, the names of particular persons from whom proprietary information was obtained would be considered as proprietary information in this countervailing duty proceeding. Furthermore, it has been the Department's practice to accept statements/affidavits from individuals with first-hand knowledge of the facts. Therefore, we have not required that petitioner make public the name and position of the affiant.

Comment 8: Respondents argue that it would be inconsistent with past practice for the Department not to use in its final determination updated information filed on May 22, 1992 (two weeks prior to verification) which outlined company use of programs for calendar year 1991. Furthermore, they note that the Department specifically refused to verify the 1991 information and, therefore, the Department prejudged the

issue of whether such information should be used.

Petitioner argues that the Department should not use 1991 calendar year data because by submitting the new data only two weeks before verification, respondents did not provide sufficient time for analysis by petitioner and others. Furthermore, petitioner states that it agreed to delay the final countervailing duty determination so that the Department could verify both the countervailing and antidumping duty responses at the same time. That delay should not be used to allow respondents to submit entirely new responses.

DOC Position: We disagree with respondents. A 1990 period of investigation was established in the questionnaire sent to the GOM on October 1, 1991. The preliminary determination was based on information provided by respondents in response to this questionnaire. It is not the Department's practice to change the period of investigation after a preliminary determination has been made. To do so would seriously limit the value of the preliminary determination because parties would have an entirely new set of data and issues to comment on.

In effect, the 1991 information submitted by respondent amounts to a new, unsolicited questionnaire response. According to § 355.31(b)(2) of the Department's regulations "in no event" will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination. As such, we have returned the response, with a letter detailing the reasons for the return, to respondents.

Comment 9: Respondents argue that the abolition of the rubber discount scheme satisfies the criteria of the program-wide change doctrine. Respondents maintain that the GOM announced on December 14, 1990, that the program would end January 1, 1991. Respondents note that this announcement took place over one year prior to our preliminary determination. They maintain that the fact that the rubber discount program was extended until December 31, 1991, is not relevant. As such, they argue that the Department should reduce the deposit rate for the rubber discount program to zero. Additionally, they state that in order to have this change accounted for, they need not avail themselves of a suspension agreement in this case, as petitioner suggests below. Finally, if the Department does not take into account the program's termination, respondents argue that the Department should at least use the 1991 information as the basis for any deposit rate.

Petitioner argues that any speculative current or future changes in the rubber discount scheme should be ignored—only program-wide changes which occur before the preliminary determination should be considered. Furthermore, termination of a subsidy must be implemented before the preliminary determination in an investigation in order to be considered in the final determination. Additionally, petitioner suggests that the Department should not allow respondents to cite the delay in the date for the beginning of the verification as the basis for permitting consideration of events following the preliminary determination. Finally, petitioner states that the U.S. Court of International Trade held in its review of the Department's 1982 final determination regarding South African steel that termination of subsidy programs during an investigation can only be considered in the context of a suspension agreement.

DOC Position: We verified that the rubber discount program was in fact extended past the originally scheduled termination date until December 31, 1991. Therefore, the actual program-wide change took effect after the publication of our preliminary affirmative countervailing duty determination. The Department's practice is to adjust for program-wide changes that take place after the POI but before the preliminary determination (*e.g.*, see *Textile Mill Products and Apparel From Peru* (50 FR 9371; March 12, 1985). However, we did verify that the program was terminated effective January 1, 1992. Such termination can be accounted for in an administrative review, if one is requested.

Because we have determined not to make an adjustment for this program-wide change, petitioner's argument that a program-wide change can only be recognized in the context of a suspension agreement is moot. We note, however, that the case relied upon by petitioner was vacated. See *United States Steel Corp.* versus *United States*, 7 CIT 117 (1984).

Comment 10: Respondents contend that the Department improperly calculated the amount of the benefit received under the ECR program in its preliminary determination. Respondents argue that the Department must use the "cost of funds" to the GOM as the benchmark because item "k" of the Illustrative List of Export Subsidies annexed to the Subsidies Code so requires, and the appropriate "cost of funds" is the 90-day rate for government bonds. Respondents assert that if the Department does not use the 90-day bond rate, it should use the bankers acceptance rate because the bankers acceptances are identical to ECR financing in terms of risk, maturity and purpose.

Petitioner argues that the Department should not use the government's cost of borrowing, but rather the weighted-average, short-term commercial interest rate in Malaysia. Petitioner suggests that such a benchmark is consistent with the Department's Subsidies Appendix to its 1982 Countervailing Duty Determination on Cold Rolled Steel from Argentina. Additionally, that approach avoids burdensome speculations as to the particular interest rate a company would pay on short-term loans and recognizes that a typical company does not borrow from just one source.

DOC Position: The Illustrative List identifies common forms of subsidies but does not necessarily instruct the Department how to value them. Nor does the Illustrative List limit the United States in applying its own national CVD law to determine the countervailability of benefits bestowed on merchandise exported from Malaysia. The Department has a long-standing practice of valuing benefits to the recipient, rather than the cost to a government. This decision is consistent with *Ceramic Tile From Mexico: Final Results of Countervailing Duty Administrative Review* (57 FR 24247; June 8, 1992).

The Department's proposed substantive regulations require the use of the rate for the most predominant form of short-term financing in the country under investigation as the benchmark for short-term loans. Furthermore, the regulations stipulate that the source of short-term financing selected as a benchmark should normally constitute 50 percent or more of the short-term financing in the country.

In Malaysia, short-term commercial term and overdraft loans are the two most predominant forms of short-term financing. Because the average interest rates for these two types of financing are not available individually, in the preliminary determination we used as our benchmark the average commercial lending rate, since approximately 80 percent of this financing is accounted for by these two predominant forms of short-term financing. We note that even if the remaining portion of the average commercial lending rate includes some long-term financing, we found at verification that the only difference between short- and long-term interest

rates was a risk premium which is typically quite small.

In past Malaysian cases, we have selected bankers acceptances as the most comparable and commonly used alternative source of short-term financing. However, in this investigation, we verified that bankers acceptances are essentially different from other forms of short-term financing because they are based on short-term receivables or payables arising from trade in goods. However, bankers acceptances constitute an extremely small percentage of short-term financing in Malaysia. Therefore, we have determined that it is appropriate to continue to use the average commercial bank lending rate. An average including these two rates is in accord with § 355.44(b)(3)(i) of our proposed substantive regulations.

Comment 11: Petitioner asserts that given the significant number of errors in the reporting of pre-shipment export financing, the questionnaires should be considered unreliable with regard to such loans. Respondents suggest that this claim is unjustified in that respondents provided information with respect to hundreds of complex financial transactions; furthermore, discrepancies were rectified.

DOC Position: We agree with respondents. The number of errors relative to the number of transactions verified is minimal, and all discrepancies were later rectified at the government or company verifications.

Comment 12: Respondents argue that the Department was in error by assuming that Heveafil would use the export abatement before any of the other allowances available, merely because the export abatement could not be carried forward. Instead, respondents suggest that the Department must take into account the non-countervailable deductions. If those non-countervailable deductions equal the tax liability, then there is no benefit in the year in question.

DOC Position: We disagree with respondents. Essentially, they have asked us to assume that the non-countervailable allowances are used first, despite the fact that the non-countervailable allowances can be carried forward while the export allowance cannot be carried forward. Given this distinction, it is more reasonable to assume that the export abatement is used first. Therefore, we have treated the export abatement as fully countervailable in the tax year under investigation.

Comment 13: Respondents argue that the Department assumed that the entire deduction for all other export tax programs resulted in cash savings in the year under investigation. They argue that these programs are unlike the export abatement in that they can be carried forward.

DOC Position: The companies under investigation earned several types of allowances (in addition to the export allowance discussed above) which may be used to offset taxable income. Certain of these allowances are not countervailable, such as the depreciation allowance, whereas others, such as the industrial building allowance, are.

Each year, the company calculates the total value of allowances to which it is entitled. It then draws from this total the amount needed to eliminate any tax liability in that year. If anything remains in the pool, it can be carried forward to offset taxable income in future years.

The specific allowances drawn from the pool in any given year are not identified on the tax form. Therefore, it was necessary to develop a methodology for estimating the portion of the allowance used in a given year that is attributable to countervailable programs, and the portion that is attributable to non-countervailing programs in order to calculate the net bounties or grants.

In our preliminary determination, we assumed that the countervailable programs would be used first. Our rationale, as stated in the notice, was to take into account the fact that a central purpose of the countervailing duty law is to encourage foreign governments not to provide distortive subsidies to their exporting industries. In this investigation, this purpose can best be served by selecting the remaining countervailable allowances before selecting any of the non-countervailable allowances available to the companies.

In addition, if we treat only a portion of the countervailable allowances as having been used, some of the amount carried forward for future use would also be countervailable when used. This means that we would have to track carry forwards and trace from year to year what portion of the allowances carried forward is countervailable. To avoid an unadministrable system of tracking and tracing, we have treated the countervailable portions as having been used in the year under investigation.

Comment 14: Respondents argue that the Pioneer Program is not countervailable since it is generally available and is not limited to companies that export. They contend that at verification, the Department was able to confirm both the *de jure* and *de facto* availability of this program throughout the entire Malaysian economy. Additionally, respondents assert that the Department verified that the internal guidelines used to grant pioneer status are characterized by neutral criteria unrelated to exports, location or any other factors that could require a determination that the program is countervailable.

Respondents further assert that the Department's preliminary determination that the pioneer program is a two-faceted program (*i.e.*, some applicants receive benefits because of export requirements whereas others meet broader criteria) is wrong. Even assuming, however, that it is a two-faceted program, respondents argue that there is no benefit for the alleged export requirement. The Department has verified that there is no separate or additional tax benefit that is provided to Rubberflex as an exporter. In other cases where a program includes multiple facets, the Department calculates the benefit on only those facets that are not generally available.

Respondents point to the fact that the pioneer program was found not countervailable in past cases and maintain that the Department fully understood that the commitment to export is only one of multiple factors considered in granting pioneer status. Respondents note that, according to the Department's proposed regulations, a program is not countervailable if an export criterion is merely one of many eligibility criteria. Finally, respondents state that the Department verified that of the twelve criteria used to assess pioneer applications, a project need not necessarily meet all of the criteria. Further, with regard to the export commitment made by Rubberflex, respondents suggest that it was made as part of the company's manufacturing license approval, and was consequently incorporated into the later pioneer application. In fact, in Rubberflex's case, the absence of any appreciable domestic market in itself required Rubberflex to concentrate on export markets. Consequently, the voluntary export undertaking was immaterial and had no economic effect.

Petitioner argues that Rubberflex must export a large percentage of its output to qualify for pioneer status. Therefore, pioneer status constitutes a countervailable export subsidy. Furthermore, petitioner argues that the Department should not attempt to determine the intent of the decision makers with regard to respondents' claim that a particular export condition that was imposed to obtain pioneer status was not really a condition. Respondents assert that the Department

does, in fact, look at the issue of intent when considering specificity. According to respondents, the sole purpose of examining the government's internal judgments is to determine the government's intent and purpose in approving or rejecting applications.

DOC Position: In our examination of the Pioneer Program as a domestic subsidy in *Carbon Steel Wire Rod From Malaysia: Final Results of Administrative Review* (56 FR 14927; April 12, 1991), we concluded that no industry or group of industries used the program disproportionately and found the program not to be countervailable. This determination, however, did not specifically address situations where companies had a specific export condition attached to their pioneer status approval. In the *Wire Rod* investigation, petitioner raised the issue of an export requirement. Thus, the requirement *per se* is not new, but it was not at issue with the companies investigated at the time.

We continue to view the "domestic" side of the Pioneer Program to be not countervailable. As respondents have pointed out, where export capabilities are one among many criteria considered in granting assistance, we do not automatically view the program as countervailable.

However, in this instance, recipients of the tax benefits conferred by Pioneer status can be divided into two categories: industries and activities that will find market opportunities in Malaysia and elsewhere, and those that face a saturated domestic market. At verification, we established that an export requirement may sometimes be applied to certain industries after it is determined that the domestic market will no longer support additional producers. The extruded rubber thread industry is among these industries.

The combination of the necessary export orientation of the industry due to lack of domestic market opportunities and the explicit export condition attached to Pioneer status approval, lead us to conclude that the "export" side of the Pioneer Program confers an export subsidy. Whether or not the commitment was voluntary, as respondents suggest, the company has obligated itself to export a very large portion of its production and that commitment appears to have been an important condition for approval of benefits.

This finding is consistent with the *Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof From Thailand,* (54 FR 19130; May 3, 1989). In that case, we examined tax exemptions under the Investment Promotion Act and found that the Board of Investment (BOI) in granting these exemptions considered various criteria, including demand in the Thai and overseas markets. This same program had also been found to be not countervailable when it operated as a domestic program. However, in certain product sectors, including the sector producing bearings, the BOI determined that exemptions would not be granted unless applicants exported all or almost all of production. In view of this requirement, we determined that the exemptions granted for bearings were countervailable.

Finally, with respect to respondents' argument that even if the Pioneer Program can be viewed as two-faceted, "exporters" receive no greater benefits than other recipients, we disagree that the generally available level of benefits limits the amount of the subsidy to exporters. The appropriate reference point is what the recipient would have received had the export benefit not been awarded. In this instance, because of the saturation of the domestic market with respect to extruded rubber thread, the companies would not have received any benefits.

Comment 15: Respondents argue that the Department's calculation of Rubberflex's Pioneer benefits fails to deduct normal capital allowances that would have been allowed if the program had not been used. Furthermore, respondents suggest that the Department incorrectly allocated Pioneer benefits over only export sales even though pioneer tax benefits are also applicable to profits on domestic sales.

DOC Position: We have not overstated the benefit from the Pioneer Program. When a company receives Pioneer status, it is allowed to stockpile normal capital allowances for use in future years. Therefore, these allowances should not be used to offset current benefits. Moreover, export sales should form the denominator because receipt of benefits is contingent upon exportation. See, § 355.47(a)(2) of the Department's proposed regulations.

Comment 16: Respondents argue that the Department's calculation of the all others rate must be amended to conform to the method established in the recent court case, *Ceramica Regiomontana, S.A. et al* v. *United States,* which held that the countervailing duty statute requires the Department to include all investigated firms' rates in calculating the all others rate.

DOC Position: Pursuant to 19 CFR 355.20(d), we compared the total *ad valorem* benefit received by each firm to the country-wide rate for all programs. The rate for one of the companies, Rubfil, was significantly different from the country-wide rate. Therefore, this firm received an individual company rate. For the remaining four firms, we recalculated the country-wide rate, based solely on the benefits received by these four firms. We then assigned the recalculated overall country-wide rate to these four firms, and all other manufacturers, producers, and exporters, with the exception of Rubfil.

The Department is not following *Ceramica Regiomontana* with respect to this issue because we disagree with that decision and acquiescence would deprive the Department of its right to appeal this issue in this proceeding.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of extruded rubber thread from Malaysia. Section 703(e)(1) of the Act provides that critical circumstances exist if there is a reasonable basis to believe or suspect that (A) the alleged subsidy is inconsistent with the Agreement, and (B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In our final determination we found that the GOM confers export subsidies on the manufacture, production, or exportation of extruded rubber thread. These subsidies are inconsistent with the Subsidies Code.

In determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered: (1) The volume and value of the imports, and (2) seasonal trends. In making this determination, our performance is to examine company-specific shipment data on exports to the United States of the subject merchandise.

Based on our analysis of the monthly shipment data for each respondent

company, we have found that imports from three of the five companies have been massive over a relatively short period of time. Therefore, we find that the requirements of section 703(e)(1) are met for the following companies exporting extruded rubber thread to the United States:

Company	Critical circumstances
Heveafil	No.
Filmax	Yes.
Rubberflex	Yes.
Filati	Yes.
Rubfil	No.

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of extruded rubber thread from Malaysia which were entered, or withdrawn from warehouse, for consumption, on or after December 30, 1991, the date of publication of our preliminary determination in the **Federal Register.** Because of our preliminary determination that critical circumstances exist, we also directed Customs to suspend liquidation on any unliquidated entries from Filmax, Rubberflex and Filati within the 90-day period prior to our preliminary countervailing duty determination.

We instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 28, 1992, pursuant to U.S. obligations under the Subsidies Code, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered prior to April 27, 1992.

Due to the withdrawal of GSP status for this product, no final determination of injury is required for entries after March 31, 1992. Therefore, we are directing the Customs Service to reinstate the suspension of liquidation and to require the deposit of estimated countervailing duties in the following amounts:

Manufacturer/exporter	Percent [1]
Rubfil Sdn. Bhd	4.21
All other manufacturers or exporters	9.63

[1] Net Ad Valorem Bounty or Grant (Percent).

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)) and 19 CFR 355.20.

Dated: August 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-20228 Filed 8-24-92; 8:45 am]

BILLING CODE 3510 DS-M

[C-307-808]

Preliminary Affirmative Countervailing Duty Determination: Ferrosilicon From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Paulo F. Mendes, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5050.

Preliminary Determination

The Department preliminarily determines that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Venezuela of the subject merchandise.

Case History

Since the publication of the notice of initiation in the **Federal Register** (57 FR 27024, June 17, 1992), the following events have occurred. On June 19, 1992, we presented a questionnaire to the Government of Venezuela ("GOV"). On August 27, 1992, we received responses from the GOV and CVG-Venezolana de Ferrosilicio C.A. ("FESILVEN"), the only producer and exporter of ferrosilicon in Venezuela. On August 31, 1992, we issued deficiency questionnaires; responses to these questionnaires were received on August 7 and August 14, 1992.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages of weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tarfiff Schedule of the United States ("HTSUS"): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description on the scope of this investigation is dispositive.

Injury Test

On August 31, 1990, Venezuela became a contracting party of the General Agreement on Tariffs and Trade ("GATT"). Since qualification as "country under the Agreement" under section 701(b)(3) requires that the GATT not apply between the United States and the country from which the subject merchandise is imported, Venezuela is no longer eligible for treatment as a "country under the Agreement" within the meaning of section 701(b)(3). However, because Venezuela is a GATT contracting party, and merchandise within the scope of the petition which is imported under HTSUS subheadings 7202.21.1000, 7202.21.5000, 7202.29.0010, and 72.29.0050 is nondutiable, the

petitioner is nonetheless required to allege that, and the International Trade Commission ("ITC") is required to determine whether, pursuant to section 303(a)(2), imports of this nondutiable merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry. The remaining HTSUS items, as described in the "Scope of Investigation" section of this notice, are dutiable. Therefore, for these items, the ITC is not required to determine whether, pursuant to section 303(a)(2), imports from Venezuela of these products materially injure, or threaten material injury to, a U.S. industry.

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the responses cannot be supported at verification, and a program is otherwise counteravailable, the program will be considered a counteravailable study in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants (the period of investigation—"POI") is calendar year 1991, which corresponds to the fiscal year of FESILVEN.

Program Preliminarily Determined To Be Counteravailable

We preliminarily determine that bounties or grants are being provided to manufacturers, producers or exporters in Venezuela of ferrosilicon under the following programs:

1. *Preferential power rates.* The petitioners alleged that C.V.G. Electrificatión del Caroni C.A. ("EDELCA"), a government-owned hydroelectric power company, charges preferential electricity rates to FESILVEN. According to the questionnaire responses the electricity rates EDELCA charges large industrial consumers of electricity are the result of non-discriminatory, arms-length negotiations between EDELCA and its customers. During such negotiations, the consumption pattern of each customer is considered by EDELCA in determining each customer's electricity rate.

When analyzing whether the provision by a government of a good or service pursuant to a domestic program confers a countervailable benefit, we examine whether the good or service is being provided to a specific enterprise or industry or group of enterprises or industries and whether the price paid by the producers under investigation for that good or service is less than the benchmark price. See *e.g.*, Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 22570, 22586 (May 28, 1992). Although we do not have complete information as to EDELCA's rates, the response provides information on rates charged to other industrial groups which are large consumers of electricity. It appears from the information provided that FESILVEN paid a lower rate than another industrial group which consumed a larger quantity of electricity than FESILVEN during the POI. Therefore, we preliminarily determine that FESILVEN received electricity at a preferential rate. For purposes of this preliminary determination, the benchmark we are using is the rate charged by EDELCA to the other large industrial consumer of electricity referred to above.

To calculate the benefit, we first multiplied FESILVEN's total electricity consumption during the POI by the average electricity rate EDELCA charged the other industrial group during the POI. Next, we subtracted from the resultant figure FESILVEN's actual electricity cost for the POI. Finally, the difference was divided by FESILVEN's total sales. On this basis, we calculated estimated net bounties or grants of 4.97 percent *ad valorem.*

Respondents have argued that under FESILVEN's current electricity contract, the company began paying a markedly higher price for electricity after the POI. According to respondents, the increase resulted from an EDELCA initiative, begun in 1990, to raise power rates paid by large volume customers gradually so that by 1995 those rates will equal the long term marginal costs of EDELCA's hydroelectric generation activities. At this time, the Department does not have sufficient information to analyze whether a program-wide change has occurred. We will continue to seek further information on this issue for purposes of our final determination.

2. *Export bond program.* Although this program was not alleged in the petition, FESILVEN's financial statements and questionnaire responses indicate that FESILVEN benefited from this program during the POI. Based on previous investigations (see, *e.g.*, Final Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, 53 FR 24763 (June 30, 1988)), we know that this program was designed to provide partial compensation for the requirement that exporters convert foreign currency export earnings to bolivars at an official rate significantly lower than the free market rate. The value of the export bond is based on a percentage of the FOB value of the product exported.

Because this program is limited to exporters, we preliminarily determine that it is countervailable. To calculate the benefit for the POI, we divided the bolivar amount of bonds shown on FESILVEN's 1991 financial statements by the company's total export sales. On this basis, we calculated estimated net bounties or grants of 1.69 percent *ad valorem.*

The export bond program was terminated as of June 15, 1991. Therefore, consistent with our policy of taking into account program-wide changes that occur before the preliminary determination, the cash deposit rate for this program is zero. See section 355.50 of the Department's proposed regulations, 54 FR 23366 (May 31, 1989).

B. Program Preliminarily Determined Not To Be Countervailable

1. *GOV grants.* The petitioners alleged that in December 1987, FESILVEN was authorized by the GOV to receive funds in the form of a government grant and loans from foreign sources to implement a major expansion plan. According to the questionnaire responses, FESILVEN financed its expansion plan by "long-term loans negotiated on ordinary commercial terms with two foreign banks, a loan from an unrelated foreign customer * * *" and capital contributions it received from its shareholders, composed of both private and public investors.

Rather than a government grant, it appears that FESILVEN received equity infusions in 1989 and 1991. Because the petitioners alleged that FESILVEN had received an equity infusion from the government in 1989 in their petition, the Department examined in this proceeding FESILVEN's equityworthiness for 1989. Based on information in the petition, we concluded that there was no reasonable basis to believe or suspect that FESILVEN was unequityworthy in 1989. For 1991, petitioners have made no unequityworthy allegation. The Department's policy is not to investigate an equity infusion in a firm absent a specific allegation by the petitioner. *See* section 355.44(e)(3) of the Department's proposed regulations (54 FR 23366; May 31, 1989). Accordingly, we preliminarily determine this program to be not countervailable.

C. Program For Which Additional Information Is Needed

1. GOV's assumption of debt. The petitioners allege that under Decree 1261, the GOV assumed a portion of FESILVEN's foreign currency debt in 1986, and the remaining portion in 1990. Furthermore, the petitioners alleged that the GOV only assumed the debt of 15 government-owned companies.

According to the questionnaire responses, the GOV "assumed all of the foreign currency debts of all government-owned companies * * *" Furthermore, the GOV specifically stated that its actions regarding FESILVEN's foreign currency debt were only intended to suspend the company's payment of interest and principal while the GOV attempted to renegotiate the terms of the debt. In addition, FESILVEN stated that it will shortly "recommence payment of principal and interest on those debts."

While the beneficiaries of this program may be limited to a specific enterprise or industry or group of enterprises or industries, it does not appear that their debt was assumed. Instead, it appears that the terms of the debt have been renegotiated. At this time, we have insufficient information on the record to determine whether the terms under which FESILVEN will repay its foreign debt will be consistent with commercial considerations. Therefore, we intend to seek additional information on this issue.

D. Programs Preliminarily Determined Not To Be Used

1. *Sales tax exemption.*

2. *Preferential Short-Term Financing—FINEXPO verification.* In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of ferrosilicon from Venezuela, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register** and to require a cash deposit or bond for such entries of the merchandise in the amount of 4.97 percent *ad valorem.* This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making 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 that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38 of the Department's regulations, we will hold a public hearing, if requested, on October 14, 1992, at 9:30 a.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or participate in a hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In accordance with 19 CFR 355.38 (c) and (d), ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than October 2, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than October 9, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with § 355.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: August 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–20229 Filed 2–24–92; 8:45 am]

BILLING CODE 3510-DS-M

[C–508–064]

Fresh Cut Roses From Israel; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on fresh cut roses from Israel. Interested parties who object to this revocation must submit their comments in writing not later than September 30, 1992.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Philip Pia, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–0983 or 377–3691.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1980, the Department of Commerce ("the Department") published a countervailing duty order on fresh cut roses from Israel (45 FR 58516). The Department has not received a request to conduct an administrative review of the countervailing duty order on fresh cut roses from Israel for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

No later than September 30, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review nor object to the Department's intent to revoke by September 30, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: August 19, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-20353 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-601]

Certain Fresh Cut Flowers From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain fresh cut flowers from Peru.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On April 29, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 18130) its intent to revoke the countervailing duty order on certain fresh cut flowers from Peru (52 FR 13491; April 23, 1987). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On May 28, 1992, the Floral Trade Council, an interested party and the petitioner in the original investigation, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: August 19, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-20354 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-603]

Standard Carnations From Canada; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on standard carnations from Canada.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 10, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 8440) its intent to revoke the countervailing duty order on standard carnations from Canada (52 FR 7645; March 12, 1987). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On March 31, 1992, the Floral Trade Council, an interested party and the petitioner in the original investigation, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: August 19, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-20352 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administrations

[C-533-807]

Alignment of the Final Countervailing Duty Determination With the Final Antidumping Duty Determination: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Madg Zalok, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 15th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3530 or 377-4162, respectively.

ALIGNMENT OF ANTIDUMPING AND COUNTERVAILING DUTY CASES: On August 11, 1992, we published a preliminary affirmative countervailing duty determination pertaining to sulfanilic acid from India (57 FR 35784). The notice stated that we would make our final countervailing duty determination by October 15, 1992.

On August 5, 1992, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the "Act"), we received a request from petitioner to extend the due date for the final countervailing duty determination to coincide with the date of the final determination in the antidumping duty investigation of sulfanilic acid from India. Accordingly, we are extending the final determination in this countervailing duty investigation to not later than December 29, 1992.

In accordance with section 705 of the Act, and 19 CFR 355.20(c)(ii), the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty proceeding as of December 9, 1992. No cash deposits of bonds for potential countervailing duties will be required for merchandise which enters the United States on or after December 9, 1992. This suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order. We will also direct the U.S. Customs Service to maintain the suspension of any entries suspended between August 11, 1992 and December

8, 1992, until the conclusion of this investigation.

The U.S. International Trade Commission is being advised of this postponement. This notice is published pursuant to section 705(d) of the Act.

Dated: August 18, 1992.

Francis J. Sailer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 92-20227 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations.

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

ACTION: Notice of removal of Pelly certifications.

SUMMARY: The Marine Mammal Protection Act (MMPA) requires that 6 months after the importation of yellowfin tuna has been banned from a nation, certification of the importation prohibition be made to the President. Certification under this provision is considered a certification for the purposes of section 8(a) of the Fishermen's Protective Act (the Pelly Amendment). The Pelly Amendment requires periodic review of the activities of the nation subject to the importation prohibition to determine if the reasons for which the certification was made no longer prevail. NMFS has lifted the yellowfin tuna embargoes that were in place against Vanuatu and Panama and, therefore, has removed the Pelly certifications that resulted from those embargoes.

EFFECTIVE DATE: The termination of these Pelly Certifications was effective August 4, 1992.

ADDRESSES: Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (telephone 301-713-2055 or FTS 933-2055).

SUPPLEMENTARY INFORMATION: On March 26, 1991, the United States imposed a court-ordered prohibition on the importation of yellowfin tuna and products derived from yellowfin tuna harvested by Vanuatuan purse seine vessels in the eastern tropical Pacific Ocean (ETP). The court order also revoked the 1989 affirmative finding that allowed Vanuatu to export ETP purse seine-harvested yellowfin tuna to the United States through December 31, 1991. Vanuata submitted data for a 1990 marine mammal finding. However, NMFS found that Vanuatu had a rate of dolphin mortality greater than 1.25 times that of the United States for the same period, and the primary embargo remained in place.

On November 15, 1991, the Secretary of Commerce certified to the President that the primary embargo on yellowfin tuna harvested in the ETP by purse seine vessels of Vanuatu had been in effect for 6 months. As required by the Marine Mammal Protection Act (MMPA), this certification is considered a certification for purposes of section 8(a) of the Fishermen's Protective Act of 1967 (the Pelly Amendment, 22 U.S.C. 1978). The Pelly Amendment authorizes, at the discretion of the President, a restriction on imports of fish and fish products from certified nations to the extent such restrictions are consistent with the General Agreement on Tariffs and Trade. No sanctions were recommended or imposed as a result of the certification of Vanuatu.

On January 23, 1992, NMFS published a notice in the **Federal Register** (57 FR 2710) announcing an affirmative finding for Vanuatu and authorizing the importation of Vanuatuan purse seine-harvested ETP yellowfin tuna through December 31, 1992.

On May 24, 1992, a secondary embargo went into effect against Panama as a nation intermediary to Mexico. Mexico had been placed under a primary embargo by court order on February 22, 1991. The importation of yellowfin tuna harvested in the ETP by Mexican purse seine vessels was, therefore, prohibited from Panama. On November 25, 1991, the Secretary of Commerce certified to the President that that secondary embargo on Mexican yellowfin tuna exported from Panama had been in effect for 6 months.

On January 31, 1992, an expanded secondary embargo went into effect, and importation of all yellowfin tuna was prohibited from intermediary nations unless the intermediary nation prohibited the importation of the same yellowfin tuna banned from direct export to the United States. On March 25, 1992, Panama issued a resolution banning the importation of yellowfin tuna prohibited from direct export to the United States. On April 24, 1992, the United States lifted the secondary embargo on yellowfin tuna from Panama.

NMFS therefore announces that the Pelly Certifications imposed on Vanuatu and Panama as a result of yellowfin tuna embargoes were removed on August 4, 1992, as a result of the lifting of those embargoes.

Dated: August 14, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 92-20233 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board; Meeting

AGENCY: National Technical Information Service, Technology Administration, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app 2, notice is hereby given that the National Technical Information Service Advisory Board will meet Thursday, August 27, 1992, from 9 a.m. to 4:30 p.m. and on Friday, August 28, 1992, from 9 a.m. to 4 p.m. The NTIS Advisory Board is composed of five members appointed by The Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of this meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include presentations on NTIS modernization, progress of the NTIS reorganization, targeted acquisition efforts, the impact of the American Technology Preeminence Act of 1991 on NTIS, the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET), and market research efforts. The discussion on the NTIS Business Plan scheduled to begin at 1:30 p.m. and ending at 4:30 p.m. on August 13, 1992, will be closed as it is likely to disclose confidential agency financial and planning information.

The NTIS Advisory Board was established by statute (Pub. L. 100-519) on October 24, 1988, and received its charter on September 15, 1989.

DATES: The meeting will convene August 27, 1992, at 9 a.m. and will adjourn at 4 p.m. on Friday, August 28, 1992. A closed session is scheduled on August 13, 1992, beginning at 1:30 p.m. and adjourning at 4:30 p.m.

ADDRESSES: The meeting will be held in room 1412, Department of Commerce, Herbert C. Hoover Building, 14th Street

and Constitution Avenue, NW., Washington, DC 20230.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Approximately thirty minutes each day will be set aside for oral comments or questions as indicated in the agenda. Seats will be available for the public and for the media. Seats will be available on a first come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time before and after the meeting. Copies of the minutes of the meeting will be available within thirty days from the address given below.

FOR FURTHER INFORMATION CONTACT: Dorothy A. Aukofer, NTIS Advisory Board Executive Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: 703-487-4778; by fax 703-487-4009.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 12, 1992, that the portion of the meeting of the NTIS Advisory Board that involves discussion of the NTIS Business Plan may be closed in accordance with section 552(c)(9)(B) of title 5, United States Code, since the meeting is likely to disclose confidential agency financial and planning information.

Dated: August 12, 1992.

Ronald Lawson,

Acting Director for Financial Management.

[FR Doc. 92-20198 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0028]

OMB Clearance Request for Termination Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0028.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Termination Requirements.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Contracting officers terminate contracts, for default or convenience, only when it is in the best interest of the Government to do so. After receipt of the notice of termination, contractors are required to terminate subcontracts, advise the contracting officer of any special circumstances, submit any requests for an equitable adjustment, submit a settlement proposal, and take other action as directed. Records regarding the terminated contract must be maintained for 3 years.

The information submitted or retained in connection with contract termination is used to reach an equitable settlement with firms and to protect the interests of the Government and the terminated contractor.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *2,920;* responses per respondent, *1;* total annual responses, *2,920;* preparation hours per response, *3;* total response burden hours, *8,760;* and total recordkeeping hours, *2,920.*

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0028, Termination Requirements, in all correspondence.

Dated: August 11, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-20276 Filed 8-24-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Strategic Defense Initiative Advisory Committee

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the Strategic Defense Initiative Advisory Committee has been renewed, effective August 17, 1992.

The Strategic Defense Initiative Advisory Committee provides expert advice to the Secretary of Defense and the Director, Strategic Defense Initiative (SDI) Organization on all matters pertaining to SDI research and technology. The Advisory Committee: evaluates reviews of technical plans relating to SDI programs; provides recommendations concerning the emphasis, schedule and content of the programs; and, examines and evaluates technologies associated with concepts for defense against ballistic missiles.

The Strategic Defense Initiative Advisory Committee will continue to be composed of approximately 12 to 14 members who are acclaimed leaders and experts in technical areas relating to the SDI program. The members will be a well-balanced composite of individuals drawn from universities, national laboratories, industry, and other segments of the public sector, to ensure that affected interest groups will be represented and that assigned functions will be performed.

For additional information regarding the Strategic Defense Initiative Advisory Committee, please contact Ms. Gail Gallant, telephone: 703-693-1532.

Dated: August 20, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-20290 Filed 8-24-92; 8:45 am]

BILLING CODE 3810-01-M

Nuclear Failsafe and Risk Reduction Advisory Committee; Meeting

AGENCY: Nuclear Failsafe and Risk Reduction Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Nuclear Failsafe and Risk Reduction Review Advisory Committee. The purpose of the meeting is to discuss and approve the Committee's Final Report to the Secretary of Defense on its

comprehensive and independent review of U.S. positive measures for the prevention of unauthorized or inadvertent use of nuclear weapons with recommendations for enhancement of fail-safe policies, procedures and mechanisms and opportunities to reduce the risk of the outbreak of nuclear war. This meeting will be closed to the public.

DATES: September 18, 1992, 1000–1100.

ADDRESSES: Pentagon, Crisis Coordination Center, room 3C912.

FOR FURTHER INFORMATION CONTACT: Colonel Bill Jones, U.S.Army, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline #3, 5201 Leesburg Pike, suite 500, Falls Church, Virginia 22041, (703) 756–8680.

Dated: August 20, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–20287 Filed 8–24–92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Ad Hoc Committee on Hyperbaric Medicine will meet on September 14–15, 1992, at the ANSER Corporation, Arlington, Virginia, from 8 a.m. to 5 p.m.

The purpose of this meeting is to gather information for the HBO study Final Report.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–20234 Filed 8–24–92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.086]

Program for Children With Severe Disabilities; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purpose of this program is to provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for children with severe disabilities, including deaf-blindness.

These priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by assisting those with disabilities through improved services and better trained service providers.

Eligible Applicants: Any public or private, profit or nonprofit, organization or institution may apply for a grant under this program.

Note: The Department is not bound by any estimates in this notice.

Applications Available: September 15, 1992.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 315.

PROGRAM FOR CHILDREN WITH SEVERE DISABILITIES

Title and CFDA number	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Outreach—Serving Students with Severe Disabilities in Integrated Environments (CFDA 84.086U).	1-29-93	3-30-93	$405,000	$125,000-140,000	$135,000	3	Up to 36.
Developing Innovations for Educating Children With Severe Disabilities Full-time in General Education Classrooms (CFDA 84.086D).	12-04-92	2-2-93	525,000	170,000-180,000	175,000	3	Up to 36.
Model Inservice Training Projects (CFDA 84.086R).	12-11-92	2-9-93	495,000	155,000-170,000	165,000	3	Up to 36.
Statewide Systems Change (CFDA 84.086J)	12-11-92	2-9-93	750,000	210,000-260,000	250,000	3	Up to 60.

Applications submitted under 84.086D will be evaluated under the selection criteria for "Research projects".

Applications submitted under 84.086U, 84.086R and 84.086J will be evaluated under the selection criteria for "Demonstration, Training, and Dissemination Projects".

Note: The Department is not bound by any estimates in this notice.

Priorities: The final priorities for this program were published in the **Federal Register** on April 8, 1992 at 57 FR 12080.

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2466. Telephone: (202) 205–9503. Deaf and hearing impaired individuals may call (202) 205–6170 for TDD services.

Program Authority: 20 U.S.C. 1424.

Dated: August 19, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–20259 Filed 8–24–92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.025C]

Services for Children With Deaf-Blindness; & Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purpose of this program is to assist States in assuring the provision of early intervention, special education, and

related services to infants, toddlers, children, and youth with deaf-blindness; to provide technical assistance to agencies that are preparing adolescents with deaf-blindness for adult placement; and to support research, development, replication, preservice and inservice training, parental involvement activities, and other activities to improve services to children with deaf-blindness.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Educational Goals, by assisting those with disabilities through improved services and better trained service providers.

Eligible Applicants: Public or nonprofit private agencies, institutions, or organizations, including an Indian tribe and the Bureau of Indian Affairs of the Department of Interior (if acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of Interior are eligible to apply for an award.

Note: The Department is not bound by any estimates in this notice.

Deadline for Transmittal of Applications: February 8, 1993.

Deadline for Intergovernmental Review: April 9, 1993.

Applications Available: September 15, 1992.

Available Funds: $950,000.

Estimated Number of Awards: 1.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 307.

Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 307.12 the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority: *Technical Assistance to State and Multi-State Projects.*

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202-2644. Telephone: (202) 205-9503. Deaf and hearing impaired individuals may call (202) 205-6170 for TDD services.

Program Authority: 20 U.S.C. 1422.

Dated: August 19, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-20260 Filed 8-24-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.078C]

Postsecondary Programs for Individuals With Disabilities; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purpose of this program is to develop, operate, and disseminate specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

This priority supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by assisting those with disabilities through improved career placement services. Specifically, National Education Goal 5 calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies are eligible to apply for an award.

Note: The Department is not bound by any estimates in this notice.

Deadline for Transmittal of Applications: May 3, 1993.

Deadline for Intergovernmental Review: July 2, 1993.

Applications Available: September 15, 1992.

Available Funds: $1,800,000.

Estimated Range of Awards: $90,000-110,000.

Estimated Size of Awards: $100,000.

Estimated Number of Awards: 18.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 338.

Priority: The final priority for this program was published in the **Federal Register** on April 8, 1992 at 57 FR 12080.

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202-2644. Telephone: (202) 205-9503. Deaf and hearing impaired individuals may call (202) 205-6170 for TDD services.

Program Authority: 20 U.S.C. 1424a.

Dated: August 19, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-20259 Filed 8-24-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.158]

Secondary Education and Transitional Services for Youth With Disabilities Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purpose of this program is to assist youth with disabilities in the transition from secondary school to postsecondary environments, such as competitive or supported employment, and to ensure that secondary special education and transitional services result in competitive or supported employment for youth with disabilities.

The priorities in this notice support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, National Education Goal five calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Institutions of higher education, State educational agencies, local educational agencies, and other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*)).

SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR YOUTH WITH DISABILITIES PROGRAM

Title and CFDA number	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Model Demonstration Projects to Identify, Recruit, Train, and Place Youth with Disabilities Who Have Dropped Out of School (CFDA 84.158D).	4-9-93	6-08-93	$630,000	$100,000-110,000	$105,000	6	Up to 36.
Model Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination (CFDA 84.158K).	1-22-93	3-23-93	470,000	110,000-120,000	115,000	4	Up to 36.
Research Projects on the Transition of Special Populations to Integrated Post Secondary Environments (CFDA 84.158P).	12-11-92	2-9-93	550,000	100,000-120,000	110,000	5	Up to 36.

Note: The Department is not bound by any estimates in this notice.

Applications Available: September 15, 1992.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 326.

Priorities: The final priorities for this program were published in the **Federal Register** on April 8, 1992 at 57 FR 12080.

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202-2466. Telephone: (202) 205-9503. Deaf and hearing impaired individuals may call (202) 205-6170 for TDD services.

Program Authority: 20 U.S.C. 1425.

Dated: August 19, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education, and Rehabilitative Services.

[FR Doc. 92-20261 Filed 8-24-92; 8:45 am]

BILLING CODE 4000-01-M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: September 9, 1992, 9 a.m. until 5 p.m. Place: Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Hazel Mingo, Acting Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., room 3682, ROB-3, Washington, DC 20202 Telephone # (202) 708-8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12677, signed April 28, 1989. The Board is established to provide advice and make recommendations on developing an annual plan to increase the participation by historically black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

The full Board will convene during National Historically Black Colleges Week to address its mandate of providing advice to the President regarding historically black colleges and universities. The President's Board of Advisors will discuss recommendations to be made to the President on the varied issues raised in the recent *United States* v. *Fordice* Supreme Court case. These issues include funding, admission standards, and academic mission for historically black colleges and universities. The agenda will include time for interested parties to comment on issues discussed during the Board meeting.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, ROB-3, room 3682, Washington, DC, from the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

Dated: August 20, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-20366 Filed 8-24-92; 8:45]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposal To Establish Transmission Rate for AC Intertie Non-Federal Capacity Ownership Upon Commercial Operation of the Third AC Intertie and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of and opportunity for review and comment. BPA File No: 3ACP-92. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation 3ACP-92.

SUMMARY: In June of 1987, BPA undertook a public process to describe and evaluate options for non-Federal participation in the northern portion of the Third AC (alternating current) Intertie. The Third AC Intertie will add approximately 1600 megawatts (MW) of transfer capability to the Pacific Northwest-Pacific Southwest (PNW-PSW) Intertie. BPA released its "Proposal for Non-Federal Participation

in the Northern Portion of the Third AC Intertie" (1988 Proposal) in December 1988. Under the 1988 Proposal, BPA reserved its share of the first 800 MW increase for its own use. BPA proposed to offer its share of the second 800 MW increase (725 MW) for use by PNW non-Federal scheduling utilities through the year 2016. BPA would retain physical ownership of facilities and decisionmaking authority over the operation, maintenance, planning, and construction of facilities.

In 1989, BPA modified the portion of its 1988 Proposal related to the pricing methodology. That 1989 Proposal was further modified in early 1990 when it became clear that utilities interested in non-Federal participation were concerned about having only a limited term for use of BPA's share of increased PNW–PSW AC Intertie capacity. There was significant interest by those utilities in life-of-facilities contract rights to a share of expanded PNW–PSW AC Intertie capacity. Therefore, BPA reconsidered its 1989 Proposal, modified the 1989 Proposal to its current Proposal (referred to as the 1990 Proposal throughout the remainder of this **Federal Register** Notice), and is currently preparing an environmental impact statement (EIS) to determine whether to offer non-Federal utilities life-of-facilities ownership of a portion of BPA's PNW–PSW AC Intertie capacity (referred to as capacity ownership throughout the remainder of this **Federal Register** Notice).

In order to proceed with its review and analysis of the 1990 Proposal and to assist in reaching a final decision whether capacity ownership will be offered, BPA is beginning a proceeding to develop a transmission rate for capacity ownership. The rate will be a formula (referred to as pricing methodology throughout the remainder of this **Federal Register** Notice) which is based on the costs of existing facilities which will be dedicated to the PNW–PSW AC Intertie upon commercial operation of the Third AC Intertie and newly constructed facilities required to increase the PNW–PSW AC Intertie rated transfer capability from 4000 MW to 4800 MW, and which will be used to determine the lump sum payment participants would make to BPA. In return for this payment, New Owners (the term used by BPA to describe utilities who execute capacity ownership agreements with BPA) would receive a life-of-facilities capacity ownership interest in 21 percent of BPA's share of the total PNW–PSW AC Intertie system. BPA's share of total PNW–PSW AC Intertie system after commercial operation of the Third AC Intertie will be 3450 MW through 2016. BPA's share of the PNW–PSW AC Intertie system beyond that date depends upon the outcome of negotiations with PacifiCorp Electric Operations (PacifiCorp), formerly Pacific Power & Light Company, one of the three current PNW owners of PNW–PSW AC Intertie. In any event, after 2016, New Owners would continue with a capacity ownership interest in 21 percent of BPA's share of the total PNW–PSW AC Intertie system. BPA will seek Federal Energy Regulatory Commission (FERC) approval of the pricing methodology.

BPA is currently preparing an EIS on non-Federal participation (NFP) in the PNW–PSW AC Intertie after commercial operation of the Third AC Intertie. Capacity ownership is BPA's preferred alternative in the NFP EIS. Thus, BPA is initiating this rate proceeding in parallel with preparation of the NFP EIS. BPA will rely on that EIS to support the Administrator's decision whether to offer capacity ownership. If, after completion of the NFP EIS, BPA decides to offer capacity ownership, BPA will file the record of the Administrator's decision on the proposed methodology with FERC. BPA would then execute capacity ownership contracts with a number of PNW utilities.

Responsible Official

Mr. Sydney D. Berwager, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's wholesale power and transmission rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated later in this notice. Petitions to intervene must be received by BPA no later than 5 p.m. on September 9, 1992, and should be addressed as follows: Honorable Dean F. Ratzman, Hearing Officer, c/o Kathryn Silva-APR, Hearing Clerk, Bonneville Power Administration, 905 NE. 11th Avenue, P.O. Box 3621, Portland, Oregon 97208. In addition, a copy of the petition to intervene must be served on BPA's Office of General Counsel-APR, P.O. Box 3621, Portland, Oregon 97208.

BPA will prefile the testimony of its witnesses on September 16, 1992. Copies of the testimony will be available in BPA's Public Information Center and will be mailed to all parties to the 1991 general rate proceeding and to others requesting it.

A prehearing conference will be held before the Hearing Officer at 9 a.m. on September 16, 1992, in the Forum Building, suite 190, 525 NE. Oregon, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. This proceeding will be conducted under BPA's rule for general rate proceedings. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional rules of procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and for expediting any necessary cross-examination. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

The following schedule is proposed for this proceeding. A final schedule will be established by the Hearing Officer at the prehearing conference. A notice of the final schedule will be mailed to all parties of record.

September 9, 1992—Deadline for interventions to be filed.

September 16, 1992
- Prehearing Conference to set schedule and act on petitions to intervene.
- BPA Direct Case filed. Available at BPA's Public Information Center, 905 NE. 11th, 1st Floor, Portland, Oregon.

September 22, 1992—BPA Witness Clarification.

October 8, 1992—Parties' Direct Case filed.

October 14, 1992—Parties' Witness Clarification.

October 23, 1992—Participant comments due.

October 30, 1992—BPA and Parties' Rebuttal filed.

December 8–10, 1992—Cross Examination.

January 6, 1993—Initial Briefs.

February 16, 1993—Draft Record of Decision (estimated date).

August 31, 1993—Final Record of Decision (estimated date).

ADDRESSES: Written comments on the proposed pricing methodology should be submitted to the Public Involvement Manager-ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Price, Public Involvement office, at the address listed above, 503–230–3478, or call 800–622–4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, room 307, 301 Yakima Street, Wenatchee, Washington 98807, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Anne Avenue, Seattle, Washington, 98109–1030, 206–553–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.

Ms. Ruth B. Bennett, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. James R. Normandeau, Boise District Manager, room 450, 304 N. Eighth Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Relevant Statutory Provisions
III. Procedures Governing Rate Adjustments and Public Participation
IV. Capacity Ownership Pricing Methodology
V. Major Issues
VI. Proposed Capacity Ownership Rate Schedule

I. Background

The present transmission capability of the PNW–PSW Intertie transmission lines is about 6300 MW, 3200 MW on two AC transmission lines and 3100 MW on a direct current (DC) transmission line. BPA owns 100 percent of the DC transmission line and shares ownership of the AC transmission lines with PacifiCorp and Portland General Electric Company (PGE). BPA owns 2100 MW of the AC transmission lines. (BPA , PacifiCorp, and PGE are referred throughout the remainder of this **Federal Register** Notice as the current owners.) The current owners are increasing the capacity of the northern portion of the PNW–PSW AC Intertie to 4800 MW by modifying existing facilities and constructing new facilities. Commercial operation is expected by November 1993.

BPA, PGE, and PacifiCorp will share the costs of increasing the capability of the PNW–PSW AC Intertie in the PNW by 1600 MW as set forth in the respective BPA–PGE and BPA-PacifiCorp Intertie Agreements.

A consortium of California parties in planning and constructing the southern portion of the Third AC Intertie Project (referred to as the California-Oregon transmission Project (COTP) in California). The COTP plans to add 1600 MW of transmission capability to the PNW–PSW AC Intertie system in California, increasing transmission capability to 4800 MW, the same capability planned for the northern portion.

BPA's portion of costs for the Third AC Intertie was authorized by Congress in July 1984. On June 22, 1987, BPA received a letter from the Chairman of the U.S. House of Representatives Committee on Energy and Commerce requesting information regarding non-Federal utility participation in the Third AC Intertie. BPA was asked to provide a study on non-Federal participation.

BPA released its "Final Study of Non-Federal Participation in the Northern Portion of the Third AC Intertie" (Study) in March 1988. The Study describes the options for non-Federal participation and examines their consequences in light of various criteria. The Study makes no recommendation whether to offer non-Federal participation or what type of non-Federal participation might be offered.

In December 1988, BPA released its 1988 proposal wherein BPA reserved its share of the first 800 MW increase of PNW–PSW AC Intertie capacity for its own use. BPA proposed to offer its share of the second 800 MW increase (725 MW) for use by PNW non-Federal scheduling utilities. Under the 1988 Proposal, BPA would retain physical ownership of facilities and decisionmaking authority over the operation, maintenance, planning, and construction of facilities. BPA would offer contracts to PNW scheduling utilities for scheduling rights on the PNW–PSW AC Intertie only through the year 2016. The 1988 Proposal contemplated that non-Federal participants would make a lump sum payment upon execution of participation contracts for construction and related costs, rather than through annual payments over the term of the participation contracts.

The pricing methodology included in the 1988 Proposal was based on BPA's cost of the second 800 MW of the Third AC Intertie Project (see section IV, ¶A, *infra*) plus the depreciated replacement cost of existing facilities (separately owned by BPA or PacifiCorp) required for operation of the Third AC Intertie. The costs included land, BPA's normal allocation of corporate overhead, interest during construction (IDC) on new facilities, and indirect expenses. The pricing methodology included an adjustment to be made, using depreciated replacement cost for both existing facilities and the Third AC Intertie Project, to account for the fact that non-Federal participants' scheduling rights would extend only through 2016 rather than for the life of the facilities.

After further consideration of the pricing methodology in the 1988 Proposal, BPA made two modifications in its 1989 Proposal. First, instead of using depreciated replacement cost as the basis for pricing, BPA proposed to use book value for pricing existing facilities. Book value represents capitalized investment cost less accumulated depreciation. Second, the 1988 Proposal included IDC as a component of the pricing methodology. The 1989 Proposal replaced IDC with Allowance for Funds Used During Construction (AFUDC) to estimate the interest on funds used during the construction period.

In early 1990, interested utilities objected to the limited term proposed for scheduling rights on BPA's share of PNW–PSW AC Intertie capacity. Instead, they expressed significant interest in life-of-facilities scheduling rights. As a result of further review and analysis, BPA revised its 1988 and 1989 Proposals. The 1990 Proposal now provides for life-of-facilities non-Federal ownership of a portion of BPS's PNW–PSW AC Intertie capacity and is referred to as capacity ownership.

During September through November 1991, BPA executed Memoranda of Understanding (MOU) with 11 PNW utilities and customer groups interested in capacity ownership. The MOUs outline the parameters of life-of-facilities capacity ownership; describe BPA's process related to environmental analysis; and set forth the understanding and intentions regarding potential contract development activities, rate case proceedings, and each utility's interest in capacity ownership. It is with some or all of those utilities that BPA expects to execute capacity ownership contracts. In those MOUs, utilities agreed to BPA's proposed price, payment, and other provisions related to capacity ownership, which are described in an exhibit to the MOU. Capacity ownership contracts would be executed in late 1993, prior to commercial operation of the Third AC

Intertie. New Owners would make a lump sum payment on or about the date when capacity ownership contracts are executed. After commercial operation of the Third AC Intertie, an adjustment to the lump sum payment would be made to reflect actual costs of construction, commercial operation date, and the appropriate discount for early payment.

The 1990 Proposal contains two revisions to the cost basis for the proposed pricing methodology contained in the 1989 Proposal. First, the adjustment to account for scheduling rights extending only through 2016 has been removed since scheduling rights are now proposed for the life of the facilities. Second, costs of existing facilities owned by PacifiCorp are no longer included in the proposed pricing methodology.

The 1990 Proposed provides that New Owners would make a lump sum payment upon execution of capacity ownership contracts. There will be an adjustment to that payment—to account for actual costs and commercial operation date as well as the discount for payment prior to commercial operation—approximately 2 years after commercial operation of the Third AC Intertie when all actual costs will have been accounted for.

BPA's proposed pricing methodology does not include costs associated with operation and maintenance, general plant, or replacements and renewals. Those costs would be paid annually by New Owners. Payment provisions and the formula for calculating the annual payments would be included in the capacity ownership contracts and are not part of the pricing methodology for which BPA is seeking FERC approval at this time. Annual costs will be addressed by BPA in its 1993 General Rate Case.

The testimony supporting BPA's proposed pricing methodology for capacity ownership will be available on September 16, 1992, at BPA's Public Information Center, BPA Headquarters Building, first floor, 905 NE. 11th, Portland, Oregon, and at BPA's Prehearing Conference to be held on the same day. The testimony may also be requested by phone or in writing from BPA's Public Involvement office.

To request the testimony by telephone, call BPA's document request line at 800-622-4520. Portland, Oregon, callers should call 230-3478.

II. Relevant Statutory Provisions

Section 7 of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the transmission of non-Federal power. In particular, section 7(a)(1), 16 U.S.C. 839e(a)(1), provides that:

> [S]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838), section 5 of the Flood Control Act of 1944, and the provisions of this Act.

Rates established by BPA are effective when approved by FERC. 16 U.S.C. 839e(i)(6).

III. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that rates be established according to certain procedures. These procedures include, among other things, issuance of a notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's Procedures Governing Bonneville Power Administration Rate Hearings (Procedures), 51 FR 7611 (1986), which implements the statutory requirements.

The hearings will be conducted according to the rule for general rate proceedings, section 1010.9 of BPA's Procedures. BPA Procedures provide for publication of a notice of the proposed rates, a prehearing conference, the opportunity for hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to FERC.

BPA's Procedures distinguish between participants in (Participants) and parties to (Parties) the hearings. BPA will receive comments, views, opinions, and information from Participants on the proposed pricing methodology. Participants are defined in section 1010.2 of the Precedures as persons who may submit comments without being subject to the duties of and having the privileges of Parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator in his final decision. Participants are not entitled to participate in the prehearing conference (except to the extent that their petitions for Party status may be ruled on); may not cross examine Parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as Parties.

Written comments by Participants will be included in the record if they are submitted to BPA on or before October 23, 1992. Participants' written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement office.

The second category of interest is that of a Party. Section 1010.2 of BPA's Procedures define Party to mean any person who has been granted the right to intervene in the proceeding. Parties may participate in any aspect of the hearing process.

Persons wishing to become a Party to BPA's rate proceeding must notify BPA in writing of their request. Petitions to intervene shall state the name and address of the person requesting Party status and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on petitions filed in conformity with BPA's Procedures. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Petitions to intervene must be filed by 5 p.m. on September 9, 1992. Any opposition to a petition to intervene must be filed and served at least 24 hours before the September 16, 1992, prehearing conference. All timely petitions will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed and served within 2 days after service of the petition. Intervention petitions will be available for inspection in BPA's Public Information Center, first floor, 905 NE. 11th, Portland, Oregon.

The record will include, among other things, the transcripts of any hearings, written material submitted by the Participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will make a decision on the final pricing methodology based on the entire record. The basis for the final pricing methodology will be expressed in the Administrator's Record of Decision (ROD). The Administrator will serve copies of the ROD on all Parties and will file the final pricing methodology, together will the record, with FERC for confirmation and approval.

IV. Capacity Ownership Pricing Methodology

The proposed pricing methodology is based on BPA's costs of new Third AC Intertie facilities and reinforcement to existing facilities needed to increase the PNW-PSW AC Intertie rated transfer capability from 4000 MW to 4800 MW, the book value of existing facilities which will be dedicated to the PNW-PSW AC Intertie upon commercial operation of the Third AC Intertie, and AFUDC associated with the new facilities.

BPA refers to the assignment of facilities and their costs as being required for either the first or second 800 MW increment. Those facilities associated with the first 800 MW increment are required to increase the PNW-PSW AC Intertie rated transfer capability from 3200 MW to 4000 MW. Those facilities associated with the second 800 MW increment are required to increase the PNW-PSW AC Intertie rated transfer capability from 4000 MW to 4800 MW.

In order to determine which costs are appropriately assigned to the first and second 800 MW of the Third AC Intertie Project, studies were performed to determine which facilities are needed for the PNW-PSW AC Intertie to operate reliably at 4000 MW. Costs were assigned to the first 800 MW on the basis of which facilities were needed for reliable operation at a rated transfer capability of 4000 MW from the PNW to the PSW. The remainder of the costs were assigned to the second 800 MW.

Following is a more detailed discussion of the components of the pricing methodology.

A. New Facilities

The new facilities associated with the Third AC Intertie Project are made up of two separate items: (1) Third AC Intertie System Reinforcement (Reinforcement) (which includes modifications to the existing PNW-PSW AC Intertie plus a new substation (Captain Jack) and related facilities) and (2) the Alvey-Meridian Transmission Line and related facilities. Costs associated with the Reinforcement are assigned to both the first and second 800 MW increments of the Third AC Intertie. These reinforcements are being made to the existing PNW-PSW AC Intertie and to existing main grid facilities that will become part of the PNW-PSW AC Intertie system upon commercial operation of the Third AC Intertie. A portion of the Reinforcement costs are assigned to the second 800 MW.

All of BPA's costs associated with the new Alvey-Meridian Transmission Line are assigned to the second 800 MW. Alvey-Meridian will be jointly-owned by BPA and PacifiCorp: BPA's portion of the line will be used for PNW-PSW AC Intertie purposes, while PacifiCorp's portion will be used to serve its obligations in southern Oregon and northern California.

B. Existing Support Facilities

A portion of two existing transmission lines and associated substations (new dedicated to serve BPA loads and wheeling obligations in the Willamette Valley) will become part of the PNW–PSW AC Intertie upon commercial operation of the Third AC Intertie Project. A portion of the book value of these facilities is included in BPA's pricing methodology for capacity ownership.

C. Allowance for Funds Used During Construction

The costs used in the proposed pricing methodology include an estimate for AFUDC.

D. Application of Proposed Pricing Methodology

For purposes of demonstrating application of the proposed pricing methodology below, BPA assumes that the New Owners' payments would be made upon commercial operation of the Third AC Intertie Project (currently estimated to be November 1993). In actuality, however, the New Owners' payments would be made to BPA when capacity ownership contracts are executed (currently to be late 1993). BPA would discount the payment to reflect receipt of the payment prior to commercial operation of the Third AC Intertie Project.

After commercial operation of the Third AC Intertie, an adjustment to the lump sum payment will be made to reflect actual costs of construction, commercial operation date, and the appropriate discount.

Using June 1989 program planning estimates of the cost of the Third AC Intertie Project, the estimated price for participation is $215/kW (in 1993 dollars). This estimate is provided to show how the pricing methodology will be applied. The estimate follows:

CAPACITY OWNERSHIP ESTIMATED PRICE [1] (1993 DOLLARS)

Cost item	Cost (millions of dollars)	Price per kW [2]
New Facilities	$157	
New Facilities needed for first 800 MW of 1600 MW	−39	
Cost of Second 800 MW	118	
AFUDC on Second 800 MW	19	
Existing Support Facilities	+19	
Total	156	$215

[1] Based on mid-1989 program planning levels.
[2] The Price per kW is derived by dividing the Total Price by 725 MW.

V. Major Issues

A. Which Facilities Are Appropriately Included in Pricing Methodology

Planned additions to transmission facilities owned by BPA, PacifiCorp, and PGE will upgrade the PNW–PSW AC Intertie from 3200 MW to 4800 MW. Existing facilities can be upgraded to 4000 MW by making reinforcements at a relatively lower cost than the remainder of the upgrade because of previous investments made by the current owners. The second 800 MW requires additional reinforcements plus construction of the Alvey-Meridian transmission line and associated facilities. BPA's proposed pricing methodology for capacity ownership is based on its portion of the costs associated with the second 800 MW of the 1600 MW Third AC Intertie Project.

In addition to the cost of new facilities specifically required for the second 800 MW of the Third AC Intertie (*see* § IV, ¶ A, *supra)*, BPA's proposed pricing methodology includes the book value of portions of existing BPA transmission and substation facilities which will become part of the AC Intertie upon commercial operation of the Third AC Intertie Project (see section IV, ¶ B, *supra*).

The existing facilities that would be assigned to the PNW–PSW AC Intertie include one-half of one circuit of a double circuit 500 kV transmission line from Buckley to Marion, one-half of a single circuit 500 kV transmission line from Marion to Alvey, and one-half of the associated terminals at the Buckley and Marion substations. These facilities are currently considered part of BPA's main grid transmission system. The book value of these facilities is included in BPA's pricing methodology.

B. Cost Basis for Proposed Pricing Methodology

BPA proposes to price existing support facilities which will become part of the PNW–PSW AC Intertie upon commercial operation of the Third AC Intertie Project using the book value of those facilities.

VI. Proposed Capacity Ownership Rate Schedule

Section I. Availability

This schedule shall apply to all agreements which provide for non-Federal capacity ownership in BPA's share of the total PNW–PSW AC Intertie System. Capacity ownership to be offered by BPA totals 725 MW and equals approximately 21 percent of BPA's share of the total PNW–PSW AC Intertie system planned for November 1993.

Section II. Rate

The charge for non-Federal capacity ownership shall be the New Owners' payment to BPA as determined by the pricing methodology set out in Section III.

Section III. Determination of Rate

A. Lump Sum Payment

The New Owner's payment to BPA for capital and related costs shall be a share of the actual cost of facilities as determined by the formula shown below.

$$\frac{A-B+C+D}{E} = \text{Capacity Ownership Price in \$/kW}$$

Capacity Ownership Price in $/kW x number of kW contracted for by New Owner=New Owners payment to BPA.

Where:

A=BPA's cost of new facilities for the Third AC Intertie, which will increase the transfer capability of the PNW-PSW AC Intertie by approximately 1600 MW, is the construction costs (including land, BPA's normal allocation of corporate overhead, and indirect expenses) of the facilities associated with the Third AC Intertie System Reinforcement and the Alvey-Meridian Transmission Line (referred to jointly as the Third AC Intertie Project), including the following: New Captain Jack substation and related facilities; a 500 kV single-circuit transmission line from the Captain Jack substation to the California-Oregon Border; other required PNW-PSW AC Intertie improvements; and 50 percent of the construction costs associated with PacifiCorp's Alvey-Meridian 500 kV single-circuit transmission line and related facilities.

B=BPA's cost of new facilities needed for the first 800 MW increment of the 1600 MW Third AC Intertie Project and includes a portion of the construction costs (including land, BPA's normal allocation of overhead, and indirect expenses) associated with the new Captain Jack substation and related facilities; a 500 kV single-circuit transmission line from Captain Jack substation to the California-Oregon border; and other required PNW-PSW AC Intertie improvements.

C=AFUDC constitutes interest on the funds used for the Third AC Intertie Project while it is under construction. AFUDC is calculated and capitalized consistent with FERC requirements. The AFUDC is that amount capitalized on the second 800 MW increment of the 1600 MW Third AC Intertie Project, or A-B.

D=Book value of existing BPA support facilities which will be dedicated to the PNW-PSW AC Intertie upon commercial operation of the Third AC Intertie. It includes the book value of one half of one circuit of BPA's Buckley-Marion double-circuit 500 kV transmission line; the book value of one half of a single circuit of BPA's Marion-Alvey transmission line; and one-half of the associated terminals at BPA's Buckley and Marion substations.

E=725 MW, which equals BPA's share of the second 800 MW of the Third AC Intertie.

B. Annual Costs

Costs associated with operation and maintenance (O&M), general plant, and replacements and renewals, will be paid by New Owners as determined in BPA's periodic rate proceedings and published in BPA's Transmission Rate Schedules.

C. Upgrades of Intertie Facilities

The charge for additional transfer capability resulting from upgrades of intertie facilities and made available to New Owners shall be 21 percent of the capital and annual costs associated with the upgrade. Annual costs will be determined in BPA's periodic rate proceedings and published in BPA's Transmission Rate Schedules.

Section IV. Adjustments and Special Provisions

A. Payment

New Owners will make an initial, estimated lump sum payment of $215/kW at the time capacity ownership agreements are executed. Such payments will be based on mid-1989 cost estimates (in 1993 dollars) and will be discounted to reflect payment prior to the date of commercial operation of the Third AC Intertie, computed using BPA's weighted average interest rate on bonds outstanding with the U.S. Treasury.

B. Adjustment to Reflect Actual Costs

After commercial operation of the Third AC Intertie, the New Owners' payment to BPA shall be determined based on actual costs. At such time, New Owners would either receive a refund, with interest, from BPA or make an additional payment, with interest, to BPA to reflect the difference between the estimated payment described in Section IV.A. and the New Owners' payment to BPA described in Section III.A.

Issued in Portland, Oregon, on August 14, 1992.

John S. Robertson,

Deputy Administrator.

[FR Doc. 92–20332 Filed 8–24–92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-763-000, et al.]

Southern California Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 14, 1992.

Take notice that the following filings have been made with the Commission:

1.

Take notice that on August 4, 1992, Southern California Edison Company (Edison) tendered for filing the following amendment, executed on July 15, 1992, by the respective parties:

Amendment No. 1 (Amendment) to the Edison-AEPCO Load Control Agreement Between Southern California Edison Company and Arizona Electric Power Cooperative, Inc.

Edison's Valley Substation has replaced Mira Loma Substation as the location at which Edison can remotely control breaker equipment and acquire data from AEPCO's Mountain Center Substation. The Amendment replaces the references to "Edison's Mira Loma Substation" with "Edison's Valley Substation" and removes provision for breaker control.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corp.

[Docket No. ER92-768-000]

Take notice that on August 10, 1992, Florida Power Corporation (Florida Power filed a supplement to the service agreement pursuant to which it provides transmission service to Seminole Electric Cooperative under its T-1

Transmission Tariff. The supplement provides for the provision of transmission service to an additional delivery point. The supplement does not affect the rates charged pursuant to the service agreement.

Florida Power states that a copy of the filing has been posted as required by the Commission's regulations, and a copy has been mailed to the customer affected by the filing and to the Florida Public Service Corporation. Florida Power requests that the supplement become effective on October 9, 1992, which is 60 days after the supplement was tendered for filing.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Co.

[Docket No. ER92-769-000]

Take notice that on August 5, 1992, Carolina Power & Light Company tendered for filing with the Commission a contract amendment to a Rate Schedule contained in CP&L's Interconnection Agreement with Yadkin, Inc. dated June 1, 1961, as amended (CP&L Rate Schedule FERC No. 46). This contract amendment has been filed for the purpose of complying with FERC Order No. 84 issued on May 7, 1987, in Docket No. RM79-29.

A copy of this filing has been sent to the affected utility, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Co.

[Docket No. ER92-771-000]

Take notice that on August 10, 1992, Interstate Power Company tendered for filing a Firm Power Interchange Service Agreement between Interstate Power Company and Minnesota Power and Light Company. Under this Agreement, Interstate Power Company will sell 20 MW of firm power in accordance with Service Schedule J of the Mid-Continent Area Power Pool Agreement. This Agreement provides for firm power sales during the MAPP summer season only commencing May 1, 1992 and ending October 31, 1992. The parties request a waiver of the Commission's 60 day filing period for this Agreement and an effective date of May 1, 1992 for such Agreement.

Comment date: August 28, 1992, in accordance with Standard Paragraph E end of this notice.

5. West Texas Utilities Co.

[Docket No. ER92-772-000]

Take notice that on August 10, 1992, West Texas Utilities Company (WTU) tendered for filing agreements between WTU and the Cities of Brady and Coleman, Texas, respectively. The Agreements provide for curtailable supplemental energy sales to the Cities, which are currently partial requirements customers of WTU.

WTU requests an effective date of August 11, 1992, for both Agreements. Copies of the filing have been served on the Cities and the Public Utility Commission of Texas.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Interstate Power Co.

[Docket No. ER92-770-000]

Take notice that on August 10, 1992, Interstate Power Company tendered for filing a rate schedule for Firm Power Interchange Service provided by Interstate to other members of the Mid-Continent Area Power Pool (MAPP), pursuant to Service Schedule J of the MAPP Agreement. Interstate requests a waiver of the Commission's 60 day filing period for this rate schedule and an effective date of May 1, 1992.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Co.

[Docket No. ER92-622-000]

Take notice that on August 6, 1992, Florida Power & Light Company (FPL) tendered for filing an Amendment to Cancellation of Florida Power & Light Company's Partial Requirements Service to the City of Vero Beach, Florida and the Fort Pierce Utilities Authority (Amendment).

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. The United Illuminating Co.

[Docket No. ER92-443-000]

Take notice that on August 7, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedule for the sale of system capacity and associated energy between UI and Central Vermont Public Service Corporation (Central Vermont). This amendment is a response to the Commission Staff's Deficiency Letter of July 10, 1992.

Copies of this amendment were served upon Central Vermont and the Vermont Public Utility Service Board.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Indiana Michigan Power Co.

[Docket No. ER92-30-000]

Take notice that American Electric Power Service Corporation (AEP) on August 3, 1992, tendered for filing on behalf of Indiana Michigan Power Company (I&M), information requested by the staff of the Commission which supports the charges made by I&M to PSI Energy, Inc. in connection with a maintenance agreement filed in the referenced docket.

A copy of this filing has been sent to the Indiana Utility Regulatory Commission.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Co.

[Docket No. ER91-562-001]

Take notice that on August 6, 1992, Virginia Electric and Power Company tendered for filing its refund compliance report in the above referenced docket.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. United States Department of Energy—Western Area Power Administration (Salt Lake City Area Integrated Projects)

[Docket No. ER92-5172-000]

Take notice that on August 13, 1992, the Assistant Secretary of Energy for Conservation and Renewable Energy of the United States Department of Energy (Assistant Secretary) filed with the Commission a request, on behalf of the Western Area Power Administration, for final confirmation and approval of Rate Schedule SLIP-F4 for firm power service from the Salt Lake City Area Integrated Projects and for final approval of Rate Schedule SP-FT4 for firm transmission service from the Colorado River Storage Project. The Assistant Secretary states that approval is sought for a period beginning October 1, 1992 and ending September 30, 1996. The Assistant Secretary further states that interim approval was given for the proposed rates on August 10, 1992.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Texas-New Mexico Power Co.

[Docket No. ES88-4-001]

Take notice that on August 11, 1992, Texas-New Mexico Power Company filed an amendment with the Federal

Energy Regulatory Commission under section 204 of the Federal Power Act requesting that the authorization previously granted in this docket be amended to change the final maturity date of the short-term notes issued from June 30, 1995 to December 31, 1995.

Comment date: September 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20262 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-19-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 19, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 17, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the following revised tariff sheets:

Proposed to be Effective August 1, 1992

11 Rev Sheet No. 41
11 Rev Sheet No. 42
Sub 11 Rev Sheet No. 42

Algonquin states that the revised tariff sheets are being filed to flow through changes in rates in Texas Eastern Transmission Corporation's ("Texas Eastern") Rate Schedules SS-2 and SS-3, which underlie Algonquin's Rate Schedules STB and SS-III, respectively. Pursuant to section 10 of Rate Schedule STB and section 9 of Rate Schedule SS-III in Algonquin's FERC Gas Tariff, Third Revised Volume No. 1, Algonquin is hereby filing the above sheets to track the latest changes filed by Texas Eastern in its latest Out of Cycle PGA filed in Docket No. TQ92-7-17 on July 30, 1992 to be effective August 1, 1992.

Algonquin also states that in its filing, Texas Eastern included two sets of tariff sheets, one to track its prior approved rates and substitute sheets to reflect rates derived from the cost of service of the Stipulation and Agreement ("S & A") in Docket Nos. RP90-119-010 and RP91-119-006. The prior rates are tracked in Algonquin's 11 Rev Sheet No. 42 and the S & A rates are tracked in 11 Rev Sheet No. 41 and Sub 11 Rev Sheet No. 42. Algonquin requests that the Commission approve Algonquin's appropriate sheets consistent with Commission action in Texas Eastern Docket No. TQ92-7-17.

Pursuant to §§ 10.3 and 9.3 of Rate Schedules STB and SS-III, respectively, the proposed effective date for the listed revised tariff sheets is August 1, 1992.

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 August 26, 1992. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20341 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-401-012]

Citizens Power & Light Corp.; Filing

August 19, 1992.

Take notice that on August 5, 1992, Citizens Power & Light Corporation (Citizens) filed certain information as required by ordering paragraph (M) of the Commission's August 8, 1989 order in this proceeding, 48 FERC ¶ 61,210 (1989). Copies of Citizens' informational filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20335 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 19, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 14, 1992, tendered for filing the following proposed change to its FERC Gas Tariff, to be effective August 1, 1992:

Sub Tenth Revised Sheet No. 26D
Sub Eleventh Revised Sheet No. 26D

Columbia states that the foregoing tariff sheets are being filed in compliance with the Commission's order issued July 30, 1992 in Docket Nos. TQ92-5-21-001 and TM92-12-21-001. Such order directed Columbia to: (1) File working papers to support the TCRA base rates in the referenced filing; (2) show the development of the SGS minimum bill; and (3) correct the tariff sheet to reflect the correct rate for Rate Schedule OPT.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 26, 1992. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20339 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-198-001]

East Tennessee Natural Gas Co.; Compliance Filing

August 19, 1992.

Take notice that on August 14, 1992, East Tennessee Natural Gas Company

(East Tennessee) tendered for filing the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1992:

Second Revised Sheet No. 150
Second Revised Sheet No. 151
Second Revised Sheet No. 152

East Tennessee states that in accordance with the Commission's July 30, 1992 order, East Tennessee has submitted a revised index of Purchasers showing the current amount of demand billing determinants on East Tennessee's system.

East Tennessee states that copies of the filing has been mailed to all affected customers on East Tennessee's system and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 26, 1992. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20338 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-521-000]

Hartwell Energy Limited Partnership; Issuance of Commission Order

August 19, 1992.

Take notice that, on August 5, 1992, the Federal Energy Regulatory Commission issued an Order Accepting Agreement for Filing and Granting and Denying Waiver. On May 4, 1992, as amended on July 22, 1992, Hartwell Energy Limited Partnership (Hartwell) filed a power purchase agreement with Oglethorpe Power Corporation (Oglethorpe) in Docket No. ER92-521-000. In addition to requesting that the Commission accept the power purchase agreement, Hartwell also requested a waiver of the 60-day prior notice requirement and certain other provisions of the Commission's regulations. In particular, Hartwell also requested that the Commission grant blanket approval under 18 CFR Part 34, of all future issuances of securities and assumptions of liability by Hartwell.

The Commission's August 5, 1992 order in Ordering Paragraphs (G), (H) and (I) reads as follows:

(G) Within thirty (30) days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liability by Hartwell should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 358.211 and 385.214).

(H) Absent a request for hearing within the period set forth in Ordering Paragraph (G) above, Hartwell is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumptions for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Hartwell's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 4, 1992.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol St., NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20336 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-43-000]

Mississippi River Transmission Corp.; Prefiling Conference

August 19, 1992.

Take notice that a prefiling conference will be convened in this proceeding on Friday, August 28, 1992, at 8:30 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC. The purpose of the conference is to address Mississippi River Transmission Corporation's summary of its proposal to comply with Order Nos. 636 and 636-A.

Any party, as defined in 18 CFR 385.102(c) (1992), or any participant, as defined in 18 CFR 385.102(b) (1992), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214 (1992).

For additional information, contact David Cain at (202) 208-0909.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20340 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-55-001]

Questar Pipeline Co.; Filing and Waiver Request

August 19, 1992.

On June 29, 1992, Questar Pipeline Company (Questar) filed revised supporting information to its annual purchased gas adjustment (PGA) to correct errors on Schedule C1 of its original filing and to explain certain negative storage withdrawals reflected in the filing. Questar states that the filing is pursuant to the May 29, 1992, Commission letter order in Docket No. TA92-1-55-000. (Unpublished.)

Questar requests waiver of the May 29 letter order to reflect a correcting adjustment of negative $7,958 to its unrecovered purchased gas cost for September, 1991 storage activity in its next annual PGA filing.

Questar states that a copy of the filing has been provided each person designated on the official service list compiled by the Secretary in this proceeding.

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 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 26, 1992. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20342 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-220-000]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 19, 1992.

Take notice that on August 17, 1992, Tennessee Gas Pipeline Company (Tennessee), tendered for filing revised tariff sheets listed on appendix A attached to the filing, to amend Fourth Revised Volume No. I of its FERC Gas Tariff effective October 1, 1992.

Tennessee states that it is filing the revised tariff sheets to implement under part 284 of the Commission's regulations the new storage service agreed to by Tennessee in its "cosmic" settlement, effective October 1, 1992. Tennessee states that the filing consists of revisions to the existing SS-E, SS-NE, and SS-S rate schedules and new schedules FSS and ISS for firm and interruptible storage on a stand alone basis.

Tennessee states that the filing is being made in response to the Commission's order of June 25, 1992, approving the cosmic settlement, as modified, in Docket Nos. RP86-119, RP88-228, *et al.*, stated that the new storage service agreed to by Tennessee in settlement could be provided under part 284 of the Commission's regulations. Tennessee indicates that it has filed revisions to the SS rate schedules, and has included new FSS and ISS rate schedules, to fulfill the Commission's policy of preferring pipelines to provide a "full line" of storage services.

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 August 26, 1992. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20343 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-11-000]

Texas Eastern Transmission Corp.; Conference

August 18, 1992.

Take notice that on August 26, 1992, at 10 a.m., a conference will be convened in the captioned restructuring docket. The conference will be held at The Department of Health and Human Services Auditorium, 300 Independence Avenue, SW. (C Street Entrance), Washington, DC. The conference is being convened so that Texas Eastern can explain the tariff and rate changes made in the August 14, 1992 draft revisions package which would revise Texas Eastern's June 8, 1992 compliance filing. All interested parties are invited to attend. Attendance at the conference however, will not confer party status. For additional information, interested parties can call Neil L. Levy at (202) 208-2794.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20263 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA88-6-000]

Wisconsin Electric Power Co.; Order Expanding the Scope of Hearing To Include Prudence Issue

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic

Issued August 19, 1992.

On February 4, 1992, pursuant to delegated authority, 18 CFR 375.303 (1992), the Chief Accountant issued a contested audit report to Wisconsin Electric Power Company (Company).[1] The audit report noted that the Company contested certain recommendations concerning the accounting and fuel adjustment clause billings for coal mine reclamation costs.[2] The Chief Accountant requested the Company to indicate whether it consented to shortened proceedings pursuant to part 41 of the Commission's regulations, 18 CFR part 41 (1992).[3]

The Company initially consented to shortened proceedings. Accordingly, on March 30, 1992, pursuant to delegated authority, 18 CFR 375.30 (1992), the Secretary issued an order instituting shortened proceedings.[4] Subsequently, before the case was submitted to the Commission, the Company filed a motion for termination of the shortened proceedings and, instead, requested a trial-type, evidentiary hearing. On May 14, 1992, pursuant to delegated authority, 18 CFR 375.30 (1992), the Secretary issued an order establishing hearing procedures.[5]

Before the presiding judge, the sole intervenor, the Cedarburg Group, questioned the prudence of the Company's payments that were the subject of the audit report. However, the presiding judge ruled that, because prudence had not been raised in the audit report, he did not have authority to address prudence without explicit Commission authorization.

On June 19, 1992, the Company and the intervenor filed a joint motion with the Commission requesting that the issue of prudence be included in the instant proceeding. While the Company states that it believes that its actions were prudent, the Company also acknowledges that the intervenor could raise the same allegations in a complaint which could lead to litigation in two proceedings over the same payments. The Company states that, if included promptly here, the prudence issue can be litigated efficiently with no delay in the hearing date and, accordingly, the Company joins in the motion.

On August 11, 1992, the intervenor, with the support of the Company, filed a motion requesting immediate action on the earlier-filed joint motion.

Discussion

Given the concurrence of both the Company and the sole intervenor, given the absence of any opposition, and given the reasons stated in the June 19, 1992 motion for addressing the issue in this proceeding as opposed to another proceeding, the June 19, 1992 motion will be granted. Any person wishing to become an additional party to this expanded proceeding must file a motion to intervene, in accordance with Rule 14 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1992) within 20 days of the date of publication of this order in the **Federal Register**. The presiding judge has the discretion to determine the procedures best suited to accommodate the filing of any such motion.

The Commission Orders:

(A) The Company's and the intervenor's June 19, 1992 joint motion to

[1] Wisconsin Electric Power Company, 58 FERC ¶ 62,121 (1992).

[2] *Id.* at 63,350, 63,357-60.

[3] *Id.* at 63,350.

[4] Wisconsin Electric Power Company, 58 FERC ¶ 61,332 (1992).

[5] Wisconsin Electric Power Company, 59 FERC ¶ 61,184 (1992).

include the prudence issue in this proceeding is hereby granted.

(B) The presiding judge designated to preside in this proceeding shall determine the procedures best suited to accommodate the granting of the June 19 joint motion and any future motions to intervene.

(C) This order shall be promptly published in the **Federal Register**.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20337 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

[Special Research Grant Program Notice 92-17]

Office of Science and Technology Advisor; Museum Science Education

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Science and Technology Advisor of the U.S. Department of Energy (DOE), in keeping with the energy-related mission of DOE, announces its interest in receiving Special Research Grant applications from museums that will support development of the media of informal energy-related science education. The media of informal science education include but are not limited to: Interactive exhibits, hands-on activities, and film/video productions. Examples of energy-related areas within the fundamental energy sciences include high energy and nuclear physics, nuclear science and technologies, global warming, waste management, energy efficiency, new materials development, fossil energy resources, renewable energy, health effects research including the human genome, emerging energy technologies, risk assessment, energy/environment, space exploration initiatives, public science literacy, and other timely topics. The purpose of the program is to fund the development and use of creative informal science education media which focus on energy-related science and technology. However, under this program only new activities, exhibits, etc., will be considered for funding. Expansion of ongoing efforts is not acceptable.

For the purpose of this notice, "museum" means: An established nonprofit institution serving the public on a year-round basis, providing interactive exhibits, demonstrations, and informal educational programs designed to further public understanding of science and technology. The term also includes organizations referred to as science centers, science-technology centers and youth museums. Thus, museums, as defined in this document, are eligible to submit Special Research Grant applications.

DATES: Preapplications to include an original and one copy must be received by November 4, 1992. To permit timely consideration for award in Fiscal Year 1993, formal applications submitted in response to this notice should be received no later than 4:30 p.m., February 3, 1993.

ADDRESSES: Preapplications should be sent to the following address: Kasse Andrews-Weller, Program Manager, Office of Science and Technology Advisor, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. Completed formal applications referencing Program Notice 92-17 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, room G-236, Washington, DC 20585, Attn: Program Notice 92-17. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Kasse Andrews-Weller, Program Manager, Office of University and Science Education Programs, ST-512, Office of Science and Technology Advisor, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8949.

SUPPLEMENTARY INFORMATION: The DOE is strongly committed to increasing the public's science literacy as well as increasing the number of students interested in science and technology careers. Projects which are designed to enhance public awareness of, and to encourage all young people to consider careers in, science and technology are strongly desired. While the application must be submitted by a museum, collaborative efforts are encouraged. Such efforts by potential applicants may include: partnerships of several small museums, of a small and large museum, or of a history museum and youth museum in collaboration with museum organizations; and cooperative enterprises which utilize the scientific and technical expertise of the DOE laboratories, industry, and the broader educational community in conjunction with a museum.

As part of DOE's effort to promote public science literacy; enhance the Nation's mathematics, science, and engineering education; and fulfill the National Education Goal of "by the year 2000, U.S. students will be first in the world in science and mathematics achievements," eligibility for awards under this notice is restricted to U.S. museums which will offer informal energy-related science education. In accordance with 10 CFR 600.7(b)(1), this restriction is necessary to support established U.S. institutions which provide a valuable supplement to formal education. While this program anticipates awarding grants only from FY 1993 appropriations, the period of support of a grant may extend up to two years.

Before preparing a formal application, potential applicants are asked to submit a brief preapplication in accordance with 10 CFR 600.10(d) (2) and (3), which consists of no more than two pages of narrative describing the major project objectives and method of accomplishment to be utilized by the applicant or its designee to determine the effectiveness of the intended exhibit or media forum, dissemination plan, work schedule, and approximate cost of the project to DOE.

The purpose of the preapplication is to give the program staff the opportunity to determine the level and appropriateness of interest in the project or activity. The program staff will also look at the approach the museum is considering. Each museum will receive a written response to its preapplication. Once you have submitted a preapplication, however, you may submit a formal application, regardless of the written response to the preapplication. Telephone and telefax numbers are required to be part of the preapplication.

A formal application consists of an original and seven copies, a copy of the museum's Internal Revenue Service nonprofit determination letter, and other documents as stated in the Application Kit and Guide.

No electronic submissions (including fax) of preapplications or formal applications under this Program Notice will be accepted.

This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as established by 10 CFR part 605 should not exceed 15

double-spaced, typed pages. This project description should include: Conceptual design and how that design relates to the program objectives; description of how the impact of the project will be maximized (dissemination); identification of the target audience(s) the project will serve and efforts planned to serve that audience; identification of the mechanisms to be used to organize and manage the project, including the rules and responsibilities, financial and otherwise, of any partnerships; clarification of the monitoring and evaluation plan, including how those plans can be used for possible project modification; delineation of the planned outcomes and how these outcomes will be assessed and reported; and discussion of the anticipated significance of the exhibit and how this will be confirmed. In addition, formal applications need to include information that will provide the expected impact in terms of populations served and any evaluation plan.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide. Multiple applications are permissible; however, each application must be limited to a single project. The DOE expects to make several grants in FY 1993 to meet the objectives of this program. It is anticipated that $1 million will be the total funds available in FY 1993, subject to the availability of appropriated funds. Awards are expected to range from $10,000 to $200,000, with the number of awards determined by the number of fundable applications and the total amount of funds available for this program. The application kit and guide are available from the U.S. Department of Energy, Museum Science Education Program, Office of University and Science Education Programs, ST-50, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone requests may be made by calling (202) 586-8949.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued at Washington, DC, on August 14, 1992.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 92-20329 Filed 8-24-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. FE C&E 92-12; Certification Notice—104]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Modesto Irrigation District has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586-9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Modesto Irrigation District, Modesto, CA.

Operator: Modesto Irrigation District.

Location: Woodland Generation Station Project, Modesto, CA.

Plant Configuration: The prime mover of the facility will be a single-train, simple-cycle aeroderivative GE LM5000 PD gas-fired combustion turbine equipped with steam injection.

Capacity: 49.4 megawatts.

Fuel: Natural Gas.

Purchasing Utility: District will primarily use all or some of the electricity for its own account, and may sell some or all to others when it is excess to the District's needs.

Expected In-Service Date: Third Quarter, 1993.

Issued in Washington, DC on August 20, 1992.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-20331 Filed 8-24-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Order Confirming and Approving an Extension of the Parker-Davis Project Rates for Firm Power and Firm and Nonfirm Transmission Service

AGENCY: Western Area Power Administration.

ACTION: Notice is given of Rate Order No. WAPA-57 extending the existing Parker-Davis Project (P-DP) rate schedules; for firm power PD-F3, firm transmission PD-FT3, nonfirm transmission PD-NFT3, and transmission service for Salt Lake City Area Integrated Projects (SLCA/IP) PD-FCT3, until superseded by new P-DP rate schedules, but for not more than 1-year.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352-2650.

SUPPLEMENTAL INFORMATION: Power and Transmission rates for the P-DP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Act of May 28, 1954 (ch. 241, 68 Stat. 143).

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary of Department of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western Area Power Administration (Western), (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary, Conservation and Renewable Energy, of the Department of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such

rates to the Federal Energy Regulation Commission (FERC).

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Pursuant to Delegation Order No. 0204-108, FERC, in the order issued November 15, 1990, in Docket No. EF90-5041-000, confirmed and approved Rate Schedules; PD-F3 for firm power service, PD-FT3 for firm transmission service, PD-NFT3 for nonfirm transmission service and PD-FCT3 for Transmission Service or SLCA/IP Power. The rate schedules were approved for the 2-year period October 1, 1990, through September 30, 1992.

Western proposes to extend the existing rates for P-DP firm power and firm and nonfirm transmission service until such time as new P-DP rate schedules supersede the existing P-DP rate schedules, but for not more than 1-year. This proposal resulted from responses to public comments stating that additional time is needed to comment on unresolved issues relative to the forthcoming P-DP rate adjustments. The public comment and consultation period for the P-DP rate adjustment has been extended to September 28, 1992 (57 FR 34776, August 6, 1992) and the anticipated effective date for the proposed P-DP rates in the first half of FY 1993.

The purpose of Rate Order No. WAPA-57 is to extend the P-DP rate schedules PD-F3, PD-FT3, PD-NFT3 and PD-FCT3 until such time as new P-DP rate schedules supersede the existing P-DP rate schedules, but for not more than 1-year.

Issued in Washington, DC, August 19, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-20330 Filed 8-24-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-4198-3]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice regarding waiver of federal preemption.

SUMMARY: The Administrator has determined that amendments to California's warranty statute and regulations and regulations establishing common emission control system nomenclature as applied through the 1993 model year are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Clean Air Act, as amended, 42 U.S.C. section 7543(b) (Act), to adopt and enforce its revised emission standards and accompanying enforcement procedures for 1979 and later model year vehicles and engines. For reasons discussed below, EPA is making no assessment of the scope of prior waivers with regard to the 1994 and later model years.

ADDRESSES: Any objection to the findings in this notice should be filed with Mr. Charles N. Freed, Director, Manufacturers Operations Division (6405-J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The Agency's decision as well as all documents relied upon in reaching that decision including those submitted by the California Air Resources Board are available for public inspection in Docket A-91-16 during the working hours of 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m. at the Environmental Protection Agency, Air Docket (LE-131), Room M-1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. Copies of the decision can be obtained from EPA's Manufacturers Operations Division by contacting Leila Holmes Cook, as noted below.

FOR FURTHER INFORMATION CONTACT: Leila Holmes Cook, Attorney/Advisor, Manufacturers Operations Division (6405-J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 233-9252.

SUPPLEMENTARY INFORMATION: I have determined that California's amendments to its warranty statute and regulations as applied through the 1993 model year are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act, 42 U.S.C. section 7543(b). The substantive amendments to the emission warranty requirements which are applicable under California State law to 1990 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles,[1] require manufacturers to provide the following:

(1) *An emission-related "defects warranty" for three years or 50,000 miles.* The manufacturer must warrant that the vehicle is free from defects in materials and workmanship which cause the failure of a warranted part to be identical in all material respects to the part described in the application for certification. The emission-related parts that are defective within this period must be repaired or replaced by the manufacturer at no cost to the vehicle owner.

(2) *A seven year or 70,000 miles "extended defects warranty" for expensive emission-related parts.* Manufacturers are required to identify and warrant for the extended period, those emission-related components that cost the consumer over $300 to replace as of the time of certification.

(3) *A "performance warranty" for three years or 50,000 miles, whichever first occurs.* Manufacturers must warrant the vehicle will pass an inspection and maintenance (SMOG CHECK) test. If a vehicle fails the Smog Check test the manufacturer will be liable for the cost of the part, labor, diagnosis, and the SMOG Check retest to ensure the vehicle passes. The manufacturer would not be liable for the failure if it can demonstrate that the failure was directly caused by abuse, neglect or improper maintenance or repair.

(4) *A prescribed Introductory Statement for owners.* Manufacturers of all 1991 and subsequent model vehicles produced after January 24, 1991 must include in their warranty booklet a specified, standardized statement that explains in layman's terms the vehicle owner's rights and responsibilities regarding the emission control systems warranty.

(5) *Common Nomenclature.* All emission-related service and certification documents, starting with the 1993 model year, must conform to the nomenclature and abbreviations in SAE publication J1930 "Diagnostic Acronyms, Terms, and Definitions for Electrical/Electronic Systems".

(6) The emission warranty requirements for covering pre-1990 and subsequent model motorcycles and heavy-duty vehicles and engines will be continued without substantial change.

Because CARB did not make the "protectiveness" determination required by section 209(b) of the Act with regard to Federal standards applicable in the 1994 and later model years as described by the 1990 Amendments to the Clean Air Act (CAAA), this determination of the scope of prior waivers will not address the California amendments as they apply to the 1994 and later model years.

California has also requested a waiver of Federal preemption for its standards as modified by new low emission vehicle (LEV) standards, which under California state law will be applicable

[1] While the amended regulations affect the 1979 and subsequent model years, the changes made to 1979 through 1989 model year regulations are merely clarification and organizational changes. Only minor clarifications and prospective obligations are addressed up through model year 1989. Regulations addressing model years 1990 and later implement the substantive changes which are described in greater detail below.

to 1994 and later model year vehicles (which also is when the phase-in of the new Federal Tier 1 standards begins).[2] For the reasons stated above, CARB acknowledged, in its request for a waiver for its LEV standards, the possibility that EPA may address the warranty amendments as they apply only through the 1993 model year.[3] Since California has made a protectiveness finding with regard to the California standards as applicable to the 1994 and later model years compared to the applicable Federal standards (including Tier 1) as a basis for the waiver request addressing LEV standards, EPA sees no reason to request California to supplement its submission to this record to include a protectiveness finding comparing the pre-LEV California standards to the Federal standards required by the CAAA. EPA plans to address the waiver for California warranty provisions for 1994 and later model years in the LEV waiver proceeding.

With regard to the 1993 model year, these amendments do not undermine California's determination that its standards, in the aggregate are as protective of public health and welfare as comparable Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting the Environmental Protection Agency's (EPA) previous waiver determination. Thus these amendments are within the scope of previous waivers determinations. A full explanation of EPA's decision is contained in a determination document which may be obtained from EPA as noted above.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by October 26, 1992. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: August 14, 1992.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-20204 Filed 8-24-92; 8:45 am]

BILLING CODE 6560-50-M

[2] California Proposed Regulations for Low Emission Vehicle Standards and Clean Fuels (August 13, 1990). Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991.

[3] Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991, p. 10, footnote 14.

[AMS-FRL-4198-2]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice regarding waiver of federal preemption.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act to enforce amendments that establish exhaust and evaporative emission standards and test procedures for various classes of dedicated-methanol and flexible-fuel vehicles and engines. California also amended its corresponding regulations.

ADDRESSES: A copy of the above standards and procedures, the decision document containing an explanation of the Administrator's determination, and the record of those documents used in arriving at this decision, are available for public inspection during normal working hours (8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m.) at the U.S. Environmental Protection Agency, Air Docket (LE-131), (Docket A-90-29), room M-1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460. Copies of the decision can be obtained from EPA's Manufacturers Operations Division by contacting Tiffany Schauer, as noted below. For further information contact: Tiffany Schauer, Attorney/Advisor, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Telephone: (202) 233-9298.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of Federal preemption pursuant to section 290(b) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543(b), for amendments to its exhaust emission standards and test procedures and corresponding regulations to make them applicable to dedicated-methanol and flexible-fuel passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty engines, beginning with the 1993 model years. This waiver encompasses the adoption by the California Air Resources Board (CARB) of amendments to its emission standards and accompanying enforcement procedures for the certification of dedicated-methanol and flexible-fuel vehicles and engines.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. No evidence has been presented which shows that California arbitrarily or capriciously reached this determination. Therefore, I cannot find California's determination to be arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I

agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 202(a) of the Act. No commenter submitted data or other information to satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. Since California's amendments generally parallel the Federal methanol standards and test procedures, the amendments do not present any issues regarding inconsistent procedures. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by October 26, 1992. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: August 14, 1992.

Richard D. Wilson,

Assistant Administrator for Air and Radiation.

[FR Doc. 92-20203 Filed 8-24-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4197-3]

Workshops on Ecological Risk Assessment Case Studies

AGENCY: Environmental Protection Agency.

ACTION: Notice of meetings.

SUMMARY: This notice announces two workshops sponsored by the U.S. Environmental Protection Agency's (EPA) Risk Assessment Forum to obtain scientific peer-review for six ecological risk assessment cases studies.

DATES: The dates for the workshops are listed below. Members of the public may attend as observers.

Part 1. The workshop will begin on Wednesday, September 9, 1992, at 8:30 a.m. and end on Thursday, September 10, at 12:30 p.m.

Part 2. The workshop will begin on Tuesday, September 22, 1992, at 8:30 a.m. and end on Wednesday, September 23, at 12:30 p.m.

ADDRESSES: The locations for the workshops are listed below.

Part 1. The workshop will be held at the U.S. Environmental Protection Agency, Environmental Research Laboratory, 27 Tarzwell Drive, Narragansett, RI.

Part 2. The workshop will be held at the Gaithersburg Marriott Hotel, 620 Perry Parkway, Gaithersburg, MD.

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend either workshop as an observer, call Eastern Research Group at (617) 674-7374 or call Deborah Kanter, Eastern Research Group, 110 Hartwell Avenue, Lexington, Massachusetts, 02173, telephone (617) 674-7320 by August 28, 1992, for the first workshop and September 9, 1992, for the second workshop. Space is limited.

FOR FURTHER INFORMATION CONTACT: Ms. Clare Stine, U.S. Environmental Protection Agency, (RD-672), 401 M Street, SW., Washington, DC, 20460, telephone (202) 260-6743.

SUPPLEMENTARY INFORMATION: The purpose of the workshops is to obtain scientific peer-review for six case studies that represent a wide range of ecological risk assessments. Each workshop will review both the scientific and risk assessment aspects of three case studies. The case studies will be used along with other information to provide a foundation for future Agency-wide ecological risk assessment guidelines.

After the workshops, a report containing the case studies and highlighting significant ecological risk assessment issues will be prepared. This report will be made available to the public in a future issue of the **Federal Register.**

Dated: August 17, 1992.

Peter W. Preuss,

Acting Assistant Administrator for Research and Development.

[FR Doc. 92-20205 Filed 8-24-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-51804; FRL 4161-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 45 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-1247, 92-1248, 92-1249, 92-1250, October 21, 1992.

P 92-1251, 92-1252, 92-1253, October 20, 1992.

P 92-1254, October 28, 1992.

P 92-1255, October 24, 1992.

P 92-1256, October 25, 1992.

P 92-1257, October 24, 1992.

P 92-1258, October 25, 1992.

P 92-1259, 92-1260, October 26, 1992.

P 92-1261, 92-1262, October 27, 1992.

P 92-1263, 92-1264, 92-1265, 92-1266, 92-1267, 92-1268, 92-1269, 92-1270, 92-1271, 92-1272, 92-1273, 92-1274, 92-1275, 92-1276, 92-1277, 92-1278, October 28, 1992.

P 92-1279, 92-1281, October 31, 1992.

P 92-1282, 92-1283, 92-1284, 92-1285, 92-1287, 92-1288, November 1, 1992.

P 92-1289, 92-1290, 92-1291, November 2, 1992.

P 92-1292, November 3, 1992.

P 92-1293, November 1, 1992.

Written comments by:

P 92-1247, 92-1248, 92-1249, 92-1250, September 21, 1992.

P 92-1251, 92-1252, 92-1253, September 20, 1992.

P 92-1254, September 28, 1992.

P 92-1255, September 24, 1992.

P 92-1256, September 25, 1992.

P 92-1257, September 24, 1992.

P 92-1258, September 25, 1992.

P 92-1259, 92-1260, September 26, 1992.

P 92-1261, 92-1262, September 27, 1992.

P 92-1263, 92-1264, 92-1265, 92-1266, 92-1267, 92-1268, 92-1269, 92-1270, 92-1271, 92-1272, 92-1273, 92-1274, 92-1275, 92-1276, 92-1277, 92-1278, September 28, 1992.

P 92-1279, 92-1281, October 1, 1992.

P 92-1282, 92-1283, 92-1284, 92-1285, 92-1287, 92-1288, October 2, 1992.

P 92-1289, 92-1290, 92-1291, October 3, 1992.

P 92-1292, October 4, 1992.

P 92-1293, October 2, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51804)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-1247

Manufacturer. Confidential.

Chemical. (G) Alkylamidic acid salt.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-1248

Manufacturer. Confidential.

Chemical. (G) Alkylamidic acid salt.

Use/Production. (G) Open, nondispersive aid. Prod. range: Confidential.

P 92-1249

Manufacturer. Confidential.

Chemical. (G) Tetra functional ketoximino silane.

Use/Production. (G) Formulation component. Prod. range: Confidential.

P 92-1250

Manufacturer. Confidential.

Chemical. (G) Tetra functional ketoximino silane.

Use/Production. (G) Formulation component. Prod. range: Confidential.

P 92-1251

Manufacturer. Elf Atochem North America.

Chemical. (S) 2,5-Furandione, polymer with ethenylbenzene,(1-methyl ethyl)benzene 6 bis (1-methyl-1-phenyl ethyl)pyroxide; aqueous ammonia.

Use/Production. (S) Pigment dispersing aid. Prod. range: Confidential.

P 92-1252

Manufacturer. Confidential.

Chemical. (G) Cyclocarbonate.

Use/Production. (G) Solidifier for epoxy formulation. Prod. range: Confidential.

P 92-1253

Manufacturer. Confidential.

Chemical. (G) Carbamate.

Use/Production. (G) Coating binder. Prod. range: Confidential.

P 92-1254

Manufacturer. E. I. Du Pont De Nemours & Company.

Chemical. (S) Polybrominated fluorobenzene mixture.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 92-1255

Manufacturer. Confidential.

Chemical. (G) Carbamic acid ester.

Use/Production. (G) Reactive coating additive. Prod. range: Confidential.

P 92-1256

Manufacturer. Confidential.

Chemical. (G) Vinyl ester polymer.

Use/Production. (G) Paint vehicle. Prod. range: Confidential.

P 92-1257

Manufacturer. Confidential.

Chemical. (G) Vinyl ester acrylate polymer.

Use/Production. (G) Paint vehicle. Prod. range: Confidential.

P 92-1258

Manufacturer. Ashland Chemical, Inc.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Matrix resin for glass reinforced. Prod. range: Confidential.

P 92-1259

Importer. Confidential.

Chemical. (G) Polyurethane resin.

Use/Import. (G) Automotive refinish. Import range: Confidential.

P 92-1260

Importer. Wacker Chemicals (USA).

Chemical. (S) 4-Hexeneenitrile, 2-ethenyl-2,5-dimethyl-.

Use/Import. (S) Fragrance ingredient. Import range: Confidential.

Toxicity Data. Acute oral toxicity: 2.45 ml/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

P 92-1261

Manufacturer. Confidential.

Chemical. (G) Mixture of 1-Hydrox-4-alkylamino anthroquinones.

Use/Production. (G) Petroleum additive. Prod. range: Confidential.

Toxicity Data. Acute dermal toxicity: > 2 g/kg species (rabbit). Skin irritation: moderate species (rabbit). Mutagenicity: positive.

P 92-1262

Importer. Hoechst Celanese Corporation.

Chemical. (G) Substituted heterocyclic compound.

Use/Import. (S) Pigment additive. Import range: Confidential.

P 92-1263

Manufacturer. Monsanto Company.

Chemical. (S) 1,3-Benzenedicarboxylic acid, compd. with 1,6-hexanediamine.

Use/Production. (G) Polymer intermediate. Import range: Confidential.

Toxicity Data. Acute oral toxicity: > 10,000 mg/kg species (rat). Acute dermal toxicity: > 7,940 mg/kg species (rabbit). Static acute toxicity: > 1,000 mg/L 96h species (rainbow trout). Eye irritation: minimal species (rabbit). Skin irritation: minimal species (rabbit).

P 92-1264

Manufacturer. Monsanto Company.

Chemical. (G) Random nylon terpolymer.

Use/Production. (S) Staple carpet yarn. Prod. range: Confidential.

P 92-1265

Manufacturer. Confidential.

Chemical. (G) Styrenated acrylic copolymer.

Use/Production. (G) Intermediate. Prod. range: Confidential.

P 92-1266

Manufacturer. Confidential.

Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 92-1267

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 92-1268

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 92-1269

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1270

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1271

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1272

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1273

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1274

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1275

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1276

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1277

Manufacturer. Eastman Kodak Company.
Chemical. (G) Bis(amidesubstituted thio benzene).
Use/Production. (G) Chemical intermediate. Prod. range: 3,700–15,000 kg/yr.
Toxicity Data. Acute oral toxicity: > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit). Skin sensitization: negative species (guinea pig).

P 92-1278

Manufacturer. Confidential.
Chemical. (G) Copolymer of acrylic and methacrylic esters.
Use/Production. (S) Radiation cure coating. Prod. range: Confidential.

P 92-1279

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate methacrylate polyester.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 15,000–30,000 kg/yr.

P 92-1280

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate methacrylate polyester.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 15,000–30,000 kg/yr.

P 92-1281

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate/methacrylate polymer.
Use/Production. (G) Component of coating. Prod. range: 15,000–30,000 kg/yr.

P 92-1282

Importer. Harcros Chemicals Inc.
Chemical. (G) Propoxylated urethane acrylate.
Use/Import. (S) Radiation curing of varnishes. Import range: Confidential.

P 92-1283

Manufacturer. The P.D. George Company.
Chemical. (S) Par-tert-butylphenol paraformaldehyde flake; merichem company low-mid xylenols; merichem company meta-para cresols.
Use/Production. (S) Insulation varnish for coating of electrical equipment. Prod. range: 51,000 kg/yr.

P 92-1284

Manufacturer. Dow Corning Corporation.
Chemical. (G) Oximosilyl perfluoroalkylsulfonamide.
Use/Production. (S) Crosslinker for silicone sealants. Prod. range: Confidential.

P 92-1285

Importer. Charkit Chemical Corporation.
Chemical. (G) Thiazolinum photosensitizing dye.
Use/Import. (G) Dye for photo film. Import range: Confidential.

P 92-1287

Manufacturer. The P.D. George Company.
Chemical. (S) Fatty acids, tall oil polymers with isophthalic acid, trimellitic anhydride, trimethylolpropane, and 2-methyl-1,3-propanediol, reaction products with p-tert-butylphenol-formaldehyde polymer.
Use/Production. (S) Insulation varnish for coating of electrical equipment. Prod. range: 98,985 kg/yr.

P 92-1288

Manufacturer. The P.D. George Company.
Chemical. (S) Tall oil fatty acids; trimethylolpropane; isophthalic acid; trimethylolpropane. isophthalic acid; trimellitic anhydride; formaldehyde, polymer with 4-(1,1-dimethyl-ethyl)phenol.
Use/Production. (S) Insulating varnish for coating of electrical equipment. Prod. range: 75,000 kg/yr.

P 92-1289

Importer. Mitsubishi Yula America, Inc.
Chemical. (G) Alkyl methacrylates, aminoalkyl methacrylate copolymer, partial salt.
Use/Import. (S) Emulsifier for thermal transfer ink ribbon. Import range: 300–600 kg/yr.

P 92-1290

Manufacturer. E.I. Du Pont De Nemours & Company.
Chemical. (G) Amide/acrylate copolymer.
Use/Production. (G) Polymer for photoimageable film. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: > 2,000 mg/kg species (rabbit). Eye irritation: severe species (rabbit). Skin irritation: severe species (rabbit).

P 92-1291

Manufacturer. Confidential.
Chemical. (G) Aminosilane mono urea adduct of the carbodiimide- modified homopolymer derivative mixture

derived from methylene bis (isocyanate benzene).

Use/Production. (S) Polyether polyurethane sealants. Prod. range: Confidential.

P 92-1292

Manufacturer. Confidential.

Chemical. (S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, distn. lights.

Use/Production. (G) Collector in minerals froth flotation. Prod. range: Confidential.

P 92-1293

Manufacturer. Confidential.

Chemical. (G) Substituted benzoyl chloride.

Use/Production. (G) Additive in polymer production. Prod. range: Confidential.

Dated: August 18, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-20201 Filed 8-24-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 26, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Office at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

Type: Revision of 3067-0163.

Title: Individual and Family Grant (IFG) Program Information.

Abstract: The collection of information is necessary for effective monitoring and management of the IFG program. While States administer the program, FEMA regional office staff are responsible for monitoring States' performance and adherence to FEMA regulations and policy guidance during and subsequent to disaster declarations. Without the information, FEMA would not be able to determine if: IFG programs are being managed efficiently; standards of uniformity and consistency are being met; and taxpayers' money is being spent appropriately. This collection is comprised of six reporting forms—FEMA 76-27, Initial Report; 76-28, Status Report; 76-29, Final Statistical Report; 76-30, Environmental Review; 76-34, Checklist for IFG Program Review; and 76-38, Floodplain Management Analysis; and two recordkeeping reqirements—FEMA Form 76-32, Worksheet for Case File Reviews, and recordkeeping activities related to grant administration activities.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping

Burden: 4,703 Hours.

Number of Respondents: 27.

Estimated Average Burden Time per Response: Reporting forms—1.6 hours per response; Recordkeeping—approximately 80 hours per response.

Frequency of Response: Recordkeeping, on occasion, weekly, and monthly.

Dated: August 7, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-20296 Filed 8-24-92; 8:45 am]

BILLING CODE 6718-01-M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 26, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

Type: Extension of 3067-0141.

Title: Reimbursement for Cost of Firefighting on Federal Property.

Abstract: Local fire services may submit claims for reimbursement of costs above normal operating expenses incurred for fighting fires on property under the jurisdiction of the United States, including federally owned buildings, bases, installations, forests, or other real federal property holdings. The information required by FEMA is contained in FEMA regulation 44 CFR part 151.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping

Burden: 240 Hours.

Number of Respondents: 10.

Estimated Average Burden Time per Response: 6 Hours.

Frequency of Response: Claims should be submitted within 90 days of a fire's occurrence. For fires of long durations, fire services may submit claims before a fire's conclusion, but only for the eligible costs actually incurred to date. Additional claims may be filed for costs later incurred.

Dated: August 14, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-20296 Filed 8-24-92; 8:45 am]

BILLING CODE 6718-01-M

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FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

Type: Extension of 3067-0020.

Title: Application for Participation in the National Flood Insurance Program.

Abstract: The National Flood Insurance Program (NFIP) is a self-sustaining, nontaxpayer funded Federal flood insurance program that provides flood insurance to communities which apply for participation and make the commitment to adopt and enforce land use control measures that will guide land development away from flood-prone areas to avoid or reduce future flood damages and losses. The application form enables the Federal Emergency Management Agency (FEMA) to continue to process new community applications and to more quickly provide flood insurance protection to the residents of the communities.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 400 Hours.

Number of Respondents: 100.

Estimated Average Burden Time per Response: 4 Hours.

Frequency of Response: On occasion.

Dated: August 14, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-20297 Filed 8-24-92; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-954-DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 19, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA-954-DR), dated August 19, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 19, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows.

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and flooding on July 11-29, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh, Jr., of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

The counties of Jefferson, Johnson, Nemaha, Nuckolls, Otoe, Pawnee, Richardson, and Thayer for Public Assistance.

(Catalog of Federal Domestic Assistance No.83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-20298 Filed 8-24-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

City of Los Angeles et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal

Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200226-003.

Title: City of Los Angeles/Metropolitan Stevedore Terminal Agreement.

Parties:

The City of Los Angeles ("Port")

Metropolitan Stevedore Company ("MSC").

Synopsis: The amendment adjusts compensation from an annual to a monthly basis, reduces the land area MSC leases from the Port and retains Berths 145 and 146 for secondary use.

Agreement No.: 203-011038-015.

Title: Southeastern Caribbean Discussion Agreement.

Parties:

United States Atlantic and Gulf/Southeastern Caribbean Conference

West Indies Shipping Corporation

Blue Caribe Line

Bernuth Lines

Sea Freight Line Ltd.

Synopsis: The proposed amendment will delete Blue Caribe Line as a party to the Agreement.

Dated: August 19, 1992.

By Order of the Federal Maritime Commission.

[FR Doc. 92-20248 Filed 8-24-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080392 AND 081492

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Rohm and Haas Company, AtoHaas B.V., AtoHaas B.V	92-1231	08/03/92
Societe Nationale Elf Aquitanie, AtoHaas B.V., AtoHaas B.V	92-1232	08/03/92
Sam Fox and Marilyn Fox, Midland Detroit Tool L.P., Detroit Tool Group, Inc	92-1262	08/03/92
American Telephone and Telegraph Company, Crabtree Capital Corporation, Prospect Leasing Company	92-1283	08/03/92
Investment AB Cardo, REN Corporation—USA, REN Corporation—USA	92-1235	08/04/92
Mr. Robert R. Onstead, Morgan Stanley Levered Equity Fund II. L. P., Cullum Companies, Inc	92-1253	08/04/92
Sonat Inc., Louisiana Land and Exploration Company, LLEC and Inexco Oil Company	92-1263	08/04/92
Eli Lilly and Company, Centocor, Inc., Centocor, Inc	92-1285	08/04/92
Corimon C. A. S.A.C.A., Grow Group, Inc., Grow Group, Inc	92-1287	08/04/92
Thermo Electron Corporation, Nicolet Instrument Corporation, Nicolet Instrument Corporation	92-1295	08/04/92
Equitable Companies Incorporated, Oxy Energy Company, Sun Operating Limited Partnership	92-1305	08/04/92
Jupiter Industries, Inc., West Point-Pepperell, Inc., Custom Fabrics Division	92-1298	08/05/92
Nesbitt Hospital Foundation, Wilkes-Barre General Health Corporation, Wilkes-Barre General Health Corporation	92-0912	08/07/92
Wilkes-Barre General Health Corporation, Nesbitt Hospital Foundation, Nesbitt Hospital Foundation	92-0913	08/07/92
Mr. Stephen P. Gottlieb, Panhandle Eastern Corporation, Lachmar, c/o Trunkline LNG Company	92-1260	08/07/92
Mayo Foundation, Luther Regional Health System, Inc., Luther Regional Health System, Inc	92-1276	08/07/92
General Electric company, JWP Inc., JWP Credit Corp	92-1297	08/07/92
Schlumberger Limited, Raytheon Company, GeoQuest Systems, Inc	92-1300	08/07/92
Cray Electronics Holdings Plc, TI Group plc, Dowty Group (19 companies)	92-1302	08/07/92
Michael Ilitch and Marian Ilitch, Thomas S. Monaghan, John E. Fetzer, Inc	92-1314	08/07/92
Theodore B. Baum and Ruth Baum, Steven J. Simmons, Simmons Communications Company, L.P	92-1318	08/07/92
Margaretten Financial Corporation, NationsBank Corporation, NationsBanc Mortgage Corporation of Virginia	92-1321	08/07/92
Cortec Group Fund, L.P., Tokheim Corporation, National Controls Corporation	92-1325	08/07/92
Younkers, Inc., H.C. Prange Company, Prange's Department Store Division	92-1293	08/10/92
JWP, Inc., George J. Gibbs, Gibbs-McAlister, Inc	92-1296	08/10/92
JWP Inc., Ernest W. McAlister, Gibbs-McAlister, Inc	92-1299	08/10/92
TECO Energy, Inc., Energen Corporation, Taurus Exploration, Inc	92-1301	08/10/92
AMERCO, James P. Shoen, Japal, Inc	92-1319	08/10/92
AMERCO, Mark V. Shoen, MVS, Inc	92-1320	08/10/92
S.A. Louis Dreyfus et Cie, DEKALB Energy Company, DEKALB Energy Company	92-1332	08/10/92
National Intergroup, Inc., Donald D. Beeler, Snyder's Drug Stores, Inc	92-1335	08/10/92
St. Francis Health System, Central Medical Health Corporation, Central Medical Health Corporation	92-1250	08/11/92
W.D. Company, Inc., W.D. Company, Inc., Higbee Associates Partnership	92-1304	08/11/92
IVAX Corporation, LuChem Pharmaceuticals, Inc., LuChem Pharmaceuticals, Inc	92-1289	08/12/92
American Home Products Corporation, Symbiosis Corporation, Symbiosis Corporation	92-1303	08/12/92
Ronald O. Perelman, Fleer Corp., Fleer Corp	92-1308	08/12/92
Ronald O. Perelman, Fleer Corp., Fleer Corp	92-1310	08/12/92
Aon Corporation, Reliance Group Holdings, Inc., Frank B. Hall & Co., Inc	92-1347	08/12/92
FPI Limited, National Sea Products Limited, National Sea Products Inc & Treasure Isle, Inc	92-1274	08/13/92
Avesta AB, British Steel plc, Tri-City Industrial Services, Inc	92-1349	08/13/92
Tyler Capital Fund, L.P., David J. Cohen, Daboco Inc	92-1272	08/14/92
Tyler Capital Fund, L.P., Abraham J. Cohen, Daboco Inc	92-1273	08/14/92
Southern Company (The), Donald L. Bren, La Jolla Village Center	92-1286	08/14/92
Oceaneering International, Inc., Eastport International, Inc., Eastport International, Inc	92-1315	08/14/92
Voting Trust dated 12/4/68, v/s of Hallmark Cards, Inc., Robert E. Tudek, Northeastern and TMC-NECT	92-1329	08/14/92
Voting Trust dated 12/4/68, v/s of Hallmark Cards, Inc., Everett I. Mundy, Northeastern and TMC-NECT	92-1330	08/14/92
Ronald J. Haan, Ronald J. Haan, International Telecharge, Inc	92-1342	08/14/92
Conseco, Inc., Bankers Life Holding Corporation, Bankers Life Holding Corporation	92-1363	08/14/92
Robert T. Shaw, Bankers Life Holding Corporation, Bankers Life Holding Corporation	92-1364	08/14/92
Blue Cross and Blue Shield of Virginia, Mutual Life Assurance Company of Canada (The), Association Life Insurance Company, Inc	92-1373	08/14/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-20318 Filed 8-24-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892-3190]

Dollar Rent-A-Car Systems, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices of unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a California-based car-rental firm to disclose, in different communications media, applicable airport surcharges, fuel charges, charges based on driver's age, geographic limitations on unlimited mileage representations, and any other charges related to a contemplated car rental that are mandatory or that cannot reasonably be avoided by consumers.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Bloom, New York Regional Office, Federal Trade Commission, 150 William St., suite 1300, New York, NY 10038. (212) 264–1200.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order to Cease and Desist

[File No. 8923190]

In the Matter of Dollar Rent-A-Car Systems, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Dollar Rent-A-Car Systems, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed By and between Dollar Rent-A-Car Systems, Inc., by its duly authorized officers, and its attorneys and counsel for the Federal Trade Commission that:

1. Proposed respondent Dollar Rent-A-Car Systems, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its headquarters located at 6141 W. Century Boulevard, Los Angeles, California 90045.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For the purposes of this order, the following definitions apply:

A. Representation—means any communication made by respondent to consumers other than a "discussion or inquiry" under paragraph B of this section or a communication made through a CRS System.

B. Discussion or Inquiry—means any oral communication between respondent and consumers either via telephone or at any of respondent's rental locations.

C. "Charges that are mandatory" and "charges that are not reasonably avoidable" shall not include charges that are: (1) Levied by a taxing authority, (2) on a constant basis, (3) on all car renters (rather than on only some car renters or on rental car companies). For example, for purposes of this order a common sales tax is deemed neither a "mandatory charge" nor a "charge that is reasonably avoidable" because: It is imposed by a governmental authority; it is applied at a constant rate; and purchasers are liable to the taxing authority for payment of the charge (notwithstanding that merchants may act for the taxing authority with respect to the collection and remittance of the charges).

For the purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

It is ordered That respondent Dollar Rent-A-Car, Systems Inc., a corporation,

its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the promotion, offering for rental or rental of any vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all fuel charges that are applicable to the contemplated rental and are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges, or that fuel is "extra."

B. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

C. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all charges resulting from a driver's age that are applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

D. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

E. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all fuel charges that are applicable to the contemplated rental and are not reasonably avoidable by consumers.

F. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

G. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all charges resulting from a driver's age that are applicable to the contemplated rental.

H. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all charges that are applicable to additional drivers in the contemplated rental.

I. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental where contemplated rentals come with unlimited mileage, all geographic driving restrictions that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

J. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

K. Failing to disclose in proximity with any representation as to the price of a contemplated rental through its inputs in the "company-specific location" part of computer-accessed data bases (also known as "CRS" systems), such as "System One," "Apollo," and "PARS," all fuel charges that are applicable to the contemplated rental or are not reasonably avoidable by consumers or any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

II.

Notwithstanding anything contained in Part I hereof, respondent shall not be held liable for any failure to disclose information required to be disclosed under Part I provided that it establishes by a preponderance of evidence that:

A. Such failure to disclose resulted solely from franchisee failure to furnish respondent with timely, complete, and accurate information;

B. Respondent previously had adopted maintained, monitored, and enforced procedures reasonably calculated to ensure timely, complete, and accurate communication of disclosable information to respondent by its franchisees; and

C. Respondent shall have required its franchisees to adopt, maintain, and comply with procedures necessary to respondent's timely receipt of complete and accurate disclosable information, and shall have terminated all franchisees who continued, after notice, to fail to adopt, maintain, and comply with such procedures; provided, however, that if respondent's contract with any franchisee precludes termination, as described above, respondent shall have exercised all available disciplinary procedures, including termination, to induce and ensure franchisee adoption, maintenance, and compliance with procedures necessary to respondent's timely receipt of complete and accurate disclosable information. Further, respondent shall, as soon as it lawfully may, modify each franchisee's contract to provide that respondent may terminate each franchisee who continued, after notice, to fail to adopt, maintain, and comply with procedures necessary to respondent's timely receipt of complete and accurate disclosable information.

III.

It is further ordered That respondent shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to all present and future operating divisions, subsidiaries, franchisees, dealers, and all managerial employees that have or may have management responsibilities with respect to compliance with this order, including, but not limited to, all managerial employees having responsibilities relating to the communication of prices or other terms of car rentals, directly or indirectly, to the public.

IV.

It is further ordered That for three (3) years from the date of service of this Order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with this Order.

V.

It is further ordered That, for a period of ten years, respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate status that may affect compliance obligations arising out of this order, such as dissolution, assignment of its business, or the emergence of a successor corporation.

VI.

It is further ordered That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Dollar Rent-A-Car, Inc. ("Dollar").

The proposed consent order has been placed on the public record for sixty (60)

days for comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns price and policy representations made by Dollar to consumers making inquiries about rental car reservations. These price and policy representations are conveyed: (1) By Dollar's agents responding to telephone inquiries from consumers calling Dollar's 800-number; (2) through Dollar's advertisements; and (3) through Computerized Reservation Systems ("CRS systems").

The complaint charges that in oral presentations made by Dollar's agents in response to consumers' telephone inquiries to Dollar's 800-number, Dollar has, in numerous instances, stated prices for Dollar's car rental services without disclosing certain charges that are mandatory or not reasonably avoidable by consumers. Specifically, the complaint charges that Dollar, in numerous instances, failed to disclose through its 800-number the existence and amount: (1) Of a mandatory fuel charge; (2) of a mandatory airport surcharge or fee that is imposed on consumers who travel from certain airport locations to one of Dollar's rental stations in one of Dollar's shuttle vehicles; (3) of a charge based on a driver's age; and (4) of a charge for additional drivers. Additionally, the complaint also charges that through its 800-numbers, Dollar has, in numerous instances, stated that cars come with unlimited mileage without disclosing applicable geographic driving restrictions.

The complaint also charges that in advertisements, Dollar has, in numerous instances, stated prices for Dollar's car rental services without disclosing applicable airport surcharges, fuel charges, and charges based on a driver's age, or, in the alternative, that there are "additional" or "other" charges.

CRS systems, like 800-numbers, are a means of conveying rental car price and policy information to consumers. Rental car companies input rental car price and policy information is then conveyed to consumer through a CRS operator, typically a travel agent. Consumers then rely on the rental car price and policy information to make rental car reservations. The complaint charges that Dollar, in numerous instances, made price disclosures through CRS systems without disclosing a mandatory fuel charge

The complaint states that the representation of a price for a contemplated rental made through an 800-number, advertisement, or CRS system, without making the previously stated disclosures, is an unfair or deceptive act of practice. Similarly, the complaint states that the representation through an 800-number or advertisement that a contemplated rental comes with unlimited mileage without disclosing applicable geographic driving restrictions is an unfair or deceptive act or practice.

The consent order contains provisions designed to remedy each of the previously stated deceptive omissions. Specifically, part I of the consent order requires Dollar to cease and desist from failing to disclose to consumers, in connection with any rental car price representations made to consumers through telephone communications or at rental locations: Any applicable airport surcharges, fuel charges, charges based on a driver's age, additional driver charges, and any other charges that are mandatory or not reasonably avoidable.

Part I of the order also requires Dollar to cease and desist from failing to disclose to consumers, in connection with any unlimited mileage representations made to consumers through telephone communications or at rental locations, applicable geographic driving restrictions.

Part I further requires Dollar to cease and desist from failing to disclose to consumers, in connection with any rental car price representations made to consumers in advertisements: any applicable airport surcharges, fuel charges, charges based on a dirver's age, and any other charges that are mandatory or are not reasonably avoidable by consumers. However, part I of the consent order would not require Dollar to disclose in advertisements any of the charges described above if they instead disclose that there are "additional" or "other" charges.

With regard to Dollar rental car price information conveyed to consumers through CRS systems, part I of the consent order requires Dollar to cease and desist from failing to disclose all mandatory fuel charges and any other charges that are mandatory or not reasonably avoidable.

Part II of the consent order provides that Dollar, after adopting and adhering to reasonable procedures to ensure compliance with the consent order, will not be liable under the order for franchisee acts and omissions beyond its control.

Part III of the order requires Dollar, for a period of three (3) years, to distribute a copy of the order to certain present and future operation divisions, subsidiaries, franchisees, dealers, and managerial employees.

Part IV of the order requires Dollar, for a period of three (3) years to maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with the order.

Part V requires Dollar, for a period of ten years (10), to notify the Federal Trade Commission of proposed changes in corporate status.

Part VI requires Dollar to file a compliance report within sixty (60) days after service of this Order.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-20319 Filed 8-24-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892-3189]

Value Rent-A-Car, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Florida car-rental firm to disclose, in different communications media, applicable airport surcharges, charges based on a driver's age, geographic limitations on unlimited mileage representations, and any other charges related to a contemplated car rental that are mandatory or that cannot reasonably be avoided by consumers.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Bloom, New York Regional Office, Federal Trade Commission, 150 William St., suite 1300, New York, NY 10038. (212) 264-1200.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C.

46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

[File No. 8923189]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Value Rent-a-Car, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Value Rent-a-Car, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed By and between Value Rent-a-Car, Inc., by its duly authorized officers, and its attorneys and counsel for the Federal Trade Commission that:

1. Proposed respondent Value Rent-A-Car, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida and Georgia, with its headquarters located at 2500 N. Military Trail, #300, Boca Raton, Florida 33431.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives: a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For the purposes of this order, the following definitions apply:

A. Representation—means any communication made by respondent to consumers other than a "discussion or inquiry" under paragraph B of this section or a communication made through a CRS System.

B. Discussion or Inquiry—means any oral communication between respondent and consumers either via telephone or at any of respondent's rental locations;

C. "Charges that are mandatory" and "charges that are not reasonably avoidable" shall not include charges that are: (1) Levied by a taxing authority, (2) on a constant basis, (3) on all car renters (rather than on only some car renters or on rental car companies). For example, for purposes of this order a common sales tax is deemed neither a "mandatory charge" nor a "charge that is reasonably avoidable" because: it is imposed by a governmental authority; it is applied at a constant rate; and purchasers are liable to the taxing authority for payment of the charge (notwithstanding that merchants may act for the taxing authority with respect to the collection and remittance of the charges).

For the purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

It is ordered That respondent Value Rent-A-Car, Inc., a corporation, its successors and assigns, and it officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the promotion, offering for rental or rental of any vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

B. Failing to disclose to consumers, in connection with any representative relating to the price of a contemplated rental, all charges resulting from a driver's age that are applicable to the contemplated rental, or in the alternative that there are "additional" or "other" charges.

C. Failing to disclose to consumers, in connection with any representative relating to the price of a contemplated rental, where contemplated rentals come with unlimited mileage, all geographic driving restrictions that are

applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are restrictions regarding unlimited mileage.

D. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

E. Failing to disclose to consumers in connection with any discussion or inquiry relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

F. Failing to disclose to consumers in connection with any discussion or inquiry relating to the price of a contemplated rental, all charges resulting from a driver's age that are applicable to the contemplated rental.

G. Failing to disclose to consumers in connection with any discussion or inquiry relating to the price of a contemplated rental where contemplated rentals come with unlimited mileage, all geographic driving restrictions that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

H. Failing to disclose to consumers in connection with any discussions or inquiry relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

I. Failing to disclose in proximity with any price representations of a contemplated rental made through inputs in the "details" (also known as "booking segment") section of the "comparative rate" screen or computer-accessed data bases (also known as "CRS" systems), such as "System One," "Apollo," and "PARS," all airport surcharges or fees, charges resulting from a driver's age, or any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

J. Failing to disclose in proximity with unlimited mileage representation made through inputs in the "details" (also known as "booking segment") section of the "comparative rate" screen of computer-accessed data bases (also known as "CRS" systems), such as "System One," "Apollo," and "PARS," geographic driving restrictions that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

II.

It is further ordered That respondent shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to any present and future operating divisions, subsidiaries, franchisees, dealers, and all managerial employees that have or may have management responsibilities with respect to compliance with this order, including, but not limited to, all managerial employees having responsibilities relating to the communication of prices or other terms of car rentals, directly or indirectly, to the public.

III.

It is further ordered That for three (3) years from the date of service of this Order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with this Order.

IV.

It is further ordered That, for a period of ten years, respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate status that may affect compliance obligations arising out of this order, such as dissolution, assignment of its business, or the emergence of a successor corporation.

V.

It is further ordered That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Value Rent-A-Car, Inc. ("Value").

The proposed consent order has been placed on the public record for sixty (60) days for comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns price and policy representations made by Value to consumers making inquiries about rental car reservations. These price and policy representations are conveyed: (1) By Value's agents responding to telephone inquiries from consumers calling Value's 800-number to obtain information and to make reservations; (2) through Value's advertisements; and (3) through Computerized Reservation Systems ("CRS systems").

The complaint charges that in oral presentations made by Value's agents in response to consumers' telephone inquiries to Value's 800-number, Value has, in numerous instances, stated prices for Value's car rental services without disclosing certain charges that are mandatory or not reasonably avoidable by consumers. Specifically, the complaint charges that Value has, in numerous instances, failed to disclose through its 800-number the existence and amount: (1) Of a mandatory airport surcharge or fee that is imposed on consumers who travel from certain airport locations to one of Value's rental stations in one of Value's shuttle vehicles and (2) of a charge based on a driver's age. The compliant also states that through its 800-number, Value has, in numerous instances, stated that cars come with unlimited mileage without disclosing applicable geographic driving restrictions.

Similarly, the complaint also charges that in advertisements Value has, in numerous instances, stated prices for its car rental services without disclosing the existence and amount of a mandatory airport surcharge and of a charge based on a driver's age or, in the alternative, that there are "additional" or "other" charges. The complaint further states that in advertisements, Value has, in numerous instances, stated that car rentals come with unlimited mileage without disclosing applicable geographic driving restrictions or, in the alternative, that there are "additional" or "other" restrictions.

CRS systems, like 800-numbers, are a means of conveying rental car price and policy information to consumers. Rental car companies input rental car price and policy information into CRS systems. Rental car price and policy information is then conveyed to consumers through a CRS operator, typically a travel agent. Consumers then rely on the rental care price and policy information to make rental care reservations. With regard to Value rental car price information conveyed to consumers through particular CRS systems, Value has the ability to disclose mandatory or not reasonably avoidable charges in certain sections of a CRS system called a "comparative rate" screen. The complaint charges that with regard to disclosures made through certain

sections of CRS systems' comparative rate screens, Value has, in numerous instances, stated prices for Value's care rental services without disclosing a mandatory airport surcharge and a surcharge based on a driver's age.

The complaint states that the representation of a price for a contemplated rental made through an 800-number, advertisement, or CRS system, without making the previously stated disclosures, is an unfair or deceptive act or practice. Similarly, the complaint states that the representation through an 800-number, advertisement, or CRS system that a contemplated rental comes with unlimited mileage without disclosing applicable geographic driving restrictions is an unfair or deceptive act or practice.

The consent order contains provisions designed to remedy each of the previously stated deceptive omissions. Specifically, Part I of the consent order requires Value to cease and desist from failing to disclose to consumers, in connection with any rental care price representations made to consumers through telephone communications or at rental locations: any applicable airport surcharges, charges based on a driver's age, and any other charges that are mandatory or not reasonably avoidable. Part I of the order also requires Value to cease and desist from failing to disclose to consumers, in connection with any unlimited mileage representations made to consumers through telephone communications or at rental locations, applicable geographic driving restrictions.

Part I further requires Value to cease and desist from failing to disclose to consumers, in connection with any rental car price representations made to consumers in advertisements: any applicable airport surcharges, charges based on a driver's age, and any other charges that are mandatory or are not reasonably avoidable. However, Part I of the consent order would not require Value to disclose in advertisements any of the charges described above if they instead disclose that there are "additional" or "other" charges. Part I also requires Value to cease and desist from failing to disclose to consumers, in connection with any unlimited mileage representations made to consumers in advertisements, applicable geographic driving restrictions. However, Part I of the consent order would not require Value to disclose applicable geographic driving restrictions in advertisements if they instead disclose that there are "additional" or "other" restrictions.

With regard to Value rental car price information conveyed to consumers through CRS systems, Part I of the order requires Value to cease and desist from failing to disclose in comparative rate screens: All airport surcharges, charges based on a driver's age, and any other charges that are mandatory or are not reasonably avoidable. Part I of the consent order also requires Value to cease and desist from failing to disclose in comparative rate screens, in connection with unlimited mileage representations, applicable geographic driving restrictions.

Part II of the order requires Value, for a period of three (3) years, to distribute a copy of the order to certain present and future operation divisions, subsidiaries, franchisees, dealers, and managerial employees.

Part III of the order requires Value, for a period of three (3) years to maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with the order.

Part IV requires Value, for a period of ten years (10), to notify the Federal Trade Commission of proposed changes in corporate status.

Part V requires Value to file a compliance report within sixty (60) days after service of this Order.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-20320 Filed 8-24-92; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Administration, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of management and Budget (OMB) to renew expiring information collection 3090-0072, U.S. Government Lease for Real Property. This Information Collection is used to award leases of 10,000 square feet or more, and serves as the first page of leases.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

Annual Reporting Burden: Respondents: 800; annual responses: 800; hours per response: .5; total burden hours: 400.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, GSA Real Estate Policy Division (202-501-1508).

COPY OF PROPOSAL: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th and F Street NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: August 17, 1992.

Mary Cunningham.

Acting Director, Information Management Division.

[FR Doc. 92-20235 Filed 8-24-92; 8:45 am]

BILLING CODE 6820-23-M

Agency Information Collection Activities Under OMB Review

AGENCY: Office of the Administration, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to renew expiring information collection 3090-0086, Description of Property for Possible Leasing, Lessor's Annual Cost Statement, and Proposal to Lease Space. This Information Collection is used to identify potential lease properties for government occupancy and to provide a means to describe and offer the property.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

Annual Reporting Burden: Respondents: 3,200; annual responses: 3,200; hours per response: 7; total burden hours: 22,500.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, GSA Real Estate Policy Division (202-501-1508).

COPY OF PROPOSAL: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th and F Street NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: August 17, 1992.

Mary Cunningham,

Acting Director, Information Management Division.

[FR Doc. 92-20236 Filed 8-24-92; 8:45 am]

BILLING CODE 6820-23-M

Intent To Prepare an Environmental Impact Statement for a Proposed Air Quality Improvement Project Affecting the Central and West Heating Plants Currently Operated in the District of Columbia by the General Services Administration

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and the General Services Administration (GSA) guidelines PBS P 1095.4B, GSA announces its intent to prepare an environmental impact statement (EIS) for an air quality improvement project affecting the central and west heating plants.

GSA produces steam for ninety-nine (99) government and quasi-governmental buildings within the District of Columbia through its central and west heating plants. The plants operate a number of boilers that produce steam that is delivered to the buildings through an extensive series of interconnecting tunnels. The boilers are fired by combinations of coal, fuel oil and natural gas.

The Environmental Protection Agency, using computer modeling, has determined that the National Ambient Air Quality Standard (NAAQS) for sulfur dioxide (SO_2) is being violated within the vicinity of both plants due to a phenomenon called downwash. Downwash is created by low stack heights which cause plumes to be emitted nearly horizontally to the ground. The plume, depending upon existing conditions, may be brought to the ground causing high ground level concentrations of sulfur dioxide.

In order to comply with NAAQS, GSA is considering altenative courses of action which may include:

(1) Increasing the height of the stacks.
(2) Installing scrubbers and nox reduction equipment on existing facilities.
(3) Installing individual boilers in existing federal buildings, to replace the two plants.
(4) Employing various/different fuel mixes.
(5) Relocating the heating plants.

GSA has prepared a preliminary environmental assessment that presents initial data collection. This document is available from the GSA office listed below.

GSA will initiate a scoping process for the purpose of determining the scope of issues to be addressed in the environmental impact statement and for identifying the significant issues related to this proposed action. A public scoping meeting is scheduled to be held on:

Date: September 16, 1992 (Wednesday).
Location: The General Services Administration, National Capital Region, Regional Office Building Auditorium, 7th and D Streets, SW. (D Street entrance), Washington, DC.
Time: 7 p.m.

A short, formal presentation will preclude the request for public comments. GSA representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal and city agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed by the EIS. In the interest of available time, each speaker will be asked to limit his/her oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comments in addition to, or in lieu of, comments at the public meeting. Scoping comments should clearly describe specific issues or topics which the commentator believes the EIS should address. Written statements concerning the project must be received no later than September 30, 1992, to be given adequate consideration in the formulation of the document. Please address comments to: Mr. Robert D. Harding, General Services Administration, National Capital Region, Planning Staff (WPL), room 7618, 7th and D Streets, SW., Washington, DC 20407, 202-708-5334.

Dated: August 18, 1992.

Daniel Neal,

Acting Director, Planning Staff, National Capital Region.

[FR Doc. 92-20277 Filed 8-24-92; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) Announces the Following Meeting

Name: Airways Disease in Miners.

Time and Date: 8 a.m.-12 noon, September 25, 1992.

Place: Appalachian Laboratory, room 203, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888.

Status: Open to the public, limited only by the space available. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Purpose: To conduct an open review of a NIOSH project entitled "Airways Disease in Miners."

Contact Person for Additional Information: Edward L. Petsonk, M.D., NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop 240, Morgantown, West Virginia 26505-2888, telephone 304/291-4223.

Dated: August 18, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-20283 Filed 8-24-92; 8:45 am]

BILLING CODE 4160-19-M

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Time and Date: 8 a.m.-5 p.m., September 24-25, 1992.

Place: Holiday Inn Decatur Conference Plaza, Decatur Ballroom A, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: This council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: CDC laboratory update; criteria for a model TB program; and guidelines for state TB laws and regulations. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Assistant Director for Science, and Executive Secretary, ACET, National Center for Prevention Services, CDC, 1600 Clifton Road, NE, Mailstop E-07, Atlanta, Georgia 30333, telephone 404/639-2766.

Dated: August 18, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-20217 Filed 8-24-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92D-0287]

Generic Animal Drug Products Containing Fermentation-Derived Drug Substances; Draft Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline entitled "Guideline for Generic Animal Drug Products Containing Fermentation-Derived Drug Substances." The guideline describes the data and information that the sponsor of an abbreviated new animal drug application (ANADA) should submit to support the chemistry, manufacturing and control section of applications for generic animal drug products containing fermentation-derived drug substances. FDA invites interested persons to submit written comments on this draft guideline.

DATES: Written comments by October 26, 1992.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Communications and Education Branch (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John M. Singer, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8673.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guideline entitled "Guideline for Generic Animal Drug Products Containing Fermentation-Derived Drug Substances." Sponsors of new animal drug applications (NADA's) including applications for drug products containing fermentation-derived drug substances are required to furnish FDA with chemistry, manufacturing, and control information necessary to support their submissions. This information is outlined in 21 CFR 514.1 for original NADA's, and in 21 CFR 514.8 for supplements to approved NADA's. The requirements for ANADA's are identical to those for original NADA's and supplements to approved NADA's. Additionally, the manufacturing process must comply with current good manufacturing practice (CGMP) regulations. The CGMP requirements are described in 21 CFR 211 for pharmaceutical dosage forms and in 21 CFR 226 for Type A medicated articles.

The Center for Veterinary Medicine believes that the guideline will provide sponsors with information and guidance that will enable them to submit complete and well-organized chemistry, manufacturing, and control data and information for ANADA's for animal drug products containing fermentation-derived drug substances. In contrast to the general description of requirements in the cited regulations, the guideline provides specific manufacturing information for antibiotic new drug substances, biomass drug substances, and the finished drug product. In addition, it provides guidance for conducting comparison studies between the generic drug product and the pioneer drug product. The guideline also describes acceptable fermentation organisms, antibiotic new drug substances, and biomass drug substances.

Guidelines state procedures or practices that may be useful to the persons to whom they are directed, but are not legal requirements. Guidelines represent the agency's position on a procedure or a practice at the time of their issuance. A person may follow a guideline or may choose to follow alternate procedures or practices. If a person chooses to use alternate procedures or practices, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA. A guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. When a guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

Interested persons may on or before October 26, 1992, submit written comments on the draft guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted. Comments should be submitted in duplicate (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 18, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-20278 Filed 8-24-92; 8:45 a.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-92-3488; FR-3305-N-01]

Extension of CDBG Direct Homeownership Assistance Eligibility

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice extends the termination date for the direct homeownership provision at section 105(a)(20) of the Housing and Community Development Act of 1974 from October 1, 1992, to October 1, 1993, in accordance with section 907(b)(2) of the National Affordable Housing Act (NAHA).

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division (202) 708-1577, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device for hearing impaired persons (TDD) is available at (202) 708-0564. FAX inquiries may be sent to Mr. Broughman at (202) 708-3363. (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: In accordance with section 907(b)(2) of the National Affordable Housing Act (NAHA), Public Law 101-625, approved November 28, 1990, the Secretary has determined that extension of the termination date for the direct homeownership provision at section

105(a)(20) of the Housing and Community Development Act of 1974, as amended, is necessary to continue to provide homeownership assistance until homeownership assistance is available under title II of NAHA, the HOME Investment Partnerships Program. Therefore, the termination date is hereby extended from October 1, 1992, to October 1, 1993.

For CDBG entitlement communities, HUD-administered Small Cities grantees in Hawaii, and for Insular Areas grantees, only CDBG funds that are obligated to a homebuyer before October 1, 1993, may be expended for any homeownership assistance under 24 CFR 570.201(n). (This interim rule was published June 17, 1992, 57 FR 27116.) For the State CDBG program, HUD-administered Small Cities program in New York, and the Indian CDBG program, no funds for homeowner assistance may be expended unless a grant for homeowner assistance has been made by the State or by HUD, as appropriate, before October 1, 1993, to a unit of general local government, and then only for amounts specifically approved for this assistance.

I. Basis for Extension

The basis for this extension is that the Department has determined that assistance to homebuyers would not be fully available under the HOME program by October 31, 1992. Under 24 CFR 92.150 of the HOME interim rule, a participating jurisdiction must prepared guidelines for HUD approval that describe how the jurisdiction will implement the resale provisions of § 92.254. In developing these guidelines, jurisdictions are forced to grapple with two difficult issues: (1) Defining a fair return on investment to the initial homebuyer, while (2) ensuring that the unit will continue to be affordable to a subsequent low-income homebuyer. Each jurisdiction must identify the subsidies and describe the legal mechanisms that will be used to ensure continued affordability. Based on numerous calls from the field and several program descriptions submitted to date, jurisdictions are having difficulty in preparing these resale guidelines. Until the Department can provide additional guidance in the form of a model program and direct technical assistance to participating jurisdictions, it appears unlikely that jurisdictions will be able to use HOME funds for homeownership assistance.

II. CDBG Rules Differ From HOME

The CDBG and HOME programs differ in such areas as resale guidelines, submission requirements, and availability of funds. Jurisdictions carrying out direct homeownership assistance activities under the CDBG program, and planning to continue such assistance under the HOME program, should make themselves familiar with the requirements of the two programs. For example, smaller CDBG entitlement communities that are not HOME participating jurisdictions may wish to determine whether HOME funds will be available from the State government to continue these activities. (CDBG entitlement communities may also wish to consider applications for assistance under the HOPE programs to support such activities.)

Dated: August 14, 1992.

Alfred A. DelliBovi,

Deputy Secretary.

[FR Doc. 92-20206 Filed 8-24-92; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Advisory Committee on Water Data for Public Use; Reestablishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing the Advisory Committee on Water Data for Public Use. The purpose of the Committee shall be to represent the interests of the non-Federal community of water-resources professionals and other water-information users in advising the Federal Government, through the U.S. Department of the Interior, on activities and plans related to water-information programs and the effectiveness of those programs in meeting the Nation's needs.

Further information regarding the Committee may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

The certification of reestablishment is published below.

Certification

I hereby certify that reestablishment of the Advisory Committee on Water Data for Public Use is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 31 and 457 (1888), 25 Stat. 618, authorizing the Irrigation Survey; by language in the annual Department of the Interior Appropriations Acts; and by Office of Management and Budget Memorandum No. M-92-01.

Dated: July 15, 1992.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 92-20237 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

Protection of Alaska Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of supplementary rule.

SUMMARY: Pursuant to 43 CFR 8365.1-6, the following Supplementary Rule No. 92-01 is established to protect public lands administered by the Bureau of Land Management in Alaska.

Applicability of Federal and State Resource Protection Laws and Regulation—Alaska

On public and other lands under Bureau of Land Management control, within Alaska, any violation of any Federal or State laws or regulations concerning the conservation or protection of natural or cultural resources or the environment, including but not limited to, those relating to air and water quality, protection of fish and wildlife, plants, or the use of chemicals toxicants, is prohibited.

43 CFR 8360.0-7 Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) any person who knowingly and willfully violates the provisions of this Supplementary Rule issued pursuant to 43 CFR 8365.1-6 may be tried before a United States Magistrate and may be imprisoned not more than 12 months or fined in accordance with the applicable provisions of title 18 U.S.C. 3571 or both.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gifford (907) 267-1435.

SUPPLEMENTARY INFORMATION: The Supplementary Rule was established to protect public lands and resources administered by the Bureau of Land Management in Alaska. The Bureau of Land Management has become increasingly involved in fish and wildlife enforcement issues in Alaska due to the requirements of the Alaska National Interest Lands Conservation Act (ANILCA) for enforcement of subsistence hunting regulations when not provided for by the state. State subsistence hunting regulations have been declared unconstitutional by the

Alaska Supreme Court, leaving the federal agency responsible for such enforcement.

Edward F. Spang,

State Director, Alaska.

[FR Doc. 92-19800 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-JA-M

Bueau of Land Management

[ID-943-02-4212-13; IDI-28567]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to J.D. Lumber, Inc., of Priest River, Idaho, under section 206 of the Federal Land Policy and Management Act. The lands acquired by the United States in the exchange will remain closed to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384-3163.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

T. 48 N., R. 1 E.,
Sec. 6, lots 11, 14, and 15, SE¼SW¼, and NW¼SE¼.
T. 48 N., R. 1 W.,
Sec. 1, lots 10, and 11, N½SW¼, SE¼SW¼, and SE¼;
Sec. 8, S½NW¼;
Sec. 12, NE¼NW¼.
Comprising 613.58 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 56 N., R. 1 E.,
Sec. 7, lots 4 and 5, the east 790 feet of the SW¼SE¼, E½SE¼, and a portion of lot 1 and E½NE¼ lying southwesterly of the county road, more particularly described by metes and bounds.
Comprising 191.10 acres of private land.

The purpose of the exchange was to acquire non-Federal land which has high public values for recreation and access. The public interest was well served through completion of this exchange. The values of the Federal and private lands in the exchange were appraised at $650,000 and $490,000, respectively. The Bureau of Land Management received an equalization payment to compensate for the difference in land value.

3. The land has been and will remain closed to the public land, mining, and mineral leasing laws.

Dated: August 12, 1992.

Larry R. Lievsay,

Acting Chief, Realty Operations Section.

[FR Doc. 92-20238 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Land Management

[WY-010-4212-14; WYW 123841]

Realty Action; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Sale of Public Land in Big Horn, Hot Springs, and Washakie Counties, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale by modified competitive sale procedures under sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713, 1719). BLM must receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law.

The fair market values, planning document, environmental assessment, and other relevant information concerning the sale are available for review at the Bureau of Land Management, Grass Creek Resource Area Office, 101 South 23rd, Worland, Wyoming, 82401, (307) 347-9871.

Sixth Principal Meridian, Wyoming

Parcel No. 1

T. 51 N., R. 97 W.,
Sec. 14, lots 24, 26, 28, E½NE¼SW¼SW¼;
Sec. 23, lot 4, 6, N½NE¼NE¼NW¼.
The above land aggregates 26.89 acres.

Parcel No. 2

T. 51 N., R. 96 W.,
Sec. 20, lot 30, 37;
Sec. 21, lot 41, W½NE¼SW¼SW¼, NW¼SW¼SW¼.
The above land aggregates 28.43 acres.

Parcel No. 3

T. 51 N., R. 97 W.,
Sec. 11, lot 8, 9, 12;
Sec. 12, lot 39;
Sec. 13, lot 6.
The above land aggregates 15.83 acres.

Parcel No. 4

T. 51 N., R. 97 W.,
Sec. 13, lot 24.
The above land aggregates 4.97 acres.

Parcel No. 5

T. 51 N., R. 97 W.,
Sec. 14, lot 7, 9, 19.
The above land aggregates 2.90 acres.

Parcel No. 6

T. 47 N., R. 95 W.,
Sec. 29, lot 18, 20, 24.
The above land aggregates 33.96 acres.

Parcel No. 7

T. 51 N., R. 95 W.,
Sec. 26, lot 8, 16, 19, 24,25;
Sec. 35, lot 8, 19, 22.
The above land aggregates 45.08 acres.

Parcel No. 8

T. 51 N., R. 95 W.,
Sec. 19, lot 40, 42;
Sec. 20, lots 31-34;
Sec. 29, N½NW¼NE¼NE¼.
The above land aggregates 16.45 acres.

Parcel No. 9

T. 45 N., R. 95 W.,
Sec. 7, lot 22, 24;
Sec. 8, lot 18, 22;
Sec. 10, lot 17.
The above land aggregates 45.53 acres.

Parcel No. 10

T. 43 N., R. 95 W.,
Sec. 12, N½N½SW¼SW¼.
The above land aggregates 10.0 acres.

FOR FURTHER INFORMATION CONTACT: Joe Vessels, Area Manager, Grass Creek Resource Area Office, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, (307) 347-9871.

SUPPLEMENTARY INFORMATION: Sale of the above parcels will be conducted by modified competitive bidding to adjoining landowners. Adjoining landowners submitting a bid must provide evidence of adjoining landownership before the bid will be accepted. A bid will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the bidder will be required to pay a $50.00 nonreturnable filing fee (in addition to their bid) for all unreserved mineral interests.

It has been determined that disposal of the parcels will benefit BLM by resolving existing agricultural and occupancy use occurrences. The proposed sale is consistent with the Grass Creek Management Framework Plan. The lands are not required for other public purposes.

All bidders must be U.S. citizens, 18 years of age or older, corporations

authorized to own real estate in the state of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in land in Wyoming.

Sealed bidding is the only acceptable method of bidding. All bids must be received in the Grass Creek Resource Area Office, 101 South 23d, Worland, Wyoming 82401, by 10 a.m, October 25, 1992, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days of whether or not the BLM can accept the bid. The sealed bid envelope must be marked in the front lower left-hand corner with the words "Public Land Sale, WYW 123841, Sale held October 25, 1992".

All sealed bids must be accompanied by a payment of net less than ten (10) percent of the total bid, plus a $50.00 nonreturnable filing fee for all unreserved mineral interests. Each bid and final payment must be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Department of the Interior-BLM.

Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be accepted or the land will be reoffered under competitive procedures. It two (2) or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

If any parcels fail to sell, they will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Grass Creek Resource Area Office by 10 a.m., on the fourth (4th) Wednesday of each month, beginning November 25, 1992. Reoffered land will periodically be re-evaluated and will remain available for sale until sold or until the sale action is canceled or terminated. Reappraisals of the parcels will be made periodically to reflect the current fair market value. If the fair market value of a parcel changes, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Any patents issued will be subject to all valid existing rights. Specific patent reservations include:

Conveyance of the public land will be subject to:

1. Reservation of rights-of-way (ROWs) for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.
2. Reservation of oil and gas.
3. Reservation on the individual parcels:
a. Parcel No. 1.
1. German Ditch ROW—1866 Act.
2. BLM Access Road ROW WYW 126234.
3. Oil and Gas Lease WYW 82113.
b. Parcel No. 2.
1. St. Joe Canal ROW—1866 Act.
2. BLM Access Road ROW WYW 56418.
3. Oil and Gas Lease WYW 101655.
c. Parcel No. 3.
1. Colorado Interstate Gas Pipeline ROW WYW 33151.
2. Tri-County Telephone ROW WYW 119032.
3. Oil and Gas Lease WYW 104074.
d. Parcel No. 4.
1. St. Joe Canal ROW—1866 Act.
2. Oil and Gas Lease WYW 82113.
e. Parcel No. 5.
1. German Ditch ROW—1866 Act.
2. BLM Access Road WYW 126234.
3. Oil and Gas Lease WYW 104074.
f. Parcel No. 6.
1. Wyoming Department of Transportation Highway ROW WYW 022640.
2. Hot Springs REA, Inc., Powerline ROW WYW 47045.
3. Holly and Niccolls Ditch ROW—1866 Act.
g. Parcel No. 7.
1. Oil and Gas Lease WYW 99241.
h. Parcel No. 8.
1. Oil and Gas Lease WYW 104704.
i. Parcel No. 9.
1. Marathon Pipeline Co. ROW WYB 08525.
2. Marathon Pipeline Co. ROW WYW 023349.
3. Hot Springs REA, Inc., ROW WYW 45907.
4. Washakie County Road ROW WYW 78713.
5. Tenderfoot Ditch ROW—1866 Act.
6. BLM Fence Project No. 4166.
7. Oil and Gas Lease WYW 114231 and WYW 119451.
8. All Salable Minerals.
j. Parcel No. 10.
1. Hot Springs County Road ROW WYW 81665.
2. Mountain States Telephone and Telephone Buried Cable ROW WYW 68474.
3. Hot Springs REA, Inc., Powerline ROW WYW 76010.
4. BLM Access Road ROW WYW 126250.
5. South Side Ditch ROW—1866 Act.

The public sale parcels involve land within the following grazing allotments: (1) North Tatman Allotment No. 674, (2) New Burlington Group Allotment No. 509, (3) North Gooseberry Allotment No. 508, (4) Cannady Individual Allotment No. 543, (5) South Gooseberry Group Allotment No. 507, and (6) Harvay Common Allotment No. 506. Permittees holding livestock grazing privileges in the above allotments have either signed a waiver on the two-year grazing notice or are being served a two-year notice that the subject lands are being excluded from the grazing allotment. The notice is being sent with a copy of this Notice of Realty Action. Less than one animal unit of forage is being lost in each sale parcel and no reduction in grazing preference will be required.

Publication of this notice in the **Federal Register** shall segregate the land from all forms of appropriation under the public land laws, including the general mining laws. The segregative effect will terminate upon issuance of patent, 270 days from the date of publication of this notice, or upon publication in the **Federal Register** of a notice of termination of segregation, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Worland District Office, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401. Any adverse comments will be evaluated by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any action by the State Director, this realty action will become final.

Dated: August 14, 1992.

Jamie Sellar-Baker,

Acting Grass Creek Resource Area Manager.

[FR Doc. 92-20239 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) 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 Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018-0066), Washington, DC 20503, telephone 202-395-7340.

Title: Migratory Bird Harvest Surveys Amendment

OMB Approval Number: 1018-0015

Abstract: Migratory bird hunting is authorized throughout the U.S. Information on magnitude and composition of the harvest is needed

for sound management and to preclude over-harvest. This request amends the Waterfowl Harvest Survey to include a phased expansion to include other migratory bird species that are not currently surveyed. In addition, to solve non-response problems, hunter names and addresses would come from a required Migratory Bird Harvest Information Program instead of from voluntary cards distributed with a sample of Federal Duck Stamps.

Service Form Number(s): 3-2056I, 3-2056J, 3-2056K

Frequency: On Occasion

Description of Respondents: Migratory bird hunters

Estimated Completion Time: 8.5 minutes (0.01447 hours)

Annual Responses: 2,379,760 responses (2,224,300 respondents × 1.06989 responses per respondent × 0.01447 hours)

Revised Annual Burden Hours: 34,446 (+16,876 hours increase)

Service Clearance Officer: James E. Pinkerton, 703-358-1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: August 10, 1992.

John G. Rogers,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 92-20274 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, Massachusetts; Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 1 section 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, September 17, 1992.

The Committee was established pursuant to Public Law 101-628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will convene at 7:30 p.m. in the Carlisle Town Hall, Carlisle, Massachusetts (Carlisle Town is located on the south side of Route 225 in the town center, i.e., on the left hand side of Rte. 225 for westbound traffic. Town Hall is in the same building as the library—a reddish-brown structure with a flagpole and one-way drive out front. Parking for Town Hall business is in the second lot along the drive).

Agenda

I. Welcome, introductions, and comments—Bill Sullivan.
II. Approval of minutes from 8/27 meeting.
III. Subcommittee Reports—Subcommittee Chairs.
  A. River Conservation Planning Subcommittee.
  B. Instream Flow Study Subcommittee.
  C. Public Participation Subcommittee.
IV. Discussion—Issues of Local Concern.
V. Opportunity for public comment.
VI. Other Business.
  A. Next meeting dates and locations.

Dated: August 19, 1992.

John H. Davis,

Acting Deputy Director, National Park Service.

[FR Doc. 92-20249 Filed 8-24-92; 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 August 15, 1992. 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 September 9, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Air Force Facility Missile Site 8 (571-7) Military Reservation, 1580 W. Duval Mine Rd., Green Valley, 92001234

CALIFORNIA

Sonoma County

Gould—Shaw House, 215 N. Cloverdale Blvd., Cloverdale, 92001244

FLORIDA

Monroe County

Adderley, George, House, 5550 Overseas Hwy., Marathon, 92001243

St. Johns County

St. Augustine Alligator Farm Historic District, 999 Anastasia Blvd., St. Augustine, 92001232

MARYLAND

Talbot County

Barnaby House, 212 N. Morris St., Oxford, 92001228

Baltimore Independent City

President Street Station, Jct. of President and Fleet Sts., Baltimore (Independent City), 92001229

OHIO

Miami County

Wheeling and Lake Erie RR Minerva Station, 301 Valley St., Minerva, 92001246

Stark County

Ideal Department Store Building, 55-59 Lincoln Way E., Massillon, 92001245

Putman, Walter S., House, 303 Lawnford Ave., Wilmot, 92001247

PUERTO RICO

Humacao Municipality

Central Playa Grande, Address Restricted, Barrio Llave, Vieques, 92001236

Laguna Jalova Archeological District, Address Restricted, Barrio Puerto Diablo, Vieques, 92001237

Paramayon 2, Address Restricted, Barrio Llave, Vieques, 92001241

Playa Vieja, Address Restricted, Barrio Punta Arenas, Vieques, 92001235

Punta Jalova, Address Restricted, Barrio Puerto Diablo, Vieques, 92001239

Punta Tapon, Address Restricted, Barrio Puerto Ferro, Vieques, 92001240

Resolucion Historic District, Address Restricted, Barrio Puerto Ferro, Vieques, 92001242

Ventana Archeological District, Address Restricted, Barrio Puerto Ferro, Vieques, 92001238

Toa Baja Municipality

Santa Elena Hacienda, N of Hwys. 2 and 165 jct., Toa Baja, 83004662

SOUTH CAROLINA

Kershaw County

Boykin Mill Complex, 8 mi. S of Camden at jct. of SC 261 and Co. Rd. 2, Camden vicinity, 92001230

Carter Hill, 10 mi. S of Camden, E of SC 521, Camden vicinity, 92001231

TEXAS

Hays County

Hays County Courthouse Historic Districts (San Marcos MRA), Roughly bounded by alleys behind N. Guadalupe, E. Hopkins, N. LBJ and E. San Antonio Sts., San Marcos, 92001233

WYOMING

Fremont County

CM Ranch and Simpson Lake Cabins, State Fish Hatchery Rd. S of Dubois off US 287. Dubois vicinity, 92001249.

[FR Doc. 92-20365 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-32 (Sub-No. 47X)]

Boston and Maine Corp. and Springfield Terminal Railway Co. Discontinuance of Trackage Rights Exemption—In Berkshire County, MA

Boston and Maine Corporation and Springfield Terminal Railway Company (applicants) have filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to discontinue trackage rights over 5.09 miles of line owned and operated by Consolidated Rail Corporation (Conrail). The segment extends between milepost 150.75 and milepost 148.16, and between milepost 0.00 and milepost 2.50 in Pittsfield, in Berkshire County MA.[1] Conrail will continue to operate the segment.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, which previously moved over the line has been rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government agency acting on behalf of such user) regarding cessation or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. Applicants also have certified that they have complied with the notice requirements of 49 CFR 1152.50(d)(1).

As a condition to use of this exemption, any employee adversely affected by the discontinuance of trackage rights shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 24, 1992, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues [2] and formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2) [3] must be filed by September 4, 1992. Petitions to reopen must be filed by September 14, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: John R. Nadolny, Law Department, Boston and Maine Corporation, Iron Horse Park, No. Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Decided: August 18, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-20305 Filed 8-24-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32130]

Burlington Northern Railroad Co.—Trackage Rights Exemption—Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to grant overhead trackage rights to Burlington Northern Railroad Company (BN) over approximately 2.4 miles of rail line, between NW milepost SL-5.1, at the division of ownership between BN and NW, North St. Louis (Luther), MO, and NW milepost SL-7.5, at Jennings, MO. The trackage rights will become effective on or after August 24, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Ethel A. Allen, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102-5384.

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: August 17, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-20304 Filed 8-24-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 4, 1992, a consent decree in *United States* v. *Speciality Systems, Inc.*, Civil Action No. IP91 351C, was lodged with the United States District Court for the Southern District of Indiana, Indianapolis Division.

The Complaint filed by the United States on March 29, 1991, and Amended Complaint proposed for filing on August 4, 1992, alleged violations of sections 112(c) and 114(a)(1) of the Clean Air Act (the "Act"), 42 U.S.C. 7412(C) AND 7414(a)(1), as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399, and the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR part 61, Subpart M. The United States sought civil penalties and injunctive relief pursuant to section 113 of the Act, 42 U.S.C. 7413.

The proposed consent decree requires Speciality Systems, Inc. to pay a civil penalty of $60,000 and comply with the asbestos NESHAP. The decree also includes stipulated penalties if Specialty Systems, Inc. fails to comply with the NESHAP requirements regarding submission of timely notification of intent to renovate or demolish asbestos, or for failure to comply with the NESHAP notification requirements by omitting any item required to be included in notifications of intent to renovate or demolish asbestos.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Specialty Systems, Inc.*, DOJ Ref. No. 90-5-2-1-1573. The proposed consent

[1] Mileposts 148.16 and milepost 0.0 mark the same point on the line, hence, the 5.09 miles constitute a continuous segment.

[2] Ordinarily a stay will be routinely issued by the Commission in those instances where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment, cannot be made prior to the effective date of the notice of the exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Because trackage rights discontinuances are exempt from the Commission's environmental and historic reporting requirements, a stay would not be issued here for these reasons.

[3] See Exempt of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

decree may be examined at the office of the United States Attorney, Southern District of Indiana, 46 E. Ohio Street, Indianapolis, Indiana 46204; at the Region V office of U.S. EPA, Records Center, Seventh Floor, 77 West Jackson Blvd., Chicago, Illinois 60604–3590; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044. (202–347–7829). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $7.00 (twenty-five cents per page reproduction costs) payable to the "consent Decree Library."

John C. Cruden,

Chief, Environment Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92–20240 Filed 8–24–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Puruant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on April 14, 1992, Radian Corporation, P.O. Box 201088, 8501 Mopac Boulevard, Austin, Texas 78759, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
4-Methylaminorex (cis isomer) (1590)	I
Methaqualone (2565)	I
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Penobarbital (2270)	II
Secobarbital (2315)	II
Pencyclidine (7471)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: August 10, 1992.

Gene R. Haislip,

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

[FR Doc. 92–20225 Filed 8–24–92; 8:45 am]

BILLING CODE 4410–09–M

Office of Juvenile Justice and Delinquency Prevention

Meeting of the National Conference of State Juvenile Justice Advisory Groups

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the National Coalition of State Juvenile Justice Advisory Groups will take place in Oklahoma City, Oklahoma, beginning at 9 a.m. on September 19, 1992, and ending at noon on September 21, 1992. This advisory committee, chartered as the National Conference of State Juvenile Justice Advisory Groups, will meet at the Lincoln Plaza Hotel and Conference Center, 4445 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105. The purpose of this meeting is to discuss and adopt recommendations from members with regard to the committee's responsibility to advise the Administrator, the President and the Congress concerning State perspectives on the operation of the Office of Juvenile Justice and Delinquency Prevention and Federal legislation pertaining to juvenile justice and delinquency prevention. This meeting will be open to the public.

Gerald (Jerry) P. Regier,

Administrator (Designate), Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 92–20258 Filed 8–24–92; 8:45 am]

BILLING CODE 4410–19–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management

and Budget, room 3001, Washington, DC 20503 (202—395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Employment Standards Administration
Operator Controversion; Operator Response
1215–0058; CM–970 and CM–970a
On occasion
Businesses or other for-profit; small businesses or organizations 3,600 respondents; 1,800 total hours; 15 minutes per response; 2 forms

The CM–970 and CM–970a are used by coal mine operators to controvert an Initial Finding or to agree or disagree with potential liability for payment of black lung benefits under the Act.

Extension

Employment Standards Administration
Maintenance of Receipts for Benefits Paid by a Coal Mine Operator (Recordkeeping)
1215–0124; CM–200
Businesses or other for-profit
150 recordkeepers; 1 total burden hour

20 CFR 725.531 requires self-insured operators or insurance carriers who make benefit payments to black lung beneficiaries to maintain receipts for those payments for five years. Cancelled checks will suffice.

Extension

Mine Safety and Health Administration
Noise Data Report Form and Calibration Records
1219–0037
Semi-annually; annually
Businesses and other for profit; small businesses or organizations
Periodic Surveys: 253,440 responses; 21 minutes per response 88,704 burden hours
Supplemental Surveys: 1,267 responses; 15 minutes per response; 317 burden hours
Survey/compl. Certification: 2,534 responses; 6 minutes per response; 253 burden hours
Survey Report: 1,267 responses; 6 minutes per response; 127 burden hours
Calibration Reports: 4,300 responses; 3 minutes per response; 215 burden hours
Total Burden: 89,616 hours

Requires coal mine operators to report to MSHA when noise exposure surveys show noncompliance with permissible levels. Records are also required to be kept at the mine of when and by whom noise dosimeters and acoustical calibrators are recalibrated.

Signed at Washington, DC this 14th day of August, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92–20306 Filed 8–24–92; 8:45 am]

BILLING CODE 4510–27–M

Office of the Assistant Secretary for Veterans' Employment and Training

Solicitation for Grant Applications

This notice announces the recent release of the Solicitation for Grant Applications (SGA) to operate the Federal Contractor Reporting System (FCRS) for Federal fiscal year 1993 (October 1, 1992—September 30, 1993).

Background

The Assistant Secretary for Veteran's Employment and Training has been tasked under 38 United States Code (U.S.C.) 4212 to provide data to Congress on an annual basis regarding Vietnam-era and special disabled veterans' employment. To accomplish this requirement, the Veterans' Employment and Training Service (VETS) has been collecting and compiling information provided by covered Federal contractors and subcontractors on their hiring and employment of Vietnam-era and special disabled veterans. As an additional function, information about contractors receiving awards of Federal contracts has been provided to each of the State employment security agencies (SESA) in the 50 States, the District of Columbia, Puerto Rico and the Virgin Islands. This information allows the SESAs to increase the awareness of the contractors covered by law regarding their obligations to consider hiring and advancing these veterans for available employment opportunities. Finally, the program provides contractors and veterans with toll-free access to operators that provide answers to questions about the VETS–100 reporting system, veterans' reemployment rights and other related programs for veterans.

Information Regarding the Solicitation

This solicitation (SGA 92–02) is open to any State entity capable of interfacing with all other State employment security agencies regardless of desired media, for communication of assembled data. The closing date of the solicitation is 4:45 p.m. e.d.t. on October 15, 1992. Copies of the solicitation may be obtained by contacting Mr. Skip MacLeod, who may be reached at (202) 523–6246.

Information regarding the Federal Contractor Program is available by contacting Hary Puente-Duany, who may be reached at (202) 523–9110. The award date for the operation of the Federal Contractor Reporting System is anticipated to be October 30, 1992.

Signed at Washington, DC, on August 19, 1992.

Robin L. Higgins,

Acting Assistant Secretary for Veterans Employment and Training.

[FR Doc. 92–20307 Filed 8–24–92; 8:45 am]

BILLING CODE 4510–79–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92–60; Exemption Application No. D–8914, et al.]

Grant of Individual Exemptions, Publix Super Markets, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4

of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Publix Super Markets, Inc. Profit Sharing Plan (the Plan), Located in Lakeland, Florida

[Prohibited Transaction Exemption 92-60; Exemption Application No. D-8914]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan to Publix Super Markets, Inc. (Publix), a party in interest with respect to the Plan, of four parcels of real property (the Properties), and the assignment to Publix by the Plan of a leasehold interest in a parcel that adjoins one of the Properties, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) The Plan pays no fees or commissions in connection with the sale; (3) The Plan will receive no less than the fair market value of the Properties as determined by a qualified, independent appraiser; and (4) The Plan's trustee has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 22, 1992 at 57 FR 27793.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

NCNB Stable Capital Fund (the Fund), Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 92-61; Exemption Application No. D-8944].

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the retention by the Fund from December 31, 1991, through April 6, 1992, of a certain bank investment contract, provided that such retention was on terms at least as favorable to the Fund as those available in arm's-length transactions with unrelated parties.

EFFECTIVE DATE: This exemption is effective as of December 31, 1991.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 17, 1992, at 57 FR 27068.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Cappuccio, Inc. Defined Benefit Pension Trust (the Plan), Located in Monterey, California

[Prohibited Transaction Exemption 92-62; Exemption Application No. D-8960].

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain improved real property (the Property) to Frank Cappuccio, a party in interest with respect to the Plan; provided that the Plan receives the greater of either: (i) $1,100,000; (ii) the total costs the Plan has incurred with respect to the acquisition of the land and the construction of the improvements on the Property, plus any operational expenses which may exceed the rental income on the Property, as of the date of sale; or (iii) the fair market value of the Property as of the date of sale, as appraised by an independent, qualified real estate appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 11, 1992, at 57 FR 24820.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (the Trust), Located in Boston, Massachusetts

[Prohibited Transaction Exemption 92-63; Exemption Application No. D-8974].

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 2975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) a certain lease (the Lease) of space in commercial real property (the Property) located at Piney Point Office Park in Houston, Texas to the Townsend Company, a party in interest with respect to the Trust; (2) the potential amendments, renewals, or extensions of the Lease; and (3) the proposed leasing by the Trust of space in the Property to any other persons that may be parties in interest with respect to the Trust or parties in interest with respect to any employee benefit plans participating in the Trust (except for fiduciaries with respect to the Property),[1] including the amendments, renewals, or extensions thereof; provided that the terms and conditions of any leases subject to this exemption, including any amendments, renewals, or extensions thereof are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties; and provided further that any such leases, including any amendments, renewals, or extensions thereof, are approved on behalf of the Trust by Eastdil Advisers, Inc.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 11, 1992, at 57 FR 24824.

EFFECTIVE DATE: The effective date of the exemption will be May 6, 1991, as to the Lease of the Property to Townsend Company.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[1] Fiduciaries as used here include the American Telephone and Telegraph Company and its affiliates, Bell South Corporation and its affiliates, and Eastdil Advisers, Inc. and its affiliates.

S&C Pension Plan (the Plan), Located in Chicago, Illinois

[Prohibited Transaction Exemption 92-64; Exemption Application No. D-8985].

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The continued holding by the Plan on and after January 1, 1993, of stock (the Stock) of S&C Electric Company (S&C), the Plan sponsor and a party in interest with respect to the Plan; and (2) the acquisition, holding and exercise by the Plan of an irrevocable put option (the Put Option) which permits the Plan to sell the Stock to S&C at a price which is the greater of the appraised fair market value of the Stock as of December 31, 1992, or the appraised fair market value of the Stock at the time of the exercise of the Put Option, provided: (a) The Plan's continued holding of the Stock is monitored by a qualified, independent fiduciary; (b) the Plan's independent fiduciary will take whatever action is necessary to protect the Plan's rights, including, but not limited to, the exercising of the Put Option if the independent fiduciary, in his sole discretion, determines that such exercise is appropriate; and (c) S&C establishes an account for the benefit of the Plan, as described in the notice of proposed exemption, which will be maintained as long as the Plan continues to hold any shares of the Stock.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 17, 1992 at 57 FR 27070.

EFFECTIVE DATE: This exemption will be effective January 1, 1993.

FOR FURTHER INFORMATION CONTACT: . Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Sun Bancorp, Inc. Retirement Plan (the Plan), Located in Selingsgrove, Pennsylvania

[Prohibited Transaction Exemption 92-65; Exemption Application Nos. D-9005 and D-9006].

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective May 28, 1992, to the cash sale by the Plan of a group annuity contract (the GAC) to Sun Bancorp, Inc., a party in interest with respect to the Plan; provided that (1) the sale as a one-time transaction for cash, (2) the Plan received a purchase price for the GAC of no less than its fair market value as of the date of the sale, and (3) the Plan did not incur any costs or expenses related to the sale.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1992 at 57 FR 27797.

EFFECTIVE DATE: This exemption is effective as of May 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

TJX Companies, Inc. Savings/Profit Sharing Plan, and TJX Companies, Inc. General Savings/Profit Sharing Plan (Together, the Plans), Located in Framingham, Massachusetts

[Prohibited Transaction Exemption 92-66; Exemption Application Nos. D-9040 & D-9041].

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to 910 interest-free loans (the Loans) to the Plans by The TJX Companies, Inc., the sponsor of the Plans, with respect to guaranteed investment contracts number 1190 and number 1307A3A (the GICs) issued by Executive Life Insurance Company of California (Executive Life); and (2) the potential repayment of the Loans by the Plans (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with an unrelated party, (b) no interest and/or expenses are paid by the Plans, (c) the Loans are made only in lieu of payments due from Executive Life with respect to the GICs, (d) the Repayments are restricted to the amounts, if any, paid to the Plans by Executive Life or other responsible third parties with respect to the GICs (the GIC Proceeds), (e) the Repayments do not exceed the total amount of the Loans, and (f) the Repayments are waived to the extent the Loan amounts exceed the GIC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1992 at 57 FR 27798.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of August, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 92-20333 Filed 8-24-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for a Project on Learning Through Design

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified individual or organization to increase the awareness of design as a catalyst for learning among educational leaders. The specific objectives of the initiative are: to search out and identify the best examples of learning through design; to profile these exemplary techniques for teaching and learning through design in a way that elucidates and emphasizes their pedagogical value; to convene a meeting of educational leaders to review this information and develop strategies on how best to further the integration of design into American teaching; to produce a succinct and visually-arresting document summarizing the findings and recommendations; and to disseminate the publication to a variety of educators and other leaders. Funding is limited to $117,500. Those interested in receiving the Solicitation package should reference Program Solicitation PS 92–11 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 92–11 is scheduled for release approximately September 1, 1992 with proposals due on October 1, 1992.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 92–20273 Filed 8–24–92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SPACE COUNCIL

Meeting of the Space Industrial Base Capability Task Group

AGENCY: National Space Council.

ACTION: Notice of meeting closure.

SUMMARY: The Space Industrial Base Capability Task Group will meet in closed session on August 26 and 27, 1992.

DATES: August 26 and 27, 1992.

ADDRESSES: 2350 East El Segundo Boulevard, El Segundo, California.

FOR FURTHER INFORMATION CONTACT: Eva Czajkowski, (703) 685–3568, Joe Scifers, or Courtney Stadd, National Space Council, Executive Office of the President, Washington, DC (202) 395–6175.

SUPPLEMENTARY INFORMATION: As previously announced (57 FR 35855, August 11, 1992), the Space Industrial Base Capability Task Group of the Vice President's Space Policy Advisory Board will meet on August 26 and 27, 1992, at the Areospace Corporation, Building A1, 2350 East El Segundo Boulevard, El Segundo, California. The meeting times, however, have been changed; the group will meet between 8 a.m. and 6:15 p.m. on August 26, 1992, and between 8 a.m. and 12 noon on August 27, 1992. This meeting will be closed to the public in its entirety for both August 26 and 27, 1992, under exemption 4 (privileged or confidential commercial and financial information) of 5 U.S.C.S 552b(c) (the Sunshine Act). Persons interested in further information should contact Eva Czajkowski, ANSER, (703) 685–3568.

Joe Scifers,

Committee Action Officer.

[FR Doc. 92–20328 Filed 8–24–92; 8:45 am]

BILLING CODE 3128-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 34—Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses are submitted every five years.

5. *Who will be required or asked to report:* Persons holding or applying for a license for the use of radioactive byproduct material for purposes of industrial radiography.

6. *An estimate of the number of responses:* 19.

7. *An estimate of the total number of hours needed to complete the requirement or request:* An average of 2.1 hours per response, plus approximately 294.5 hours per recordkeeper. The total industry burden is approximately 63,938 hours annually.

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* 10 CFR part 34 establishes rules governing the domestic licensing of radioactive byproduct material for use in industrial radiography. The information collected will be evaluated during licensing reviews or inspections to ensure that the performance of industrial radiography will not endanger health or pose a danger to life or property. The revision is an adjustment resulting from a decrease in the number of licensees, the addition of reporting requirements in a previous proposed rule, and a reevaluation of time estimates for licensee recordkeeping.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0007) NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 14th day of August 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–20282 Filed 8–24–92; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* revision (Information collections contained in final rule are currently under review by OMB.)

2. *The title of the information collections:* 48 CFR chapter 20, Nuclear Regulatory Commission Acquisition Regulation (NRCAR): Organizational Conflicts of Interest.

3. *The form number of applicable:* N/A.

4. *How often the collection is required:* on occasion.

5. *Who will be required or asked to report:* contractors receiving task-order-type contract awards from NRC.

6. *An estimate of the number of responses:* 2.

7. *An estimate of the burden per response:* 1 hour.

8. *An estimate of the total number of hours needed to complete the requirement or request:* 2.

9. *An indication of whether section 3504(h), Public Law 96-511 applies:* Applicable.

10. *Abstract:* The NRC is proposing a revision to one provision, Organizational Conflicts of Interest (COI), contained in the Nuclear Regulatory Commission Acquisition Regulation. This revision would require a contractor to justify why the firm was unable to comply with the requirement to disclose all new work within 15 days of the proposed start date of such work.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, NEOB-3019 (3150-0169), Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.Q04

Dated at Bethesda, Maryland this 17th day of August 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official For Information Resources Management.

[FR Doc. 92-20280 Filed 8-24-92; 8:45 am]

BILLING CODE 7590-01-M

Generic Reactor Pressure Vessel Integrity Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will meet with the staff of the Nuclear Management and Resources Council (NUMARC), DOE, and other industry representatives to discuss research and regulatory activities underway concerning generic reactor pressure vessel integrity issues.

DATE: September 2-3, 1992.

TIME: 8 a.m.-5 p.m.

ADDRESS: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Z. Serpan, Jr., Chief, Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-3835.

SUPPLEMENTARY INFORMATION: A significant amount of work is underway by NRC, DOE and others in the U.S. nuclear industry on research and regulatory activities related to generic reactor pressure integrity issues. Some information exchanges, round-robin comparison exercises and coordination have been underway between NRC and EPRI, as well as others in the industry. However, there has not been a concerted effort to exchange and coordinate all activities of all the parties. Therefore, on July 9, 1992, NRC wrote to EPRI, DOE, NUMARC and Yankee Atomic Electric proposing that NRC hold a meeting to coordinate generic reactor pressure vessel integrity efforts; the meeting described in this notice is a result of that invitation. The meeting will include statements of interest and activities by NRC, and by NUMARC acting as a coordinator for industry efforts, as well as descriptions of research programs and regulatory activities underway concerning reactor pressure vessel integrity. It is expected that overlap and open areas will be identified, and actions for future coordination between the parties will be started.

Dated at Rockville, Maryland, this 19th day of August, 1992.

For the Nuclear Regulatory Commission.

Robert J. Bosnak,

Deputy Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92-20279 Filed 8-24-92; 8:45 am]

BILLING CODE 7590-01-M

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Georgia

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Georgia. The MOU provides the basis for mutually agreeable procedures whereby the Georgia Environmental Protection Division may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in the State of Georgia. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register** Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective July 22, 1992.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-4155 or (301) 492-7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Georgia to provide data related to plant conditions during emergencies at commercial nuclear power plants in Georgia.

Dated at Rockville, Maryland, this 14th day of August, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Georgia and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Georgia enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Georgia recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

D. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Georgia fulfills its statutory mandate to provide for preparedness, response, mitigation and recovery in the event of an accident at a nuclear power plant in part through the Georgia Environment Protection Division, as described in the State of Georgia Radiological Emergency Plan (REP) and the Georgia Natural Disaster Operations Plan (NDOP).

III. Scope

A. This Agreement defines the way in which the NRC and Georgia will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of Georgia.

B. It is understood by the NRC and the State of Georgia that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Georgia, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Georgia on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Georgia authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one (1) user terminal for the State of Georgia during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within the State of Georgia. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Georgia's General Responsibilities

A. Georgia will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Georgia will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Georgia agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10-mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

Georgia and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Georgia and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Georgia agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Georgia will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Georgia Open Records Act (O.C.G.A. 50–18–70), 10 CFR 2.790 and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Georgia by the NRC. Georgia may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Georgia will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the

Director, Division of Operational Assessment, Office of Analysis and Evaluation of Operational Data, and the Environmental Radiation Program Manager, Georgia Environmental Protection Division. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between the NRC and Georgia staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Georgia will work together to resolve these differences.

B. Resolution of differences between Georgia and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than one (1) year after the effective date, will be performed by the NRC to evaluate implementation of this Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon thirty (30) days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission.

Dated: July 20, 1992.

James M. Taylor,

Executive Director for Operations.

For the State of Georgia.

Dated: July 20, 1992.

Harold F. Reheis,

Director, Georgia Environmental Protection Division.

[FR Doc. 92-20281 Filed 8-24-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Form RI 25-7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 25-7, Marital Status Certification, is used to determine whether widows and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits from OPM.

Approximately 50,000 RI 25-7 forms are completed annually. It takes approximately 6 minutes to complete. The total annual burden is 5,000 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received by September 24, 1992.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Office of Retirement Programs, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-20231 Filed 8-24-92; 8:45 am]

BILLING CODE 6325-01-M

Notice of Request for Expedited Review of DPRS-2809 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the expedited review by OMB for a revised clearance of an information collection. Form DPRS-2809, Request to Change FEHB Enrollment or to Receive Plan Brochures for Spouse Equity and Temporary Continuation of Coverage Enrollees, is completed by the former spouse of employees, separated employees, or former spouses and children of separated employees who wish to change enrollment in the FEHB program during the annual open season. The instructions will be submitted for clearance in early September 1992.

Approximately 15,000 forms are completed annually, each requiring approximately 10 minutes to complete for a total public burden of 2,500 hours.

A draft copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received by September 1, 1992. OMB will act upon this clearance within 3 calendar days after the close of the comment period.

ADDRESSES: Send or deliver comments to—

Robert A. Yuran, Deputy Assistant Director, Office of Financial Control and Management, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 4312, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

The content of draft DPRS-2809 is set out below:

Federal Employees Health Benefits Program (FEHB)

Open Season

Draft DPRS-2809

Revised October 1992
Previous editions are not usable
Form Approved: OMB No. 3206-0202
Request To Change FEHB Enrollment or To Receive Plan Brochures for Spouse Equity and Temporary Continuation of Coverage Enrollees

Read the enclosed instructions before completing this form.

Return Form to USDA/OFM/NFC, DPRS, Billing Unit, P.O. Box 61760, New Orleans, LA 70161-1760.

Do not take any action to maintain your present coverage.

Section I-Action-Mark the appropriate block to indicate the action you are requesting. Please mark only ONE block.

—Change Enrollment. I want to change my FEHB enrollment and do not need to review further information. I have marked the block in Section II to indicate the plan I have selected OR entered the enrollment code and plan name for a prepaid plan.

—Receive Plan Brochures. I need to review additional information before making an Open Season election. Please send me the brochure(s) for the plan(s) I have marked in Section II or entered in the blocks for prepaid plans. A list of the prepaid plans is included in the comparison booklet. I understand that I may choose a total of 5 brochures.

Section II—Enrollment Codes and Plan Names—Mark the appropriate blocks.

Fee-for-Service Open Enrollment
Fee-for-Service Limited Enrollment

Enrollee must be a full member of the sponsoring organization to enroll in these plans.

Prepaid Plans
Enrollment code _____
Name of plan _____

Section III—Address Correction—I need to correct my address. The changes are indicated in the box below.

Section IV—Authorization—You must sign and date this form. Enter the daytime area code and telephone number where you can be contacted to answer questions.

Signature: _____
Date: _____

Area Code and Telephone Number

[FR Doc. 92-20232 Filed 8-24-92; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988 RRB Records Used in Computer Matching Programs

AGENCY: Railraod Retirement Board (RRB).

ACTION: Notice of records used in Computer Matching Programs; notification to individuals who are receiving benefits under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, the RRB is issuing a public notice of its use and intent to use, in ongoing computer matching programs, certain information obtained from state agencies with respect to individuals who received benefits under the Railroad Retirement Act. The information from state agencies will consist of Social Security Number, full name, address, and date of birth. The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by the RRB of this information obtained from state agencies by means of a computer match.

DATES: Comments should be received on or before September 24, 1992.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT: Richard J. Erickson, Office of Inspector General, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092, telephone number (312) 751-4338.

SUPPLEMENTARY INFORMATION: Under certain circumstances, the Computer Matching and Privacy Protection Act of 1988, Public Law 100-503, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** regarding the establishment of the matching program. Such a notice must include information in the following first five categories:

Name of participating agencies: The Railroad Retirement Board and an agency of the State of Illinois, together with such other states with which the RRB may negotiate agreements in the future.

Purpose of the match: To identify certain individuals receiving benefits under the Railroad Retirement Act who may have married and failed to notify RRB to their marriage. For certain beneficiaries marriage may terminate entitlement to benefits or affect the amount of benefits paid.

Authority for conducting the match: 45 U.S.C. sections 231f(b) and 362(f); 42 U.S.C. section 503(c)(1); 5 U.S.C. app. 3, section 4(a)(4) of the Inspector General Act of 1978.

Categories of records and individuals covered: All recipients of spouse, widow, and child benefits under the Railroad Retirement Act. Records furnished the states are covered under Privacy Act system of records RRB-22, Railroad Retirement, Survivor, and Pensioner Benefit System.

Inclusive dates of the matching program: Agreements with the individual states will run for either 12 or 18 months. The number of matches conducted with each state during the period of the match may vary from state to state.

Procedure: The RRB will furnish the state agency a tape file. The data elements will consist solely of beneficiary identifying information, including surname and Social Security Number (SSN). The state agency will match on SSN and surname. For each record where there is an SSN match but a surname difference, the state agency will furnish the following information on its records: SSN, full name, address, and date of birth. The RRB will then write each such beneficiary requesting that he or she explain the reason for the change in surname and furnish a copy of the legal document that accounts for the surname change. Only if the beneficiary advises that the reason for the surname change is marriage or fails to timely respond to the letter will the RRB give notice that benefits will be terminated or adjusted.

Other information: The notice we are giving here is in addition to any individual notice.

A copy of this notice will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: August 12, 1992.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-20241 Filed 8-24-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-18897; Release No. IA-1323; 813-85]

Partners Income Fund; Application

August 17, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act") and the Investment Advisers Act of 1940 (the "Advisers Act").

APPLICANT: Partners Income Fund (the "Initial Partnership").

RELEVANT 1940 ACT AND ADVISERS ACT SECTIONS: Applicant seeks an order under section 6(b) granting an exemption from all provisions of the 1940 Act except sections 7, 8(a), and 9, certain provisions of section 17, sections 36 through 53, and the rules and regulations related to those sections. Applicant also seeks an order under section 206A of the Advisers Act exempting Paul Harris Management Inc. ("Harris Management") and other subsidiaries (the "Advisory Subsidiaries") of McKinsey & Company, Inc. ("McKinsey") that may advise or manage the partnerships from section 203(c) of that Act and rule 203–1 thereunder so that such entities need not disclose one item of Form ADV.

SUMMARY OF APPLICATION: Applicant seeks an order that would grant an exemption from most provisions of the 1940 Act to the Initial Partnership and other existing and future partnerships sponsored by McKinsey, and would permit certain affiliated and joint transactions. Each partnership will be an employees' securities company within the meaning of section 2(a)(13) of the 1940 Act. Applicant also seeks an order exempting Harris Management and the Advisory Subsidiaries from one disclosure requirement of Form ADV under the Advisers Act.

FILING DATES: The application was filed on February 6, 1989 and amended on June 15, 1989, February 16, 1990, April 7, 1992, July 9, 1992, and will be amended during the notice period to reflect changes agreed to in a letter from Applicant's counsel dated August 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 11, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Interested persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o McKinsey & Company, Inc., Park Avenue Plaza, 55 East 52nd Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 272–3035, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. McKinsey is an international business consulting and management firm that, with its affiliated companies, specializes in solving management problems for major industrial and financial institutions. It has 51 offices in 25 countries. McKinsey proposes to organize limited and general partnerships that will serve as an in-house investment program for its key employees, who will be able to pool their funds to acquire large-denomination and diversified investments that they might not be able to acquire individually.

2. The Initial Partnership was organized in 1987 as a New York general partnership. Certain existing partnerships that presently are excepted from the definition of investment company intend to rely instead on the requested order and register under the 1940 Act. McKinsey intends to organize additional general or limited partnerships (the "Subsequent Partnerships") from time to time. The Initial Partnership, such expected partnerships, and the Subsequent Partnerships are referred to collectively as the "Partnerships." Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the 1940 Act, and will operate as a closed-end management investment company. The affairs of each Partnership will be governed by a partnership agreement and related documents (the "Organizational Documents").

3. Only the following "Eligible Employees" of McKinsey may acquire Partnership interests: (a) Senior McKinsey professionals having the title "Director" or "Principal," and certain senior administrative personnel ("Administrative Shareholders"), each of whom owns McKinsey common shares; (b) Directors, Principals, and Administrative Shareholders who have "retired" from McKinsey by selling their common shares back to the company, but still are actively employed; (c) up to ten individuals who are not included within the "management group" of McKinsey, but are responsible for administering the Partnerships and McKinsey's employee benefit plans; and (d) up to ten other individuals who have sophistication, access to Partnership management, and financial resources comparable to the individuals described in clause (a). The Eligible Employees described in clauses (a) (b) above are referred to as "management group members" or "MGMs." Those in (c) and (d) are referred to as "Non-MGM Employees." MGMs and Non-MGM Employees also must meet the sophistication and financial standards set out in paragraphs 6 and 7 below to acquire interests in a Partnership.

4. The MGMs are experienced professionals in the consulting business, or in administrative, financial, accounting, legal, or operational activities related thereto. As of January 1, 1992, all MGMs had an undergraduate degree, and over 90% also had a graduate degree (usually in business or law). The MGMs will know or be known to a number of other management group members, and will have direct access to those directly responsible for managing the Partnerships' assets.

5. Currently, there are three Non-MGM Employees included within item (c) of paragraph 3 above, one of whom (the "Administrator") has undergraduate and masters degrees in business administration, and devotes a major portion of his time to the Partnerships' administrative affairs.

6. Each Eligible Employee must, at the time he or she becomes a partner of, or makes an additional contribution to, a Partnership: (a) be an "accredited investor" as defined in subdivision (5) or (6) of rule 501(a) of regulation D promulgated under the Securities Act of 1933 (the "1933 Act"); (b) have had income from all sources in the calendar year preceding the date of investment of at least $200,000 (or joint income with spouse of at least $300,000), and an expectation of reaching that income level in the current year; and (c) have a net worth of a least $250,000 (or joint net worth with spouse of at least that amount). If the Commission increases or decreases the $200,000 and $300,000 annual income levels of subdivision (6) of rule 501(a) in the future, the levels set out in clause (b) above shall be deemed to be changed correspondingly.

7. In addition to the financial standards, each Eligible Employee must: (a) Have a graduate degree (or foreign equivalent) in business, law, accounting, finance, economics, marketing, engineering, government, science, mathematics, or another business, scientific, technical or analytical field and at least five years of professional full-time work experience; or (b) have a college degree (or foreign equivalent) and at least ten years of professional full-time work experience in one of such fields; or (c) be one of up to ten Eligible Employees whom the Management Committee or Advisory Committee (as defined below), as the case may be, of the relevant Partnership has determined has an education and experience level equivalent to that in (a) or (b) above, provided that any such Eligible Employee must have at least a college degree (or foreign equivalent) or five years of professional full-time work experience in one of the above fields.

8. A person who ceases to be an Eligible Employee, through departure from McKinsey or otherwise, will not be permitted to invest in Subsequent Partnerships or to make additional capital contributions to Capital Contribution Partnerships (as defined below) or additional capital commitments to Capital Commitment Partnerships (as defined below) in which he or she is a partner. Such former Eligible Employees may retain their interests in a Partnership unless required to redeem under the circumstances discussed below.

9. The Partnerships will be managed in one of two ways, depending on whether the Partnership is a "commodity pool" as defined by the Commodity Exchange Act. The Initial Partnership, which is a commodity pool, is managed by Harris Management, a registered commodity pool operator ("CPO") and a registered investment adviser. Any other Partnership that is a commodity pool will, so long as required under the Commodity Exchange Act, be managed by Harris Management or another Advisory Subsidiary that is registered as a CPO. (As used hereafter, the term "Harris Management" includes any such other CPO.) Harris Management is and will be minimally capitalized, and will invest in the Partnerships only to the minimum extent required to satisfy Federal income tax requirements with respect to limited partnerships. Harris Management will not charge a fee to, or receive any other compensation from, the Partnerships for its management services, nor does it intend currently to seek expense reimbursement from the Partnerships. Its directors and officers, all of whom are McKinsey employees, will not invest in the Partnerships except in their capacity as Eligible Employees, and will not receive any compensation or expense reimbursement from the Partnerships.

10. Harris Management is advised by an "Advisory Committee" that, under the Initial Partnership's partnership agreement, has only administrative and consultative responsibilities. All of the members of the Advisory Committee currently are partners of the Initial Partnership. While serving as members of the Advisory Committee, these individuals will continue their duties as employees of McKinsey, and only the Administrator will devote a material portion of his time to managing the Partnerships' affairs. Subsequent Partnerships that are "commodity pools" also will have an Advisory Committee.

11. Harris Management or another Advisory Subsidiary will make all investment decisions for Subsequent Partnerships that are not commodity pools, and will be advised by a "Management Committee" or a single managing individual (the "Managing Person"). If the Managing Person or a member of the Management Committee makes investment decisions for, or furnishes general investment advice to, a Partnership, such individual would do so in his or her capacity as director, officer or employee of Harris Management or such other Advisory Subsidiary. If a Subsequent Partnership is managed by a Managing Person, rather than a Management Committee, that Partnership also will have an Advisory Committee.[1]

12. Applicant states that the need to create two distinct types of committees stems from regulations imposed by the Commodity Futures Trading Commission ("CFTC"). CFTC regulations stipulate that commodity pool Partnerships be managed exclusively by a CPO (such as Harris Management), and that such Partnerships have only an Advisory Committee. Non-commodity pool Partnerships are not subject to those requirements, and thus may be managed by a Management Committee that has a greater decisionmaking and administrative role than an Advisory Committee.

13. Most Subsequent Partnerships will be organized as general partnerships rather than limited partnerships. This preference stems primarily from the advice McKinsey has received from its tax counsel to the effect that a McKinsey subsidiary acting as sole general partner of a limited partnership generally would have to invest at least 1% of the total positive capital account balance of that partnership. Applicant states that such a capital investment requirement would be burdensome to McKinsey and its shareholders. The Organizational Documents and the investment program of any Partnership organized as a general partnership will seek to limit the maximum liability of each general partner in the following ways:

(a) The Partnership itself will not become a general partner in any entity in which it invests;

(b) The Partnership will not make any commitments, borrow money, or enter into any other obligations other than: (i) Those expressly made non-recourse to its general partners (provided that any Partnership Note referred to in paragraph 14 or 15 below may be severally guaranteed by the partner whose capital contribution or commitment is so financed); (ii) full-recourse borrowings and obligations, such as pursuant to securities margin accounts and margin deposits in commodity trading accounts, subject to an overall fixed dollar ceiling disclosed to the partners prior to their investment; (iii) capital commitments to limited partnerships and other entities in which it invests, provided such commitments in the aggregate do not at the time of commitment exceed the sum of the Partnership's net worth and any uncalled Capital Commitments (as defined below) from its own partners; and (iv) accounts payable and accrued expenses incurred in the ordinary course of its investment operations;

(c) With respect to many of the capital commitments referred to in (b)(iii) above, the Partnership's potential liability in the event of default would be limited to the forfeit of the Partnership's limited partnership or other interest therein, according to Applicant;

(d) The Partnership's Organizational Documents will provide that if, as a result of capital defaults by the Partnership's other partners or otherwise, a capital call on the Partnership by an investee entity or payment by the Partnership of a non-recourse obligation would subject a general partner to a capital call or other assessment by the Partnership of more than 200% in excess of such general partner's Capital Commitment or Capital Contribution, as the case may be (each as hereafter defined), the Partnership

[1] In the case of commodity pool partnerships, the term "Manager" refers to Harris Management, and in the case of other Partnerships, refers to Harris Management or the relevant Advisory Subsidiary having investment discretion for such Partnership, as well as the Management Committee or the Managing Person.

will elect to default on the capital call or other non-recourse obligation. Such election to default may be waived only by a unanimous vote of the Partnership's general partners; and

(e) The Organizational Documents will limit a general partner's liability as among the partners to such general partner's proportionate share of the Partnership's liabilities.

14. The Partnerships may obtain capital through capital contributions (the "Capital Contribution Partnerships"), or through capital commitments (the "Capital Commitment Partnerships"). The Initial Partnership is a Capital Contribution Partnership. At least 25% of the initial capital contribution to a Capital Contribution Partnership will be due on acceptance. A partner may finance the remaining portion of his or her initial capital contribution (currently 50% in the case of the Initial Partnership) and any additional capital contributions (collectively, "Capital Contributions") through a loan obtained by the Partnership (evidenced by a "Partnership Note") from an unrelated lender or lenders. Each Partnership Note will be obtained on the most advantageous terms the Partnership can negotiate, and will be non-recourse to the Partnership. Any partner who finances a portion of his or her Capital Contributions will be obligated to pay principal and interest to the Partnership on that Partnership Note at such time as the Partnership may request, and may be required to furnish a several guarantee to the lender relating to the Partnership Note.

15. In Capital Commitment Partnerships, an installment equal to at least 25% of the total agreed capital commitment will be due on acceptance, with all or a portion of the remainder payable from time to time upon notice by the Manager. At the discretion of the Manager, partners will satisfy calls for subsequent portions of their initial capital commitment either in cash or by severally guaranteeing Partnership Notes. Such Partnership Notes would be non-recourse to the Partnership, and otherwise would meet the same criteria discussed in paragraph 14 above. The Manager of Capital Commitment Partnerships could require the partners to make additional capital commitments in the event that (a) the Partnership makes investments requiring additional contributions, or with respect to which the Manager concludes that additional contributions would be in the Partnership's interest, or (b) such contributions are necessary to meet a shortfall as a result of default by a partner in meeting a capital call relating to such partner's initial capital commitment.

16. The Organizational Documents of the Initial Partnership provide that Partnership interests are non-transferable, except that a partner may, with the approval of Harris Management, transfer all or a portion of his or her interest to an immediate family member or to a trust or other entity that has as its sole beneficiaries or investors the transferring partner or members of his or her immediate family. Subsequent Partnerships will have restrictions on transfer substantially identical to, or more restrictive than, those of the Initial Partnership, except that the Organizational Documents may provide that partnership interests also may be transferred to another Eligible Employee, subject to the approval of the Manager.

17. Under the Organizational Documents of the Initial Partnership, partners have only limited rights to redeem their interests. At a partner's request, the Initial Partnership will redeem all or a portion of such partner's interest on January 2 of each year, and may permit redemptions on three other days during each year under certain circumstances. If, after giving effect to all redemptions, the aggregate capital available to the Initial Partnership to invest would be less than $250,000, the Initial Partnership may, in the discretion of Harris Management, either (a) limit redemptions to such amount as would result in the Partnership's having at least $250,000 in aggregate capital to invest, or (b) liquidate the Initial Partnership. In the event of the death, incompetency, or bankruptcy of any partner, Harris Management may, but is not obligated to, (a) make a special valuation of and purchase the partner's interest in the Initial Partnership, or (b) treat the death, incompetency, or bankruptcy as a request for redemption of all of such partner's interest, and redeem such interest on the next regularly scheduled date for redemptions. Subsequent Partnerships holding investments of equivalent or better marketability or liquidity to those of the Initial Partnership will have the same provisions concerning annual redemptions, and may allow more frequent periodic redemptions, subject to the consent of the Manager. The Organizational Documents of Partnerships that afford no redemption rights will provide that a partner may withdraw from the Partnership only upon specified notice to, and in the absolute discretion of, the Manager.

18. To determine the price of Partnership interests that are redeemed or repurchased, Partnership assets will be valued as follows: (a) Assets for which market quotations are readily available will be valued at market value as selected and determined by the Manager; (b) assets representing interests in investment pools will be valued based on the most recent financial statements or other net asset value reports received by the Manager from the manager of those pools, provided that Manager reasonably believes such net asset value information reasonably reflects the fair value of such interests; and (c) other illiquid assets will be valued based on the Manager's appraisal, taking into account all relevant factors, including costs of liquidation, brokerage, and restrictive agreements.

19. The Organizational Documents of a Subsequent Partnership also may provide that the Manager may, but is not obligated to, (a) require the estate of a deceased partner or a partner who is incompetent, permanently disabled, or who leaves the employ of McKinsey or its affiliates to withdraw from the Partnership in exchange for payment for such partner's interest at an amount equal to the redemption price discussed in paragraph 18, and on such other terms as the partner and the Manager agree, or (b) require the complete or partial withdrawal of a partner who is bankrupt, in default with respect to a capital call, or who fails to make payments on a Partnership Note guaranteed by him, in each case in exchange for payment of such partner's interest at an amount equal to (i) the redemption price discussed in paragraph 18 less (ii) the amount by which the Partnership has been damaged by such partner's bankruptcy, capital default, or failure to pay in respect of Partnership Notes, based on good faith estimates made by the Manager and approved by the Fairness Determining Body (as defined below). The application contains detailed guidelines to which the Manager will reduce in exercising its discretion to require a partner to withdraw.

20. The Manager may retain investment advisers for the Partnerships that are not affiliated with McKinsey without a prior vote of the partners; provided, that the terms of the arrangement with any such investment adviser will be set forth in a written contract that (a) has been approved by the Management Committee or Advisory Committee, and (b) provides that the Partnership may terminate such contract at any time, without payment of penalty,

by action of the Manager or by vote of a majority in interest of the partners on not more than 60 days' written notice to the investment adviser.

21. The Partnerships may invest in new ventures, emerging private companies, leveraged buy-outs, troubled company situations, real estate, oil and gas oriented ventures, foreign currencies or foreign currency instruments, fixed income or equity securities, limited partnerships and other pooled investment vehicles (including those excepted from the 1940 Act by section 3(c)(1)), all or some of which may be "commodity pools" engaged in various investment strategies. The Partnerships also may invest in securities of registered investment companies, provided that a Partnership will not acquire any security issued by a registered investment company if immediately after such acquisition, it would own more than 3% of the total outstanding voting stock of such registered investment company based on the company's most recently distributed report to shareholders. There are no other limitations on the types of securities or other instruments in which the Partnerships may invest, and there is no limit on the amount or percentage of a Partnership's assets that may be invested in any single company, industry, or type of investment. The Initial Partnership has made equity investments in limited partnerships with low or moderate risk. Some or all of the investments made by Subsequent Partnerships may have a high degree of risk, no assurance of liquidity, and a low probability of current income, and may require long holding periods. The Partnerships will not acquire any investment sponsored or promoted by McKinsey or any Manager, and neither McKinsey nor any Manager will receive any sales commission or other compensation from any person in respect of a Partnership's investments.

22. The Partnerships will send investors annual reports and financial statements regarding their operations and assets. The Initial Partnership and any Subsequent Partnership that is a commodity pool will send other periodic reports as required by regulations governing commodity pools. In addition, after the end of each Partnership's tax fiscal year, and assuming that the Partnership has received all of the necessary information from the managers of its investments, a report will be transmitted to each investor setting forth information concerning his or her distributive share of income, gains, losses, credits, and other items for federal income tax purposes.

23. The Organizational Documents of the Partnerships will not require that statements of account be audited. However, the Manager may, in its discretion, determine that an audit of a Partnership's financial statements shall be conducted. In addition, pursuant to the terms of a letter of exemption from the staff of the CFTC (attached as Exhibit C to the application), if an audit is requested by any partner of the Initial Partnership Harris Management shall promptly notify the other partners of the Initial Partnership of such request and any reasons given therefor, and shall conduct a vote of the partners as to whether an audit should be performed. If 25% or more in number of the partners vote in the affirmative, Harris Management will cause an audit to be conducted promptly with respect to any prior fiscal year in question or as soon as practicable after the end thereof with respect to the then current fiscal year. Upon completion of any such audit, Harris Management will furnish copies of the audited financial statements to each partner of the Initial Partnership and to the CFTC. The same audit request procedure would apply to each Subsequent Partnership, whether or not it is subject to CFTC jurisdiction. As discussed in the application, Eligible Employees will be informed prior to investing if audited financial statements will not be provided routinely. Applicant states that the cost of an annual audit outweighs the marginal additional protection afforded thereby, especially given the fact that 25% of the partners will have the right to request an audit, and in any event the partners of each Partnership will have reasonable access under the Organizational Documents to all books of account. Furthermore, in cases where a Partnership has only one or a small number of investments, auditors may be unwilling to render an audit report without also auditing, or performing similar procedures with respect to, the underlying investment. Such an audit would most likely be outside of the Partnership's power to arrange and, in any event, would be prohibitively expensive. Applicants conclude that the disclosure, consent, and review procedures described above should provide adequate safeguards.

24. A Partnership's Organizational Documents will provide for the Partnership's dissolution under the following circumstances: (a) At the election of the Manager or the partners, but in either case only upon the affirmative vote to dissolve by partners whose capital contributions amount to a specified percentage (which will be more than 50%) of all the capital contributions of partners not in capital default; (b) by sale or disposition of substantially all of the assets or discontinuance of substantially all of the business of the Partnership; (c) by operation of law; (d) in the case of general partnerships, at such time as there are fewer than two general partners; or (e) at the expiration of any term stated in the Organizational Documents.

25. Each partner of a Partnership will have an aggregate contribution recorded in his or her capital account. A Partnership will make allocations of income, gain, loss, and expense which will, with certain exceptions, be reflected in the partner's capital account. There will be no special allocations for any partners other than special expense allocations for interest on Partnership Notes, and redemption and other expenses incurred by the Partnership at the behest of the partner. There will be no overrides for any partners. If a Manager or members of an Advisory Committee are partners of a Partnership, their respective general allocations of income, gain, loss, and expense will be made on the same basis as those of the other partners (*i.e.*, in proportion to capital contributions or commitments). Income, expenses, gains, and losses of the Partnerships will be determined in accordance with generally accepted accounting principles or tax accounting principles. The Organizational Documents will provide that accurate books of account shall be kept, and that each partner will have reasonable access thereto.

26. The timing and amount of any distributions of net income or net realized gains will be solely within the discretion of the Manager, except that the Organizational Documents of certain Subsequent Partnerships may require that at least a stated percentage of all cash realized from investments by distributed annually to the extent the Manager determines that such Partnership's cash resources are sufficient to make such distribution without any material adverse effect on the Partnership's ability to pursue its investment objectives.

Applicant's Legal Analysis

1. On behalf of itself and the Subsequent Partnerships, Applicant requests an exemption pursuant to section 6(b) of the 1940 Act from all the provisions of the 1940 Act except sections 7, 8(a), and 9, certain provisions of section 17, sections 36 through 53, and the rules and regulations related to these sections. Applicant requests exemptions from sections 17(a) and 17(d) as

discussed below, and also seeks limited exemptions from sections 17(f), 17(g), and 17(j) of the 1940 Act and rules 17f–2, 17g–1, and 17j–1 thereunder.

2. Harris Management also requests that the Commission enter an order pursuant to section 206A of the Advisers Act exempting Harris Management and any Advisory Subsidiary from certain provisions of section 203(c) of the Advisers Act, rule 203–1 thereunder and Form ADV to the extent that, in responding to question 2(b) of Schedule A of Form ADV (or the equivalent question of Schedule B for an Advisory Subsidiary organized as a partnership), it and any Advisory Subsidiary be permitted to omit the name of any individual owning 5% or more of a class of equity security of McKinsey (or of any future holding company of McKinsey), and instead be required to disclose only the name of any individual owning 5% or more of the voting securities of McKinsey (or any such holding company). As a private company managed by its shareholders, McKinsey believes that share ownership information is a sensitive and confidential subject more in the nature of internal compensation information, and that disclosure of this information would not benefit the partners in the Partnerships.

3. Section 17(a) of the 1940 Act would prohibit an affiliated person of a Partnership and affiliated persons of such persons ("Section 17 Persons") from engaging in purchases and sales of securities or other property with the Partnership, and from borrowing money or other property from the Partnership. For purposes hereof, Section 17 Persons of a Partnership are grouped as follows:

(a) the "McKinsey Significant Persons Group," consisting of (i) McKinsey (which term includes its majority owned subsidiaries, such as Harris Management and any Advisory Subsidiary, and any future holding company); (ii) any other entity (a "McKinsey-controlled Entity") of which McKinsey beneficially owns or McKinsey management group members acting as a group (as defined in the application) in the aggregate beneficially own more than 25% of the voting securities; (iii) McKinsey management group members acting as a group (as defined in the application) who in the aggregate control (as defined in the 1940 Act) McKinsey; (iv) individual members of McKinsey's Shareholders' Committee (*i.e.*, its corporate board of directors); (v) any management group member who singly owns 5% or more of the voting securities of McKinsey; and (vi) directors, officers, and employees of Harris Management or the Advisory Subsidiary, as the case may be, that acts as investment adviser of that Partnership (the persons in (iii)–(vi) being collectively referred to as "McKinsey Significant Persons");

(b) the "Fairness Determining Body," consisting of members of the Advisory Committee or Management Committee, as the case may be, of that Partnership;

(c) the "McKinsey Employees," consisting of partners of that Partnership and other Eligible Employees;

(d) the "McKinsey Investment Vehicles," consisting of other Partnerships, "Exempt Partnerships" (*i.e.*, McKinsey partnerships or employee investment vehicles currently excepted from the Act), and other investment vehicles advised or managed by the McKinsey Significant Persons Group or otherwise having the same investment adviser or manager as that Partnership; and

(e) "Remote Affiliates," consisting of Section 17 Persons not otherwise described in (a)–(d).

4. Applicant requests an exemption from the provisions of section 17(a) to the extent necessary to permit a Partnership (a) to purchase and dispose of interests in a company or other investment vehicle (other than in McKinsey or a McKinsey-controlled Entity) which is a Section 17 Person with respect to that Partnership, whether by virtue of ownership by affiliated persons of the Partnership of 5% or more of the voting securities of the company or vehicle, or otherwise; (b) to reimburse a partner from his or her own partnership account pursuant to the Organizational Documents for any amounts advanced by such partner pursuant to a several guarantee of the Partnership's borrowings under the Partnership Note relating to such partner's Capital Contribution or Capital Commitment; and (c) to acquire investments from McKinsey that McKinsey has, temporarily and as an accommodation to the Partnership, acquired on the Partnership's behalf; provided that the foregoing would not exempt transactions between a Partnership, on the one hand, and (a) any director, officer, or employee of Harris Management or the Advisory Subsidiary advising the Partnership (or any entity controlled by such person) or (b) any member of the Partnership's Fairness Determining Body (or any entity controlled by such person) on the other hand.

5. Applicant states that the requested exemption from section 17(a) is consistent with the policy and purpose of the Partnerships and with the protection of investors. The partners will have been fully informed of the possible extent of the Partnerships' dealings with McKinsey and its affiliates and, as successful professionals employed in the consulting business, will be able to evaluate any attendant risks. According to Applicant, the community of interest among McKinsey's partners is the best insurance against any risk of abuse with respect to affiliated principal transactions. Applicant acknowledges that any types of transactions otherwise subject to section 17(a) of the 1940 Act for which exemptive relief has not been requested would require specific approval by the Commission.

6. Section 179(d) of the 1940 Act and rule 17d–1 thereunder provide generally that it is unlawful for any affiliated person of a registered investment company and certain other entities, acting as principal, to effect any transaction in which the investment company is a joint or a joint and several participant with such person or entities. applicant requests an exemption from section 17(d) and rule 17d–1 to the extent necessary to permit a Partnership to engage in transactions in which a section 17 person with respect to the Partnership may participate as a co-investor. Applicant states that compliance with section 17(d) and rule 17d–1 may cause the Partnerships to forego many otherwise attractive investment opportunities simply because a partner or other affiliated person of McKinsey or a Partnership also had, or contemplated making, a similar investment. For example, McKinsey's Profit Sharing Retirement Plan ("PSRP") and McKinsey Employees may wish to invest in some of the same transactions as the Partnerships. According to Applicant, the concern that permitting joint investments might lead to disadvantageous treatment of the Partnership should be mitigated by the fact that McKinsey will be acutely concerned with its relationship with the management group members who are partners in the Partnerships. The Partnerships will not engage in any transaction that violates section 17(d) and rule 17d–1 without prior Commission approval if such transaction is not described in the application.

7. Each Partnership will be an "employees' securities company" as that term is defined in section 2(a)(13) of the 1940 Act. Under section 6(b) of the 1940 Act, the Commission is required, upon application, to exempt an employees' securities company if and to the extent that the exemption is consistent with the

protection of investors. Applicant contends that in light of the criteria for evaluating such applications set out in section 6(b), the Commission should grant the requested exemptions.

8. Applicant asserts that the protections created by the 1940 Act are generally unnecessary with respect to the Partnerships for a number of reasons, including that (a) there will be a community of economic and other interests among McKinsey and the partners of the Partnerships; (b) the Partnerships will be conceived and organized by those investing in the Partnerships, and will not be promoted by persons outside McKinsey seeking to profit from fees for investment advice or the distribution of securities; and (c) those investing in the Partnerships will have a high level of sophistication and financial status, and will not require the benefit of regulatory safeguards. Each eligible employee must, among other things, meet the definition of "accredited investor" set out in paragraphs (5) or (6) of section 501(a) of regulation D under the 1933 Act. Paragraph (5) of that section categorizes as an accredited investor any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of purchase exceeds $1,000,000. Paragraph (6) of that section categorizes as an accredited investor any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year.

Applicant's Conditions

1. As a condition of the section 17(a) relief requested for a Partnership, applicant agrees that:

(a) the Partnership will not acquire any investment sponsored or promoted by McKinsey or any member of the Fairness Determining Body;

(b) the Partnership will not acquire any interest in McKinsey or a McKinsey-controlled Entity;

(c) any acquisition by the Partnership of an investment covered by the section 17(a) relief requested will be effected at value (as defined in section 2(a)(41) of the 1940 Act), as determined in good faith by the Fairness Determining Body, except that transfers from McKinsey will be effected at cost as described in (d) below; and

(d) any transfer of an investment from McKinsey to the Partnership will be effected as soon as reasonably practicable after McKinsey's acquisition, but in any event within one year, and will be effected at McKinsey's cost, which includes any actual interest charges, not to exceed the prevailing prime rate, incurred to purchase and hold the property in question.

2. As a condition of the section 17(d) relief requested for a Partnership, applicant agrees that:

(a) The Partnership will not make any investment in which McKinsey is participant or, to the knowledge of the Partnership, plans concurrently or otherwise to become a participant, other than (i) as general partner in a Partnership organized as a limited partnership, to the limited and *pro rata* extent described in the application; and (ii) to the extent McKinsey may make temporary investments on behalf of the Partnership as described in paragraph 4 of Applicant's Legal Analysis above;

(b) the Partnership will not knowingly make any investment in which a member of the Fairness Determining Body is a participant or plans concurrently or otherwise directly or indirectly to become a participant, other than (i) through an investment in or relationship with a Partnership or Partnerships or through the PSRP (or other employee benefit plan), (ii) with respect to securities issued by open-end registered investment companies, (iii) with respect to readily marketable securities, or (iv) with respect to any other investment as to which such member recuses himself or herself from determinations on behalf of the Partnership, including the fairness determinations referred to in condition 3 below. Any investments described in clauses (i)–(iv) that are made concurrently with a member of the Fairness Determining Body will be made by the Partnership on the same basis as, or on a basis better than, such person. Moreover, in the case of any such concurrent transaction described in clause (iv), the Manager will obtain a commitment from such member that such member will not dispose of his or her investment in such joint investment without giving sufficient, but not less than one day's, notice to the Manager so that the Partnership has the opportunity to dispose of its investment in the joint investment prior to or concurrently with such member and on the same terms as such member;

(c) a Partnership may knowingly make an investment in which a McKinsey-controlled Entity or a McKinsey Significant Person is a participant or plans concurrently or otherwise directly or indirectly to become a participant or plans concurrently or otherwise directly or indirectly to become a participant only if the commitment regarding notice of dispositions, as described in (b) immediately above, is obtained and, in the case of a McKinsey Significant Person that is a director, officer, or employee of Harris Management or the Advisory Subsidiary advising the Partnership, such Person recuses himself or herself from determinations on behalf of the Partnership with respect to such investment, including the fairness determinations referred to in condition 3 below. Any such investments that are made concurrently with such Entity or Person will be made by the Partnership on the same basis as, or on a basis better than, such Entity or Person. Such commitment regarding notice of dispositions shall not apply to, and the determinations described in condition 3 below shall not be required for (i) participation by MGMs in such investment through an investment in or relationship with a Partnership or Partnerships or through the PSRP (or other employee benefit plan), (ii) with respect to securities issued by open-end registered investment companies, or (iii) with respect to readily marketable securities;

(d) for purposes of (a)–(c) above, a Partnership will have knowledge of an event if the Manager has actual knowledge thereof after reasonable investigation, which will at a minimum include: (i) Prior to making any investment, the Manager will confirm with each member of the McKinsey Significant Persons Group, the Fairness Determining Body, and the McKinsey Investment Vehicles whether or not any such person or entity also is or contemplates participating in that investment. In the case of individuals who are McKinsey Significant Persons solely by virtue of being members of the McKinsey Shareholders' Committee (*i.e.*, McKinsey's corporate board of directors), this confirmation may be obtained through notification of proposed investments given by the Manager, explaining the reason for the notification, requesting a response within a reasonable period (not less than 7 days) if such individual is or contemplates becoming a participant, and stating that failure to respond will be deemed a confirmation that such individual is not and does not contemplate becoming a participant; in the case of all other members of the McKinsey Significant Persons Group, this confirmation will be obtained by the Manager through an affirmative response by the person in question; and (ii) prior to making any investment, the Manager will obtain an affirmative response from the investee entity or its sponsor as to whether it is aware of any current or proposed participation in such investment by any member of the

McKinsey Significant Persons Group, the Fairness Determining Body, or the McKinsey Investment Vehicles; and

(e) joint investments by a Partnership and other McKinsey Investment Vehicles will be subject to specified allocation procedures. These procedures are intended to give first priority to the broadest constituency of McKinsey Employees, with successively narrower employee classes receiving next priority. First, if one or more of the proposed investors is a Section 17 Person that is subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), such as the PSRP, this investor or these investors will, to the extent required by ERISA, by given priority over the Partnerships to purchase as much of the proposed investment as desired. Any such ERISA investor would have the broadest participant base of McKinsey Employees as compared with the other investing entities hereinafter discussed, since even non-Eligible Employees would be participants. Next priority will be given to the Partnerships and any other McKinsey partnerships or employee investment vehicles ("Exempt Partnerships") relying on an available exemption from the 1940 Act rather than the requested order. Typically, only a subset of Eligible Employees will be investors in any single Partnership. Allocation among the Partnerships and Exempt Patnerships will be made without distinction as to their status as Partnerships or Exempt Partnerships, but will, of course, be based on objective criteria deemed fair and equitable by the Fairness Determining Body. For example, the most likely allocation criteria would be made on the basis of the relative amount of funds available for investment in the proposed investment opportunity, after taking into account the Partnerships' and Exempt Partnerships' respective investment objectives and policies.

3. As a further condition to the Partnership's participating in Section 17(a) Transactions or Section 17(d) Transactions for which relief is requested, Applicant agrees that each such Transaction will be effected in compliance with section 57(f) of the 1940 Act as if Applicant were a business development company to the extent that the Fairness Determining Body of the Partnership (instead of the "required majority" as defined in section 57(o) of the 1940 Act) approves the Transaction on the basis hereinafter set forth. The Fairness Determining Body will be the Management Committee, or Advisory Committee, even if the Partnership is otherwise managed by a single individual. Also, the reporting relationship, if any, within McKinsey's management structure of any member of the Fairness Determining Body will not be junior to the Section 17 Person (if such person is a McKinsey Employee) involved in the Transaction in question. In the case of a Section 17(a) Transaction involving the transfer of an investment from McKinsey to a Partnership, prior to the original acquisition by McKinsey such fairness determination will also be made with respect to the terms of such original acquisition. The Fairness Determining Body must approve the Transaction on the basis that:

(a) The terms of such Transaction, including the consideration to be paid or received, are fair and reasonable to the partners of the Partnership and do not involve overreaching of the Partnership or its partners on the part of any person concerned;

(b) the proposed Transaction is consistent with the interests of the partners and consistent with the Partnership's Organizational Documents and its reports to partners; and

(c) the members of the Fairness Determining Body will record in their minutes and preserve in their records a description of such Transaction, their findings, the information or materials upon which their findings were based, and the basis therefor. All such records will be maintained for the life of the Partnership and for a period of at least six years [2] after the termination of the Partnership, and will be subject to examination by the Commission and its staff.

4. Applicant agrees that each Partnership will maintain and preserve, for the life of the Partnership and a period of at least six years after the termination of the Partnership, such accounts, books, and other documents as constitute the record forming the basis for the Partnership's financial statements that are to be provided to partners, and that all such records will be subject to examination by the Commission and its staff.

5. Applicant also agrees that each Partnership will comply with section 57(h) of the 1940 Act and will adopt, and periodically review and update, procedures reasonably designed to ensure that reasonable inquiry is made prior to the consummation of any Section 17(a) Transaction or Section 17(d) Transaction as if Applicant were a business development company, except that the directors or general partners of such Partnership shall for this purpose be the members of the Fairness Determining Body.

6. As a condition to a Partnership's reliance on the requested order, Harris Management or the Advisory Subsidiary acting as investment adviser or manager of that Partnership, as the case may be, will register as an investment adviser pursuant to the Advisers Act and remain so registered as long as it advises or manages the Partnership and the Partnership seeks to rely on the requested order, subject to the very limited Advisers Act exemption described above.

7. The Organizational Documents of the Partnerships will not require that statements of account be audited. However, the Manager may, in its discretion, determine that an audit of a Partnership's financial statements shall be conducted. In addition, pursuant to the terms of a letter of exemption from the staff of the CFTC (attached as Exhibit C to the application), if an audit is requested by any partner of the Initial Partnership, Harris Management shall promptly notify the other partners of the Initial Partnership of such request and any reasons given therefor, and shall conduct a vote of the partners as to whether an audit should be performed. If 25% or more in number of the partners vote in the affirmative, Harris Management will cause an audit to be conducted promptly with respect to any prior fiscal year in question or as soon as practicable after the end thereof with respect to the then current fiscal year. Upon completion of any such audit, Harris Management will furnish copies of the audited financial statements to each partner of the Initial Partnership and to the CFTC. Applicant further undertakes as a condition of the Order sought herein that the same audit request procedure will be applicable to each Subsequent Partnership, whether or not it is subject to CFTC jurisdiction. Furthermore, Applicant undertakes as a condition of the Order sought herein that with respect to each Partnership that will not be providing audited annual financial statements, (a) prior to any initial investment in the Partnership (or prior to such Partnership's seeking to rely on the Order sought herein) each partner will be notified in writing that (i) the Partnership will not provide audited financial statements (except pursuant to the aforementioned consent procedure) and (ii) (if such be the case) all or most of the Partnership's investee entities

[2] Consistent with rule 31a–2 of the 1940 Act, each Partnership will preseve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years. Retention of documents for six years conforms to the general document retention requirements applicable to investment companies and should afford the Commission and its staff ample time to review such retained documents.

also will not provide audited financial statements to the Partnership, (b) no Eligible Employee will be admitted to a Partnership (or, in the case of a Partnership not previously seeking to rely on the Order sought herein, such Partnership will not seek to rely on the Order sought herein) unless prior thereto he or she consents specifically in writing to the absence of audits as described in clause (a), (c) before making any investment in an entity that will not provide the Partnership with audited financial statements at least annually, a Partnership will (unless it has previously made the disclosure described in (a)(ii) and obtained the consents described in (b) disclose to all of its partners such fact and obtain their specific written consent thereto, and (d) the chief financial officer of McKinsey (currently the Director of Finance) will conduct or supervise review procedures at least annually with respect to the Partnership's financial statements and accounting records as hereinafter described, and, if any exceptions or irregularities are found, will send a report thereon to each member of the Management Committee or Advisory Committee, as the case may be, of the Partnership. If for any reason that individual leaves the employ of McKinsey or otherwise ceases to be its chief financial officer, he will be asked to send a summary of the status of any reviews in process directly to the Managing Director of McKinsey, with copies to the Management Committee or Advisory Committee of each Partnership involved. The Managing Director of McKinsey will be responsible for ensuring that the new chief financial officer follows up. The procedures to be followed by or on behalf of the chief financial officer will include testing of cash receipts and disbursements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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Tandem Variable Annuity Separate Account

August 18, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Tandem Variable Annuity Separate Account.

RELEVANT 1940 ACT SECTION: Application filed pursuant to section 8(f) of the 1940 Act and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on June 10, 1992, and amended on August 6, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on September 14, 1992, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant is a separate account that was established by Tandem Insurance Group, Inc. ("Tandem Insurance") under the insurance laws of the state of Illinois. On May 29, 1991, the Applicant filed a notification of registration on Form N-8A and a registration statement on Form N-4 under the 1940 Act.

2. On that same date, the Applicant filed two registration statements under the Securities Act of 1933 (File Nos. 33-40912 and 33-40913) for an indefinite number of variable annuity contracts (the "Contracts"). The registration statements became effective on August 19, 1991. The public offering of the Contracts commenced on September 1, 1991.

3. Effective October 1, 1991, and with the prior approval of their respective boards of directors and shareholders, Tandem Insurance, merged with and into Merrill Lynch Life Insurance Company ("MLLIC"). As the surviving corporation, MLLIC assumed legal ownership of all of the assets of Tandem Insurance, including the Applicant and its assets.

4. In addition, effective October 1, 1991, and in connection with the merger of Tandem Insurance and MLLIC, the Applicant ceased to exist under Illinois state law as a result of its combination with and into the Merrill Lynch Life Variable Annuity Separate Account (the "Merrill Lynch Separate Account"), a separate account established by MLLIC. The combination of the Applicant and the Merrill Lynch Separate Account was effected with the prior approval of the respective boards of directors of Tandem Insurance and MLLIC; no vote, consent, or exercise of any other right of owners of the Applicant and the Merrill Lynch Separate Account was required to consummate the combination of the Applicant and the Merrill Lynch Separate Account. As part of the Applicant's combination with and into the Merrill Lynch Separate Account, the Applicant transferred all of its assets to the Merrill Lynch Separate Account in exchange for the latter's assumption of all of the Applicant's liabilities. The transfers were effected at the net asset value of the shares or units involved, and no charges were imposed or other deductions made in connection with the transfers. The combination of the Applicant and Merrill Lynch Separate Account had no effect on the values under the variable annuity contracts offered by the Applicant.

5. All costs of the merger and the combination of the separate accounts was borne by Tandem Insurance and MLLIC. No brokerage commissions were incurred in connection with the transfer.

6. The Applicant made no distributions to its security holders in connection with its combination with and into the Merrill Lynch Separate Account.

7. The Applicant has no assets, debts or other liabilities or any security holders. The Applicant has not transferred any of its assets to a separate account.

8. The Applicant is not a party to any litigation or administrative proceedings (other than this deregistration proceeding).

9. The Applicant is not now engaged, nor does it propose to engage, in any business activity.

10. The Applicant filed a report on Form N-SAR for the year ended December 31, 1991, and Applicant represents that it will continue to make such filings as required until such time as the Commission issues an order granting deregistration of the Applicant under the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20302 Filed 8-24-92; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Agency Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. chapter 35):

SSS Form No. and Title:

SSS Form 152, Alternative Service Employment Agreement
SSS Form 153, Employer Data Sheet
SSS Form 156, Skills Questionnaire
SSS Form 157, Alternative Service Job Data Form
SSS Form 160, Request for Overseas Job Assignment
SSS Form 163, Employment Verification Form
SSS Form 164, Alternative Service Worker Travel Reimbursement Request
SSS Form 166, Claim for Reimbursement for Emergency Medical Care

Copies of the above identified forms can be obtained upon written request to: Selective Service System, Reports Clearance Officer, Washington, DC 20435.

No changes have been made to the above identified forms. OMB clearance is limited to requesting a three year extension of the current expiration dates.

Written comments should be sent within 60 days after the publication of this notice, to: Selective Service System, Reports Clearance Officer, Washington DC 20435.

Send a copy of the comments to: OMB Reports, Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: August 18, 1992.

Robert W. Gambino,

Director.

[FR Doc. 92-20242 Filed 8-24-92; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 34), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before September 24, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Office before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBA Contract Requirements. *SBA Form No:* N/A. *Frequency:* On occasion. *Description of Respondents:* Contractors seeking SBA contracts. *Annual Responses:* 550. *Annual Burden:* 220,000.

Title: Application for Associate Development Company Designation. *SBA Form No.:* SBA Form 1849. *Frequency:* On occasion. *Description of Respondents:* Certified Development Companies. *Annual Responses:* 10. *Annual Burden:* 200.

Title: Associate Development Company Annual Report Guide. *SBA Form No.:* SBA Form 1850. *Frequency:* Annual. *Description of Respondents:* Associate Certified Development, Companies. *Annual Responses:* 100. *Annual Burden:* 100.

Dated: August 19, 1992.

Calvin Jenkins,

Director, Office of Administrative Services.

[FR Doc. 92-20217 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2583]

Kentucky; Declaration of Disaster Loan Area

Boyle and Fayette Counties and the contiguous counties of Bourbon, Casey, Clark, Garrard, Jessamine, Lincoln, Madison, Marion, Mercer, Scott, Washington, and Woodford in the State of Kentucky constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on June 17 and 18, 1992. Applications for loans for physical damage may be filed until the close of business on October 13, 1992 and for economic injury until the close of business on May 12, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308; or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.500
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 258306 and for economic injury the number is 768300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 12, 1992.

Patricia Saiki

Administrator.

[FR Doc. 92-20268 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2582]

Ohio; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 4, 1992, I find that the Counties of Franklin, Logan, Ross and Shelby in the State of Ohio constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on July 12, 1992 and continuing. Applications for loans for physical damage may be filed until the

close of business on October 4, 1992, and for loans for economic injury until the close of business on May 4, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308; or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Auglaize, Champaign, Darke, Delaware, Fairfield, Fayette, Hardin, Highland, Hocking, Jackson, Licking, Madison, Mercer, Miami, Pickaway, Pike, Union, and Vinton in State of Ohio may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.00
Others (including non-profit organizations) with credit available elsewhere)	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 258206 and for economic injury the number is 768200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 10, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-20216 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2580 & #2581]

South Dakota (and Contiguous Counties in Iowa); Declaration of Disaster Loan Area

Lincoln County and the contiguous counties of Clay, Minnehaha, Turner, and Union in the State of South Dakota, and Lyon and Sioux Counties in the State of Iowa constitute a disaster area as a result of damages caused by a fire on July 18, 1992 in downtown Canton, South Dakota. Applications for loans for physical damage may be filed until the close of business on October 8, 1992 and for economic injury until the close of business on May 7, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 258005 for South Dakota and 258105 for Iowa.

For economic injury the numbers are 768000 for South Dakota and 768100 for Iowa.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: August 7, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-20215 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Birmingham, will hold a public meeting from 9:30 a.m. to 12 noon on Friday, September 18, 1992, at First Alabama Bank, Training Center, 298 West Valley Avenue, Birmingham, Alabama, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, suite 200, Birmingham, Alabama 35203, (205) 731-1341.

Dated: August 18, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20220 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Santa Ana, will hold a public meeting from 10 a.m. to 12 noon on Tuesday, September 22, 1992 at Western Community Bank, 321 E. 6th Street, Corona, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John S. Waddell, District Director, U.S. Small Business Administration, 901 W. Civic Center Drive, suite 160, Santa Ana, California 92703, (714) 836-2494.

Dated: August 18, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20221 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, will hold a public meeting at 9:30 a.m. on Thursday, September 24, 1992 at Hazard Community College, Commodore Room, Hazard, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. William Federhofer, District Director, U.S. Small Business Administration, Room 188, 600 Dr. Martin Luther King, Jr. Place, Louisville, Kentucky 40202, (502) 582-5971.

Dated: August 18, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20218 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, will hold a public meeting from 10 a.m. to 12 noon on Friday, September 11, 1992, at the Small Business Administration Office, 11145 Mill Valley road, Omaha, Nebraska, to discuss such matters as may be

presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Glenn Davis, District Director, U. S. Small Business Administration, 11145 Mill Valley Road, Omaha, Nebraska 68154, (402) 221-3620.

Dated: August 14, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20222 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting on Thursday, September 17, 1992, from 1:30 p.m. to 4:30 p.m. at the Business Assistance Center, 6715 East 41st Street, Tulsa, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. W. Bruce Robinson, District Director, U.S. Small Business Administration, 200 N.W. 5th Street, suite 670, Oklahoma City, Oklahoma 73102, (405) 231-5237.

Dated: August 14, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20223 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Seattle, will hold a public meeting at 9 a.m. on Thursday, October 1, 1992, at the Henry M. Jackson Federal Building, room 1792, 915 Second Avenue, Seattle, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Robert P. Meredith, District Director, U.S. Small Business Administration, room 1792, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174, (206) 553-0704.

Dated: August 18, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20219 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1677]

Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting on September 16, 1992, at the Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, DC, from 9 to 12 a.m. in the 8th Floor Conference Room.

Study Group 4 deals with matters relating to the fixed satellite service. The purpose of the meeting is to deal with administrative matters, review the activities of the Working Parties and Task Groups, identify issues to be treated at the November 1992 Study Group 4 and Joint Study Group 4-9 meetings and finally to review the current and future work program.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. Hans Weiss, Communications Satellite Corporation, 22300 Comsat Drive, Clarksburg, MD 20871, phone (301) 428-4777.

Dated: August 14, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92-20272 Filed 8-24-92; 8:45 am]

BILLING CODE 4710-45-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Orlando International Airport, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Orlando International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 24, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Norman J. Glass, Executive Director of the Greater Orlando Aviation Authority, at the following address: Greater Orlando Aviation Authority, Orlando International Airport, One, Airport Boulevard, Orlando, Florida 32827-4399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Greater Orlando Aviation Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Pablo G. Affant, Civil Engineer, Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Dr., Suite 130, Orlando, Florida 32827-5397, Telephone 407-648-6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Orlando International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 17, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Greater Orlando Aviation Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 5, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1993.

Proposed charge expiration date: December 31, 1997.

Total estimated PFC revenue: $171,000,000.00.

Brief description of proposed project(s):

Roadway to the Southern Connector (Airport Access Road Between the Airport Terminal Loop Road and the Southern Connector Portion of the Orange County Beltway Roadway System)

International Passenger Terminal

Airside 1 Expansion and Rehabilitation

Environmental Planning and Approvals for the North Crossfield Taxiway

West Ramp Rehabilitation

Runway 18L/36R Rehabilitation

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: NONE.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Greater Orlando Aviation Authority.

Issued in Atlanta, Georgia, on August 17, 1992.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 92-20323 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pensacola Regional Airport, Pensacola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pensacola Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 24, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827-5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank R. Miller, Airport Director, Pensacola Regional Airport, at the following address: Pensacola Regional Airport, 2430 Airport Boulevard, Pensacola, Florida 32504-8977.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Pensacola, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr Carlos Maeda, Airports Plans & Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397, Telephone 407-648-6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at Pensacola Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 17, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Pensacola was substantially compelete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in parts, no later than November 28, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1993.

Proposed charge expiration date: March 31, 1996.

Total estimated PFC revenue: $4,912,000.00.

Brief description of proposed projects:

Projects to Impose and Use PFCs:

Provide Vegetation Barrier (Noise Barrier)

Land Acquisition

Construct a Midfield Service Road

Purchase Aviation Easements

Projects to Only Impose PFCs:

Extension Passenger Terminal Concourse

Conduct a Master Plan Drainage Study

Class of classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercal Operators.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pensacola.

Issued in Atlanta, Georgia, on August 17, 1992.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 92-20324 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Motor Carrier Advisory Committee Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee (NMCAC) will hold its next meeting on September 23-24, 1992, at 400 7th Street, SW., room 2201, Washington, DC. The meeting will be from 1:30 p.m. to 5 p.m. on September 23 and from 8:30 a.m. to 3 p.m. on September 24. The focus of the meeting will be on implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, HIA-20, room 3104, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1861. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal Federal holidays. (23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 19, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-20289 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Quarterly Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Public meeting; amendment.

SUMMARY: This is an amendment to the previous notice published in the **Federal Register** August 17, 1992 announcing a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs and at which NHTSA will briefly discuss its strategic planning activities.

DATES: The Agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on September 18, 1992, beginning at 9:30 a.m. and ending at approximately 1 p.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by September 10, 1992, to the address shown below. If sufficient time is available, questions received after the September 10 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by September 10, 1992, and the issues to be discussed will be mailed to interested personnel by September 14, 1992, and will be available at the meeting.

ADDRESSES: Questions for the September 18 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, room 5401, 400 Seventh Street SW., Washington, DC 20590. The meeting will be held at the Ramada Inn, 8270 Wickham Road, Romulus, Michigan 48174 (by the Detroit Metropolitan Airport.)

SUPPLEMENTARY INFORMATION: This notice amends a Federal Register notice of NHTSA quarterly meeting published August 17, 1992 (57 FR 37027). NHTSA will hold its regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's rulemaking, research and enforcement programs, on September 18, 1992. The meeting will be held at the Ramada Inn, 8270 Wickham Road, Romulus, Michigan. The purpose of the meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street SW., Washington DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

At the end of the regularly scheduled quarterly meeting, an official from NHTSA's Office of Strategic Planning and Evaluation will briefly review the agency's strategic planning activities to improve traffic and motor vehicle safety into the next century. A particular focus will be the **Federal Register** notice that was published on July 28 announcing the agency's stragetic planning initiative and inviting comments from the public on a number of key issues. The issues that are particular relevance to the automotive industry will be highlighted during the session. Also, the agency will stress how important the auto industry's specific input is in crafting NHTSA's future direction.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366-1810, by COB September 9, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-19979 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-42; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990 Mercedes-Benz 300SEL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Mercedes-Benz 300SEL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Mercedes-Benz 300SEL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATE: The closing date for comments on the petition is September 24, 1992.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1990 Mercedes-Benz 300SEL (Model ID 126.025) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1990 Mercedes-Benz 300SE (Model ID 126.024). Champagne has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1990 Mercedes-Benz 300SE, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 300SEL is substantially similar to the 300SE, and "differs mainly in minor options." In accounting for the

differences between the two vehicles, the petitioner observed that manufacturers such as Daimler Benz A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 300SEL's absence from the United States market could be attributed to "salability considerations, or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1990 model 300SEL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1990 model 300SE that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1990 model 300SEL is identical to the certified 1990 model 300SE with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the 1990 model 300SEL is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition switch is turned off.

Standard No. 206 *Door Locks and Door Retention Components:* Replacement of the rear door locks and locking buttons with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner claims that the 1990 model 300SEL is equipped with a passive restraint system consisting of an airbag, control module, and knee bolster, which have identical part numbers to those found on the U.S. certified 1990 model 300SE.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1990 model 300SEL must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 24, 1992.

Authority: 15 U.S.C. 1397(c)(3)(a)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on August 18, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–20252 Filed 8–24–92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92–18; Notice 2]

Determination That Nonconforming 1981 BMW 628CSI Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1981 BMW 628CSi passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1981 BMW 628CSi passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1981 BMW 628CSi), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) The motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) petitioned NHTSA to determine whether 1981 BMW 628CSi passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 8, 1992 (57 FR 19962) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP ‹15 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1981 BMW 628CSi is substantially similar to a 1981 BMW 628CSi originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that the 1981 BMW 628CSi is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 18, 1992.

William A. Boehly,
Associate Administrator for Enforcement.

[FR Doc. 92-20253 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-19; Notice 2]

Determination That Nonconforming 1986 BMW 728i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1986 BMW 728i passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1986 BMW 728i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1986 BMW 735i), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * *substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) petitioned NHTSA to determine whether 1986 BMW 728i passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 8, 1992 (57 FR 19965) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #14 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1986 BMW 728i is substantially similar to a 1986 BMW 735i originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that the 1986 BMW 728i is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 18, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-20254 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 19, 1992.

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: 1545-0085.

Form Number: IRS Form 1040A, Schedules 1, 2, 3, and EIC.

Type of Review: Resubmission.

Title: U.S. Individual Income Tax Return.

Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form is correct and are also for statistics use.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 33,591,448.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Form 1040A	1 hr., 3 min.	2 hr., 8 min.	2 hr., 47 min.	35 min.
Sched. 1	20 min.	4 min.	10 min.	20 min.
Sched. 2	33 min.	11 min.	38 min.	28 min.
Sched. 3	13 min.	14 min.	28 min.	35 min.
Sched. EIC	39 min.	16 min.	33 min.	47 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 150,353,636 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. 92-20244 Filed 8-24-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 19, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0024.

Form Number: ATF F 1 (AFT F 5320.1).

Type of Review: Extension.

Title: Application to Make and Register a Firearm.

Description: This form is used by the public when applying to make a firearm that falls within the purview of the National Firearms Act (NFA). The information supplied by the applicant on the form helps to establish the applicants eligibility for approval of the request.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 370.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,480 hours.

OMB Number: 1512-0221.

Form Number: ATF F 5640.1.

Type of Review: Extension.

Title: Offer in Compromise of Liability Incurred Under the Internal Revenue Code.

Description: ATF F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue Code. If accepted the offer in compromise is a settlement between the Government and the party in violation in lieu of legal proceedings or prosecution. ATF F 5640.1 identifies the person making the offer, violations, amount of offer and circumstances concerning the violations.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 40.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 80 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-20245 Filed 8-24-92; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 18, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980,

Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0086.
Form Number: IRS Form 1040C.
Type of Review: Extension.
Title: U.S. Departing Alien Income Tax Return.
Description: Form 1040C is used by aliens departing the U.S. to report income received or expected to be received for the entire tax year. The data collected are used to insure that the departing alien has no outstanding U.S. tax liability. Affected public are aliens departing the U.S.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping—2 hours, 5 minutes
Learning about the law or the form—44 minutes
Preparing the form—2 hours, 19 minutes
Copying, assembling and sending the form to the IRS—1 hour, 13 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 11,492 hours.
OMB Number: 1545–0197.
Form Number: IRS Form 5300.
Type of Review: Revision.
Title: Application for Determination for Employee Benefit Plan.
Description: IRS needs certain information on the financing and operating of employee benefit and employee contribution plans set up by employers. IRS uses Form 5300 to obtain the information needed to determine whether the plans qualify under Code sections 401(a) and 501(a).
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 300,000.

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping—21 hours, 46 minutes
Learning about the law or the form—6 hours, 12 minutes
Preparing the form—8 hours, 41 minutes
Copying, assembling and sending the form to the IRS—32 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 11,157,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., 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. 92–20246 Filed 8–24–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 18, 1992.

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: New.
Form Number: None.
Type of Review: New collection.
Title: Questionnaire to Small Boat Manufacturers (CF 418).
Description: This one-time survey is to ascertain availability of compartment and arrangement drawings, plans and profile, and line drawings of powerboats from 18 to 100 feet in length. These boats are commonly used by drug smugglers.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 79.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other (one-time).
Estimated Total Reporting Burden: 79 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, 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. 92–20247 Filed 8–24–92; 8:45 am]
BILLING CODE 4820–02–M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on September 2, 1992. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday, September 2, 1992. The agenda will include the following topics:

Wednesday, September 2, 1992

Ethics Survey Results
Report on State of Quality in IRS Field Offices
Status of Taxlink
Status of 1040 PC
Section 482: Task Force on 3rd Party Transfer Price Information
Automated Processing of Extensions (APEX)
Employee/Independent Contractor
Report on Penalty Handbook
New Deposit Regulations
100 Percent Penalty from a Small Business Perspective
Questions & Answers/News Items

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Patti Andrews, Senior Program Analyst, no later than August 26, 1992. Ms. Andrews can be reached on (202) 622–6450 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Ms. Andrews, Executive Secretariat, C:ES, Room 3308, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Patti Andrews, Senior Program Analyst, (202) 622-6450 (not toll-free).

Shirley D. Peterson,

Commissioner.

[FR Doc. 92-20257 Filed 8-24-92; 8:45am]

BILLING CODE 4830-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Establishment of Dispute Settlement Panel Concerning U.S. Import Restrictions on Certain Tuna

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR), responding to public interest in this matter, is providing notice that the Council of Representatives of the General Agreement on Tariffs and Trade (GATT), pursuant to a request by the European Community (EC), has decided to establish a dispute settlement panel to review the complaint by the EC against U.S. prohibitions on the importation of certain tuna under the Marine Mammal Protection Act of 1972.

FOR FURTHER INFORMATION CONTACT: Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, or Jeanne Davidson, Associate General Counsel, Office of the General Counsel, USTR, 600 17th Street, NW., Washington, DC 20506, (202) 395-7305 or (202) 394-3432, respectively.

SUPPLEMENTARY INFORMATION: In light of the extensive public interest in an earlier panel proceeding on this topic initiated by the Government of Mexico, USTR is providing notice of the request for, and establishment of, a second dispute settlement panel to examine the consistency of these U.S. tuna import prohibitions under the Marine Mammal Protection Act of 1972 (MMPA) with U.S. international trade obligations under the GATT.

Section 101(a)(2)(B) of the MMPA (16 U.S.C. 1371(a)(2)(B)) prohibits the importation of certain yellowfin tuna and tuna products from countries ("primary embargo countries") whose marine mammal mortality rates and programs are not comparable to those of the United States. Section 101(a)(2)(C) of the MMPA (16 U.S.C. 1371(a)(2)(C)) prohibits the importation of yellowfin tuna from any intermediary nation from which yellowfin tuna and tuna products will be exported to the United States that has not certified and provided reasonable proof that it has acted to prohibit the importation of such tuna and tuna products from any nation from which direct export to the United States is banned.

Pursuant to court order, the United States has, under the MMPA, prohibited the importation of certain yellowfin tuna and tuna products from several countries, including Mexico (as a "primary embargo country") and from a number of additional countries, including member states of the EC and the Netherlands Antilles (as "intermediary nations" or "secondary embargo countries").

In November 1990, the Government of Mexico requested consultations with the United States, contending that the U.S. tuna import embargo was inconsistent with U.S. obligations under the GATT. On January 25, 1991, Mexico requested the formation of a GATT dispute settlement panel to review its challenge to the U.S. import prohibitions. The dispute settlement panel issued its final report September 3, 1991, finding in part that the primary and intermediary nations embargoes, and the provisions of the MMPA under which they are imposed, are contrary to the GATT.

Specifically, the panel found that the primary and intermediary nation embargoes are import prohibitions that are impermissible under the GATT, and that the GATT's exceptions for import restrictions necessary to protect animal life or health (Article XX(b)) or relating to the conservation of exhaustible natural resources (Article XX(g)) are not available for measures to protect resources located outside the jurisdiction of the nation taking the measure.

The panel reasoned that each country remains free under the GATT to set its own environmental policies; if the exceptions were available for extrajurisdictional measures, then, in the panel's view, a country could take trade measures based on the fact that another country had different environmental policies from its own, thereby infringing that other country's right to establish its own environmental policies. The panel considered that if the exceptions were construed to apply extrajurisdictionally, then any GATT contracting party could unilaterally determine the life or health protection policies from which other contracting parties could not deviate without jeopardizing their rights under the GATT. There was widespread public interest in, and discussion of, this panel report. As a result, pursuant to the request of the United States, Mexico agreed with the U.S. to make the report public on September 13, 1991. Accordingly, copies of the panel's report are available upon request.

The Governments of the United States and Mexico have worked together since the issuance of the panel report to resolve their dispute without further proceedings in the GATT. The panel report has not been adopted by the GATT Council of Representatives and consequently is not an official determination of U.S. obligations under the GATT.

In the spring of 1992, the EC and the Netherlands, acting on behalf of the Netherlands Antilles, initiated a separate challenge to the United States actions under the MMPA as being inconsistent with U.S. obligations under the GATT, in particular with respect to the secondary embargo countries. The EC requested the formation of a GATT dispute settlement panel. The Netherlands, on behalf of the Netherlands Antilles, asked to join its complaint against the United States to the proceeding requested by the EC. On July 14, the GATT Council agreed to both requests.

Panelists are currently being selected for the panel.

Daniel M. Price,

Acting General Counsel.

[FR Doc. 92-20251 Filed 8-24-92; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 165
Tuesday, August 25, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 27, 1992.

PLACE: Room, 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Southern Ohio Coal Co.*, Docket No. LAKE 91-650-R, etc. (Issues include whether the judge erred in concluding that Southern Ohio Coal Co. violated 30 CFR § 75.1704-2(a), which requires that escapeways follow the "safest direct practical route" out of the mine.)

Any person attending this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.1509 (a)(3) and § 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Southern Ohio Coal Co.*, Docket No. LAKE 91-650-R, etc. (See Oral Argument Listing)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Dated: August 20, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92-20490 Filed 8-21-92; 3:33 pm]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 31, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20479 Filed 8-21-92; 3:31 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 24, 31, September 7, and 14, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 24

Wednesday, August 26

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 31—Tentative

Tuesday, September 1

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, September 3

1:00 p.m.
Briefing by EPRI on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Week of September 7—Tentative

Tuesday, September 8

10:00 a.m.
Briefing on Advanced and Evolutionary Reactor Topics: Form and Content for a Design Certification Rule and Follow-up to SECY-90-016 (Public Meeting) (Contact: Dennis Crutchfield, 301/504-1199)

Wednesday, September 9

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 11

8:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

8:30 a.m.
Briefing by Charlie Meinhold on 1990 Recommendations of the International Commission on Radiological Protection (ICRP Publication 60) (Public Meeting)

10:00 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Raymond Fraley, 301/492-8049)

Week of September 14—Tenative

Thursday, September 17

2:00 p.m.
Status Briefing on Shutdown and Low Power Risk Issues (Public Meeting) (Contact: Mark Caruso 301/504-3235)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: August 21, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-20482 Filed 8-21-92; 3:32 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
August 25, 1992

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for Housing Opportunities for Persons With AIDS; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3481; FR-3306-N-01]

Notice of Funding Availability for Housing Opportunities for Persons With AIDS

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This notice announces the availability of $4,771,000 in funds to be allocated by competition for housing assistance and supportive services under the Housing Opportunities for Persons with AIDS (HOPWA) program. There will be two categories of assistance: (1) Grants to States and localities for projects of national significance; and (2) grants to: (A) States that do not qualify for HOPWA formula allocations; (B) localities outside of eligible metropolitan areas; and (C) localities inside of eligible metropolitan areas that do not have a HUD-approved Comprehensive Housing Affordability Strategy (CHAS). Approximately ten grants will be competitively awarded. The NOFA contains information concerning eligible applicants, the funding available, the application package, and its processing. An Interim Rule containing the requirements and other programmatic information for the HOPWA program was published in the **Federal Register** on July 20, 1992 (57 FR 32106).

DATES: Application packages will be available beginning September 1, 1992 from the HUD field offices listed at the end of this NOFA. Additional information regarding the submission of applications is included in the package.

Applications for HOPWA assistance must be received at HUD's national headquarters by 5:15 p.m. eastern time on October 26, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: The original application must be sent to the following: James N. Forsberg, Director, Office of Special Needs Assistance Programs, U.S. Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410-7000. A copy must also be sent to the HUD field office serving the area in which the applicant's project is located. A list of field offices appears at the end of this NOFA. A determination that an application was received on time will be made solely on receipt of the original application at the national office.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410-7000; telephone (202) 708-4300, or for hearing- and speech-impaired persons, (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the HOPWA program have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506-0133.

I. Purpose and Substantive Description

(a) Purpose

The HOPWA competitive program will support and encourage the development of approximately five housing assistance and supportive services projects which, due to their unique or innovative nature, are likely to serve as effective models in addressing the housing and related needs of low-income persons living with acquired immunodeficiency syndrome and provide assistance for the development of approximately five additional projects that will address housing and supportive services made of persons with AIDS and related diseases. For the latter projects, assistance may be provided only to: (1) States that do not qualify for HOPWA formula grants; (2) localities outside of eligible metropolitan areas, as defined in 24 CFR 574.3; and (3) localities inside of eligible metropolitan areas that do not have a HUD-approved CHAS.

(b) Authority

The assistance made available under this NOFA is authorized by the AIDS Housing Opportunity Act (Pub. L. 101-625, approved November 28, 1990, 42 U.S.C. 12901-12912), which established the Housing Opportunities for Persons with AIDS (HOPWA) program. The funding was appropriated by the Department's appropriation act for fiscal year 1992 (Pub. L. 102-139, approved October 29, 1991). The Department's Interim Rule for the HOPWA program was published in the **Federal Register** on July 20, 1992 (57 FR 32106).

(c) Allocation Amounts

(1) This NOFA announces the availability of $2,385,000 for grants for projects of national significance.

(2) This NOFA also announces the availability of $2,386,000 for grants to: (i) States that do not qualify for HOPWA formula allocations; (ii) localities outside of eligible metropolitan areas; and (iii) localities inside of eligible metropolitan areas that do not have a HUD-approved CHAS.

(3) HUD expects to award approximately five grants in each of the two categories of assistance. The maximum amount that an applicant may receive is $500,000. HUD reserves the right, however, to make reductions in the amounts requested and, if there are too few applications in one category that rank sufficiently high to be funded, to transfer funds from that category of assistance to the other. Because of the limited number of grants to be awarded, HUD expects an extremely competitive process and strongly suggests that only applications likely to receive a high score under all the selection criteria be submitted.

(d) Eligibility

(1) All States and units of general local government, regardless of whether they qualify for a HOPWA formula allocation, may apply for grants for projects of national significance, as described in 24 CFR 574.250(b)(3).

(2) The only applicants that may apply for grants for other projects are the following:

(A) States that do not qualify for HOPWA formula grants;

(B) localities outside of eligible metropolitan areas; and

(C) localities inside of eligible metropolitan areas that do not have a HUD-approved CHAS. Nonprofit organizations may serve as project sponsors under contract with grantees to operate projects receiving funding under both categories of assistance.

(e) Threshold Review

The selection process for HOPWA includes a preliminary technical threshold review, provided by § 574.250 of the Interim Rule. HUD will conduct its review to determine:

(1) Whether the application is adequate in form, time of submission, and completeness;

(2) Whether the applicant, the population to be served and the proposed project sponsor(s), if any, are eligible;

(3) Whether the proposed activities are eligible for assistance under the program; and

(4) Whether the applicant is currently in compliance with the Federal requirements contained in subpart G (Other Federal Requirements) of the Interim Rule.

(f) Rating Criteria

(1) Applications for grants for projects of national significance that meet the threshold review requirements described in paragraph (e) of this NOFA will be rated based on the following selection criteria:

(i) Applicant Capacity (200 Points)

HUD will award up to 200 points based on the ability of the applicant and, if applicable, any project sponsor(s) to develop and operate the proposed assisted housing and supportive services program. With regard to both the applicant and the project sponsor(s), HUD will consider such factors as the quality of any ongoing programs; past experience in programs serving low-income persons with AIDS and related diseases, including minority persons; management and staffing plans; and other relevant factors.

(ii) Need for the Project in the Area to be Served (200) Points

HUD will award up to 200 points based on the extent of the urgent housing and supportive service needs of eligible persons that are not currently being addressed by available public and private resources within the intended service area, including the relative numbers of AIDS cases and per capita AIDS incidence.

(iii) Appropriateness of Housing and Supportive Services (300 Points)

HUD will award up to 300 points based on the extent to which the proposed activities to be carried out with HOPWA assistance will address the identified needs. In assessing an application under this criterion, HUD will consider the degree to which the applicant demonstrates that proposed activities will provide a continuum of housing and services to meet the changing needs of beneficiaries.

(iv) Extent of Leveraged Public and Private Resources for the Project (100 Points)

HUD will award up to 50 points based on the extent to which the applicant will leverage the amount of assistance requested with funds and other resources from other public or private sources, including the likelihood of the continuation of State and local efforts. HUD also will award up to 50 points based on the extent to which the applicant demonstrates local planning and coordination of housing programs for persons with AIDS.

(v) Innovative Nature of the Proposal (100 Points)

HUD will award up to 100 points based on the extent to which the project involves an exemplary program for, or alternative method of, meeting the needs of low-income persons with AIDS and related diseases, when compared to other applicants; and

(vi) Potential for Replication (100 Points)

HUD will award up to 100 points based on the extent to which the project design, management plan, and service descriptions are appropriate as a model for replication in other similar localities or nationally.

(2) Applications for grants under paragraph (c)(2) of this notice that meet the threshold review requirements described in paragraph (e) of this NOFA will be rated based on the following selection criteria:

(i) Applicant Capacity (200 Points)

HUD will award up to 200 points based on the ability of the applicant and, if applicable, any project sponsor(s) to develop and operate the proposed assisted housing and supportive services program. With regard to both the applicant and the project sponsor(s), HUD will consider such factors as the quality of any ongoing programs; past experience in programs serving low-income persons with AIDS and related diseases, including minority persons; management and staffing plans; and other relevant factors.

(ii) Need for the Project in the Area to be Served (200 Points)

HUD will award up to 200 points based on the extent of the urgent housing and supportive service needs of eligible persons that are not currently being addressed by available public and private resources within the intended service area, including the relative numbers of AIDS cases and per capita AIDS incidence.

(iii) Appropriateness of Housing and Supportive Services (400 Points)

HUD will award up to 400 points based on the extent to which the proposed activities to be carried out with HOPWA assistance will address the identified needs. In assessing an application under this criterion, HUD will consider the degree to which the applicant demonstrates that proposed activities will provide a continuum of housing and services to meet the changing needs of beneficiaries.

(iv) Extent of Leveraged Public and Private Resources for the Project (200 Points)

HUD will award up to 100 points based on the extent to which the applicant will leverage the amount of assistance requested with funds and other resources from other public or private sources, including the likelihood of the continuation of State and local efforts. HUD also will award up to 100 points based on the extent to which the applicant demonstrates local planning and coordination of housing programs for persons with AIDS.

(g) Ratings

Applicants for funds for both categories of assistance will be assigned a rating score and placed in ranked order within their category, based upon the criteria listed in paragraph (f) of this NOFA. The Department will consider the highest rated applicants for final selection in accordance with their ranked order within their category, to the extent that funds are available.

II. Application Submission Requirements

(a) Complete application submission requirements are contained in the application package. Any potential applicants who have questions about the preparation or submission of applications are urged to contact their HUD field office.

(b) Applicants not having a HUD-approved comprehensive housing affordability strategy (CHAS) must submit a CHAS meeting the requirements of 24 CFR part 91, except for applicants eligible under § 574.210(b)(3) of the interim rule.

III. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies are items that are not necessary for HUD review under the selection criteria (e.g., failure to submit a required certification with the application). Items that would improve the substantive quality of the application may not be submitted after the application due date has expired.

IV. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, was made in connection with the interim rule authorizing this program that was published in the **Federal Register** on July 17, 1992 [Docket No. 92-1601]. That Finding of No Significant Impact applies to this NOFA, and it is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order. The Notice announces the availability of funds and invites applications from eligible applicants for the Housing Opportunities for Persons with AIDS program.

Impact on the Family

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that this Notice, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance and general well-being. However, the statutory authority for the program requires that the funds be targeted to individuals with acquired immunodeficiency syndrome and related diseases. Any funding provided to projects which may through other funding sources be incidentally serving families can be expected to enable those families with a participating member who has HIV infection to live in decent, safe, and sanitary housing in connection with the supportive services necessary to live independently in mainstream American society. Since the impact on families, if any, is a beneficial one, no further review is necessary.

Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period, beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 of HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708-3815 (TDD/voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters for the program to which the question pertains.

Section 112 of HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Urban Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule codified at 24 CFR part 86 (56 FR 22912, May 17, 1991). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3000. Telephone: (202) 708-3815 (TDD/voice). This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352)

(The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Drug-Free Workplace Certification

In accordance with 24 CFR 24.630, an applicant must submit its Certification for a Drug-Free Workplace (Form HUD-50070).

HUD Field Offices

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for field offices; all HUD numbers may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDD or (1-800-877-8339) or (202) 708-9300.

Alabama: Jasper H. Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, suite 300, Birmingham, AL 35209-3144; (205) 731-1672; TDD (205) 290-7624

Alaska: Colleen Craig, Federal Bldg., 222 W. 8th Ave., #64, Anchorage, AK 99513-7537; (907) 271-3669; TDD (907) 271-4328

Arizona: Diane Domzalski, 400 N. Fifth St., suite 1600, Arizona Center, Phoenix, AZ 85004; (602) 379-4754; TDD (602) 379-4461

Arkansas: Billy M. Parsley, Lafayette Bldg., 523 Louisiana, suite 200, Little Rock, AR 72201-3707; (501) 324-6375; TDD (501) 324-5931

California: (Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015-3801; (213) 251-7235; TDD (213) 251-7038; (Northern) Gordon H. McKay, 450 Golden Gate Ave., P.O. 36003, San Francisco, CA 94102-3448; (415) 556-5576; TDD (415) 556-8357

Colorado: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811; TDD (303) 844-6158

Connecticut: Daniel Kolesar, 330 Main St., Hartford, CT 06106-1860; (203) 240-4508; TDD (203) 240-4522

Delaware: John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106-3392; (215) 597-2665; TDD (215) 597-5564

District of Columbia: James H. McDaniel, 820 First St., NE, Washington, DC 20002; (202) 275-0994; TDD (202) 275-0967

Florida: James N. Nichol, 325 W. Adams St., Jacksonville, FL 32202-4303; (904) 232-3587; TDD (904) 232-1291

Georgia: Charles N. Straub, Russell Fed. Bldg., room 688, 75 Spring St., SW, Atlanta GA 30303-3388; (404) 331-5139; TDD (404) 730-2654

Hawaii: Patti A. Nicholas, 7 Waterfront Plaza, suite 500, 500 Ala Moana Boulevard, Honolulu, HI 96813-4918; (808) 541-1327; TDD (808) 541-1356

Idaho: John G. Bonham, 520 SW 6th Ave., Portland, OR 97204-1596; (503) 326-7018; TDD (503) 326-3656

Illinois: Richard Wilson, 77 W. Jackson Blvd., Chicago, IL 60604-5760; (312) 353-1696; TDD (312) 353-7143

Indiana: Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204-2526; (317) 226-5169; TDD (317) 226-6951

Iowa: Gregory A. Bevirt, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102-1622; (402) 221-3703; TDD (402) 492-3102

Kansas: Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101-2406; (913) 236-2184; TDD (913) 236-3972

Kentucky: Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201-1044; (502) 582-5394; TDD (502) 582-5139

Louisiana: Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112-2887; (504) 589-7212; TDD (504) 589-7237

Maine: David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2487; (603) 666-7640; TDD (603) 666-7518

Maryland: Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202-1865; (301) 962-2417; TDD (301) 962-0106

Massachusetts: Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222-1092; (617) 565-5343; TDD (617) 565-5453

Michigan: Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226-2592; (313) 226-4343; TDD (313) 226-6898

Minnesota: Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401-2195; (612) 370-3019; TDD (612) 370-3186

Mississippi: Jeanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., room 910, Jackson, MS 39269-1096; (601) 965-4765; TDD (601) 965-4171

Missouri: (Eastern) David H. Long, 1222 Spruce St., St. Louis, MO 63103-2836; (314) 539-6524; TDD (314) 539-6331; (Western) Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101-2406; (913) 236-2184; TDD (913) 236-3972

Montana: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811; TDD (303) 844-6158

Nebraska: Gregory A. Bevirt, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102-1622; (402) 221-3703; TDD (402) 492-3102

Nevada: (Las Vegas, Clark County) Diane Domzalski, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379-4754; TDD (602) 379-4461; (Remainder of State) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102-3448; (415) 556-5576; TDD (415) 556-8357

New Hampshire: David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2487; (603) 666-7640; TDD (603) 666-7518

New Jersey: Frank Sagarese, Military Park Bldg., 60 Park Pl., Newark, NJ 07102-5504; (201) 877-1776; TDD (201) 645-6649

New Mexico: R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113-2905; (817) 885-5483; TDD (817) 885-5447

New York: (Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203-1780; (716) 846-5768; TDD (716) 846-5787; (Downstate) Joan Debelko, 26 Federal Plaza, New York, NY 10278-0068; (212) 264-2885; TDD (212) 264-0927

North Carolina: Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407-3707; (919) 547-4005; TDD (919) 547-4055

North Dakota: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811; TDD (303) 844-6158

Ohio: Jack E. Riordan, 200 North High St., Columbus, OH 43215-2499; (614) 469-6743; TDD (614) 469-6694

Oklahoma: Katie Worsham, Murrah Fed. Bldg., 200 NW. 5th St., Oklahoma City, OK 73102-3202; (405) 231-4973; TDD (405) 231-4181

Oregon: John G. Bonham, 520 SW. 6th Ave., Portland, OR 97204-1596 (503) 326-7018; TDD (503) 326-3656

Pennsylvania: (Western) Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219-1906; (412) 644-5493; TDD (412) 644-5747; (Eastern) John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106-3392; (215) 597-2665; TDD (215) 597-5564

Puerto Rico: Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR

00918–1804; (809) 766–5576; TDD (809) 766–5909

Rhode Island: Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453

South Carolina: Louis E. Bradley, Acting, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564; TDD (803) 253–3071

South Dakota: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811; TDD (303) 844–6158

Tennessee: Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 549–9422; TDD (615) 549–9372

Texas: (Northern) R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447; (Southern) Robert W. Hicks, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (512) 229–6820; TDD (512) 229–6885

Utah: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811; TDD (303) 844–6158

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Dated: August 17, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

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Part III

Environmental Protection Agency

40 CFR 260 et al.

Burning of Hazardous Waste in Boilers and Industrial Furnaces; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, and 266

[EPA/OSW-FR-92-SWH-FRL-4198-5]

Burning of Hazardous Waste in Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical clarification amendments and corrections.

SUMMARY: This action makes several technical clarification amendments and corrections to the final rule for boilers and industrial furnaces burning hazardous waste. The final rule was published on February 21, 1991 (56 FR 7134). These revisions provide clarification and correct unintended consequences of the rule.

EFFECTIVE DATE: August 11, 1992.

ADDRESSES: The documents are available for viewing at the RCRA Information Center (docket identification number F-92-BBC3-FFFFF), located at: EPA/RCRA Information Center, room M2427, 401 M Street, SW., Washington, DC 20460.

The RCRA Information Center is open from 9 a.m. to 4 p.m. Monday through Friday, except for federal holidays. The public must make an appointment to review docket materials. Call (202) 260-9327 for appointments. Copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at: (800) 424-9346 (toll free) or (703) 920-9810.

Shiva Garg, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-8459.

SUPPLEMENTARY INFORMATION:

Preamble Outline

A. Technical Clarification Amendments

1. The Definition of Baseline Hydrocarbon Level for Industrial Furnaces Complying with the Alternative Hydrocarbon Limits is Clarified to Require Consideration of Process Variability.
2. Industrial Furnaces Complying with the Alternative HC Limit May Comply with the Interim HC Limit Using a Conditioned Gas HC Monitoring System if They Demonstrate that a Heated System Is Impracticable.
3. Industrial Furnaces that Cannot Comply with the 20 ppmv HC Limit by Aug. 21, 1992, because of Organic Matter in Raw Materials May Apply for a Case-by-Case Time Extension to Make Physical Changes to the Facility in Order to Comply with that HC Limit.
4. The Metals and Total Chlorine and Chloride Feed Rate Operating Limits for Tier I or Adjusted Tier I Are Based on the Screening Limits, Not the Compliance Test.
5. Adjusted Tier I Feed Rate Screening Limits May Be Used in Dispersion Situations where the Tier I and Tier II Screening Limits Are Precluded.
6. Several Requirements Are Clarified to Account for Facilities that Comply with Adjusted Tier I Limits.
7. BIF Storage Units are Subject to the Air Emissions Standards of subparts AA and BB of parts 264 and 265.
8. The Definitions of Plasma Arc and Infrared Incinerators Are Clarified to Include Only those Devices that Use an Afterburner.
9. Facilities that Comply with the Tier I or Adjusted Tier I Metals and Chlorine Controls and that have Uncontrolled Emissions that Meet the Particulate Matter Standard Need Not Establish a Limit on Production Rate during Interim Status.
10. Halogen Acid Furnaces that Burn Hazardous Waste as an Ingredient Are Subject to the BIF Rule.
11. When Comparing Levels of Nonmetal Constituents in Residue to the Health-Based Limits for the Bevill Exclusion, the Levels Cannot Exceed the Health-Based Limits or the Level of Detection, whichever Is Higher.
12. The Applicability of part 266 Is Clarified.
13. Conforming Revisions Are Made to the Applicability Sections of parts 264 and 265.
14. A Conforming Revision Is Made to the Rulemaking Petitions Provision of part 260.

B. Technical Corrections

C. Immediate Effective Date

A. Technical Clarification Amendments

On February 21, 1991, the Agency published a final rule which regulates the burning of hazardous waste in boilers and industrial furnaces (BIFs). See 56 FR 7134. The rule controls emissions of toxic organic compounds, toxic metals, hydrogen chloride, chlorine gas, and particulate matter from BIFs that burn hazardous waste. In addition, the rules subject owners and operators of BIFs to the general facility and permitting standards applicable to hazardous waste treatment, storage, and disposal facilities.

After publication of the rule, the Agency received many questions and requests for clarification on certain provisions of the rule. In addition, in a number of cases, the Agency was questioned as to whether the rule as promulgated truly reflected the Agency's intent. As a result of these questions and as a result of the Agency's own review, the Agency published a technical amendment to the rule to clarify the operation of the regulation and to correct certain unintended consequences. Those amendments were published at 56 FR 42504 on August 27, 1991. (Note that EPA had previously published several other technical corrections and amendments to the February 21 final rule (56 FR 32688 (July 17, 1991).)

As facilities began to comply with the BIF rules, additional questions have been raised about the way various provisions of the rule are intended to work. Today's technical clarification amendments address those questions.

1. The Definition of Baseline Hydrocarbon Level for Industrial Furnaces Complying With the Alternative Hydrocarbon Limit Is Clarified To Require Consideration of Process Variability

The Cement Kiln Recycling Coalition (CKRC) has expressed concern to the Agency that the alternative hydrocarbon (HC) provision of the rule is problematic for furnaces that feed raw materials containing naturally-occurring organic matter.[1] See § 266.104(f). That provision was intended to allow furnaces that could not comply with the 20 ppmv HC limit because of organic matter in raw materials to comply with an alternative, higher HC limit. EPA's rationale for the 20 ppmb limit was to ensure good hazardous waste combustion conditions and, thus, control of emissions of products of incomplete combustion (PICs). However, because hydrocarbon emissions from organic matter in raw materials are not directly related to fuel-generated hydrocarbons (i.e., from burning normal fuels and hazardous waste fuels), the Agency believed that these hydrocarbon should not be counted toward the 20 ppmv HC limit. See 56 FR 7155-56. To implement the alternative HC limit, the final rule required such furnaces to establish an HC limit that would be applicable when burning hazardous waste as the HC level achieved when not burning hazardous waste and when the furnace is operated to "minimize" HC levels. See § 266.104(f)(1).

CKRC has noted that this provision could be read to limit fuel-generated hydrocarbons to approximately 2 to 5 ppmv—the HC levels that are achieved when cement kilns (and boilers, incinerators, and other industrial furnaces) are operated under conditions to absolutely minimize HC levels. Therefore, although the Agency limits combustion-generated hydrocarbons from other combustion devices to 20 ppmv, the rule could be read to limit fuel-related hydrocarbon levels from cement kilns to 2 to 5 ppmv. In particular, CKRC notes that the rule

[1] See the BIF docket for documentation of meetings and phone conversations and copies of correspondence.

could be interpreted to limit hydrocarbons when burning hazardous waste to the levels achieved when not burning hazardous waste (i.e., baseline conditions) and when kiln is operated to absolutely minimize HC levels and would not allow the facility to account for normal transient combustion conditions that occur because of factors such as mechanically handling coal. These conditions are elements of normal operating variability. Although these transient conditions cause combustion perturbations and momentary increases (i.e., spikes) in HC levels, these combustion-related HC levels do not generally exceed the 20 ppmv hourly rolling average limit that the Agency has established to control PICs.

Nonetheless, the most literal-minded reading of the rule would preclude consideration of these normal combustion perturbations if the rule's requirement that baseline HC levels be established when the kiln is operated to minimize HC levels is read to mean to operate constantly at absolute peak performance.[2] This literal-minded reading would lead to the result—not intended by EPA—that whenever such a normal combustion perturbation would occur (when the kiln is burning hazardous waste) and there is a spike in the HC level that causes the baseline HC level to be exceeded, the kiln would be required to stop burning hazardous waste and not restart the hazardous waste feed until the HC level falls below the baseline limit. Nor did EPA intend that industrial furnaces operate at an absolutely optimized performance in establishing a baseline ignoring normal operating variability (i.e., a performance level analogous to a New Source Performance Standard rather than best available technology). Indeed, the rule refers to establishing a baseline when the industrial furnace "produces normal products under normal operating conditions" (see § 266.104(f)(1)), and the analogous 20 ppmv HC limit itself is an "indicator of good combustion conditions" (see 55 FR 7155), not absolutely optimized combustion.

Although EPA believes these readings take an unduly stringent view of the requirement that HC levels be minimized when establishing a baseline, we nevertheless think it best to clarify the text of the rule. Therefore, EPA is correcting the definition of the baseline HC level provided by § 266.104(f)(1) to make it clear that the measured baseline HC level must be adjusted as appropriate to consider the normal variability of hydrocarbon levels under good combustion operating conditions. Thus, the measured baseline level could be increased by a variability factor that considers normal transient combustion conditions (i.e., provided that the transient conditions do not result in combustion-generated HC that exceed the 20 ppmv limit provided by § 266.104(c)). Accordingly, today's clarification amends the definition of the baseline HC level in § 266.104(f)(1) to read as follows: "The baseline HC level is defined as the average over all valid test runs of the highest hourly rolling average value for each run, adjusted as appropriate to consider the variability of hydrocarbon levels under good combustion operating conditions."

This HC variability factor would be determined on a case-by-case basis by the Director. As guidance in determining what variability factor to apply, EPA believes that a factor of 10 ppmv would be appropriate in most situations.[3] As indicated previously, the Agency believes that combustion-generated HC levels from cement kilns (and other furnaces eligible for the alternative HC limit) should be limited to 20 ppmv to ensure good combustion conditions. This is the same HC limit that applies to boilers, other furnaces, and incinerators, and provides a "level playing field" with respect to control of combustion-generated hydrocarbons. Thus, we recommend that the alternative HC limit be established as 20 ppmv plus the raw material-generated HC level. We do not believe that it is feasible, however, to measure only raw material-generated hydrocarbons; the HC monitor in the stack measures both hazardous waste combustion-generated and raw material-generated hydrocarbons. Therefore, to estimate the level of raw material-generated hydrocarbons, it is conservative and reasonable to assume that 10 ppmv[4] of the HC measured under baseline conditions (when the kiln must be operated to minimize combustion-generated hydrocarbons) is attributable to hazardous waste combustion. (Note that when the kiln is operated to absolutely minimize hazardous waste combustion-generated hydrocarbons, HC levels should be in the range of 2 to 5 ppmv. Thus, the recommended assumption that combustion-generated hydrocarbons are 10 ppmv during baseline testing is conservative.[5] Under this approach, raw material-generated hydrocarbons are estimated to be the measured HC level during baseline testing minus 10 ppmv. The 20 ppmv combustion-generated HC allowance would then be added to the estimated raw material-generated hydrocarbons. The net effect would be simply to add 10 ppmv to the measured baseline HC level.

As discussed above, the rational for adding a variability factor to the measured baseline HC level assumes that the baseline level is determined when the device is operated under conditions that generally minimize combustion-generated hydrocarbon.[6] Therefore, combustion-generated hydrocarbon spikes causing a significant increase in the hourly rolling average HC level should not be allowed during baseline testing. To ensure that substantial variability is not already included in the baseline HC level, the hourly rolling average hydrocarbon level should not vary during baseline testing by more than 5 ppmv when measured HC levels are in the range of 10–30 ppmv. When measured HC levels exceed 30 ppmv, then a higher allowable range of HC levels (i.e., the difference

[2] Even if the rule were interpreted to allow normal combustion perturbations (i.e., perturbations that do not result in combustion-generated hydrocarbons exceeding 20 ppmv on an hourly rolling average, and thus, are within the Agency's definition of good combustion conditions) during baseline testing, establishing a baseline that includes such normal perturbations would be problematic. This is because the owner or operator cannot ensure that the perturbations that occur during the baseline testing are representative (i.e., in frequency, magnitude, and duration) of normal perturbations. The occurrence of normal perturbations cannot always be predicted, and it would be difficult for the owner or operator to demonstrate that perturbations that could be artificially induced during baseline testing are representative of normal perturbations.

[3] We note that, if a variability of 10 ppmv is used to adjust he measured baseline HC level, facilities with measured HC levels of 11 ppmv or greater would be eligible for the alternative HC limit. This is because the baseline HC level, when adjusted for the 10 ppmv variability factor, would be 21 ppmv or more and facilities with baseline HC levels exceeding 20 ppmv are eligible for the alternative HC limit.

[4] Note that the assumption that 10 ppmv of HC during baseline testing is attributable to hazardous waste combustion is not the basis for the recommended 10 ppmv variability factor. As discussed in the text, however, this assumption leads to the Agency's conclusion that a 10 ppmv variability factor is appropriate.

[5] The assumption that combustion-generated HC is 10 ppmv during baseline testing is conservative because if, for example, we assumed that combustion-generated HC is 5 ppmv, the variability factor would be 15 ppmv, not 10 ppmv. This is because, the lower that the combustion-generated HC is assumed to be, the higher the raw material-generated HC is estimated to be, and the 20 ppmv allowance for combustion-generated HC is added to the estimated raw material-generated HC.

[6] Although it is not practicable for an industrial furnace to operate continuously under conditions that minimize combustion-generated HC as discussed previously in the text, it is reasonable and necessary to require the facility to operate during baseline testing under conditions that generally minimize combustion-generated HC. This is because, otherwise, a variability factor would be added to a baseline HC level that may already include substantial variability.

between the highest and lowest hourly rolling average level) during baseline testing may be appropriate given that the absolute HC levels are higher and even minor perturbations could cause significant changes in HC levels.[7]

EPA is interested in obtaining further information on whether this recommended approach is reasonable to establish an alternative HC limit for devices that cannot meet the 20 ppmv HC limit because of organic matter in raw materials. EPA therefore invites all interested persons to submit any relevant information on this issue.

2. Industrial Furnaces Complying With the Alternative HC Limit May Comply With the Interim HC Limit Using a Conditioned Gas HC Monitoring System if They Demonstrate That a Heated System Is Impracticable

Section 266.103(c)(5) of the rule allows owners and operators of BIFs, other than those that obtain a time extension, to certify compliance with the 20 ppmv HC limit using a conditioned gas (i.e., cold) HC monitoring system rather than a heated monitoring system. Although the Agency prefers the heated system because a cold system may remove some hydrocarbons during gas conditioning (e.g., chilling the gas sample line to condense water vapor can also remove hydrocarbons), the Agency recognized that heated systems are not in widespread use on BIFs and modifications to the monitoring systems may be necessary to address operation and maintenance problems. See 56 FR 7162 (February, 21, 1991). Consequently, the Agency reasoned that facilities that comply with the HC limit on Aug. 21, 1992, should be allowed to use a cold system. On the other hand, he Agency reasoned that those owners and operators who obtain a time extension should be required to certify compliance with a hot system given that the time extension should provide enough time to resolve operation and maintenance problems. (Note that facilities that elect to certify compliance with a cold system on Aug. 21, 1992, must use a hot system when they recertify compliance under interim status or obtain a RCRA operating permit. See § 266.103(c)(5).

The Agency did not anticipated the consequences that this requirement would have on cement kilns complying with the alternative hydrocarbon provision of §§ 266.104(f) and 266.103(c)(7)(ii)(B). Under those requirements, cement kilns must, prior to August 21, 1992, submit a complete Part B permit application that includes documentation of the baseline HC level, and obtain a time extension from the Director. Until the operating permit is issued, the facility must comply with an interim HC (and CO) limit effective no later than August 21, 1992, that is established as a condition of the time extension.

Consequently, although cement kilns complying with the alternative hydrocarbon provision must obtain a time extension, they must monitor hydrocarbons prior to August 21, 1992, in order to establish the baseline HC level, and must monitor hydrocarbons continuously beginning August 21, 1992. Thus, § 266.103(c)(5) has the unintended consequence of requiring such facilities to use a hot HC monitoring system on (and before) August 21, 1992.

As discussed above, the Agency has already determined that this is infeasible (and therefore provided a conditioned (i.e., cold) monitoring option). Therefore, to give such facilities the time they may need to resolve operating and maintenance problems with hot monitoring systems, today's technical correction revises § 266.103(c)(5) to enable the Director to approve on a case-by-case basis the use of a cold system for establishing the baseline HC level and complying with the alternative, interim HC limit. This correction is a logical and necessary adjunct to the existing regulation that allows the alternative use of cold HC monitoring systems. The Director's approval will be based on a demonstration by the facility that it has made a good faith effort to install and operate a heated system but that it has determined that continuous operation is not practicable at this time. The Agency does not believe that this demonstration will be a burden on owners and operators because they have known since February 21, 1991, that a hot monitoring system was required by the rule and should have been attempting to operate continuously such systems for some time.

In considering a request to use a conditioned gas monitor in lieu of a hot monitor, the Director may impose additional requirements on the owner and operator of the facility to ensure that a hot monitoring system is installed as soon as practicable. See § 266.103(c)(7)(ii)(A). For example, the Director may require the owner or operator to operate a hot monitoring system to the extent practicable concurrently with a conditioned gas monitoring system in order to meet specified milestones in activities designed to resolve operational problems with a heated HC monitoring system, and to report periodically on progress toward achieving sustained operation of the hot monitoring system.

This amendment does not extend the deadline for certification of compliance. Owners and operators requesting to comply with the alternative hydrocarbon limit are required to submit their request along with accompanying supporting materials in time to allow the Director to grant or deny the request by August 21, 1992.

3. Industrial Furnaces That Cannot Comply With the 20 PPMY HC Limit by August 21, 1992, Because of Organic Matter in Raw Materials May Apply for a Case-by-Case Time Extension To Make Physical Changes to the Facility in Order to Comply With That HC Limit

The Agency is clarifying the rule to make it clear that industrial furnaces that cannot comply with the 20 ppmv HC limit for reasons beyond the owner's or operator's control may request a time extension to certify compliance with the HC limit. The final rule allows facilities that elected to comply with the alternative hydrocarbon provisions of § 266.104(f) to obtain a time extension under § 266.103(c)(7)(ii)(B). However, the Agency inadvertently did not make it clear that owners and operators that elected to make physical changes to the facility to enable them to comply with the 20 ppmv HC limit (i.e., the usual HC limit, rather than an alternative limit established on a case-by-case basis) but who cannot do so by August 21, 1992, for reasons beyond their control are also eligible to request a time extension under § 266.103(c)(7)(ii).

EPA meant for § 266.103(c)(7)(ii) (B) to apply only to facilities that comply with the alternative HC limit, and believes that this intent is fairly clear in the existing regulatory language since the provision (§ 266.103(c)(7)(ii)(B)(2)) references the procedure for establishing CO and HC baseline levels (§ 266.104(f)(1)) applicable only to persons complying with the alternative HC limit. Conversely, the provisions make little sense for persons who intend to comply with the limit of 20 ppmv because the requirements in § 266.103(c)(7)(ii)(B) are related only to the alternative HC limit.

Accordingly, today's amendment revises § 266.103(c)(7)(ii)(B) to clarify that paragraph applies only to facilities that comply with the alternative HC limit. Thus, the general time extension provision of § 266.103(c)(7)(ii) applies to all other situations, including industrial furnaces that need time to modify the

[7] Baseline testing should consist of a minimum of three test runs, with each run having a minimum duration of three hours.

facility to comply with the 20 ppmv HC limit.

Industrial furnaces such as cement kilns may elect to make physical modifications to the facility to enable them to certify compliance with the 20 ppmv HC limit rather than to comply with the alternative HC provisions of § 266.104(f). If those modifications cannot be completed in time to enable the facility to certify compliance by August 21, 1992, for reasons beyond the facility's control, the owner or operator may request a time extension.

If a time extension is granted, the Director will use the authority of § 266.103(c)(7)(ii) to establish operating conditions as necessary to reasonably ensure that emissions of toxic organic compounds do not pose a threat to human health and the environment. Operating conditions that may be applied may include limits on the type, quantity, and method of firing hazardous waste, and limits on combustion parameters such as oxygen, carbon monoxide, and hydrocarbons.

Examples of physical changes that may be made to the facility in order to meet the 20 ppmv HC limit are: (1) Installation of a secondary combustion chamber to destroy organic compounds in the kiln off-gas; or (2) installation of a roaster to volatilize organic compounds from the raw material before feeding it to the kiln where hazardous waste is burned. These changes may enable the owner or operator to demonstrate that stack gas concentrations do not exceed the 20 ppmv limit. At this time, the Agency has not evaluated the practicability of installing a secondary combustion chamber or roaster to reduce HC emissions. The Agency is simply identifying these as conceivable changes that may enable a facility to meet the 20 ppmv HC limit.

4. The Metals and Total Chlorine and Chloride Feed Rate Operating Limits for Tier I or Adjusted Tier I Are Based on the Screening Limits, Not the Compliance Test

The final rule requires facilities that comply with the Tier I or Adjusted Tier I feed rate screening limits for metals and total chlorine and chloride to establish feed rate limits based on the feed rates used during the compliance test, and to establish feed rate limits on both pumpable and total hazardous waste feeds. In addition, the final rule requires the owner or operator to conduct a compliance test to document compliance with the particulate matter (PM) limit even though a facility may comply with the Tier I or Adjusted Tier I feed rate screening limits for metals and total chlorine and chloride.

As discussed in the preamble to the final rule (56 FR 7175 (February 21, 1991)), the Tier I or Adjusted Tier I feed rate screening limits are protective of human health and the environment because the limits are back-calculated from acceptable ambient levels using conservative dispersion scenarios, and because the limits are based on an assumption that all metals and chlorine feed to the BIF are emitted (i.e., metals and chlorine do not partition to ash or product and are not removed by an air pollution control system). Because of this, the Agency did not intend for facilities complying with Tier I or Adjusted Tier I to establish feed rate limits on metals or chlorine during a compliance test; rather, the feed rate limits on metals and chlorine are established by the reference tables in appendices I and II of part 266. Further, given that the Tier I or Adjusted Tier I compliance approaches assume that all metals or chlorine fed to the BIF are emitted, it is not necessary to establish a separate feed rate limit for these parameters on pumpable or total hazardous waste. The feed rate limits under Tier I or Adjusted Tier I are based on the total feed rate in total feed streams, and are limited to the levels established in appendices I and II of part 266. (Note, however, that in order to ensure and document compliance with the feed rate screening limits, the facility must nonetheless know the feed rate of metal or chlorine in each feed stream at all times.)

In addition, the Agency considered whether facilities complying with the Tier I or Adjusted Tier I limits for metals and total chlorine and chloride during the compliance test should be required to feed metals and chlorine at the maximum rate during the PM emissions test to ensure maximum PM emissions. As discussed in the preamble to the final rule (56 FR 7144), the Agency is not regulating PM emissions under RCRA per se, but rather as a secondary control on emissions of metals and organics that could be adsorbed on the PM. Given that the Tier I or Adjusted Tier I metals and chlorine feed rate screening limits ensure protection of human health and the environment, the Agency does not believe that it is necessary to spike metals and chlorine at the screening feed rate limits during the PM compliance test.

To make sure that these requirements are fully understood the Agency is amending §§ 266.103(c)(1), 266.103(c)(1)(ii)(A), and 266.103(c)(1)(iii) to clarify that the Tier I or Adjusted Tier I feed rate limits are based on the feed rate screening limits specified under §§ 266.106 (b) or (e) (for metals) and 266.107 (b)(1) or (e) (for chlorine) and are not based on the actual feed rates demonstrated during the compliance test. Further, the Agency is clarifying §§ 266.103(b)(3)(ii)(B) and 266.103(c)(1)(ii)(C) by deleting the requirements for metals feed rate limits in total hazardous waste feed and in total pumpable hazardous waste feed when the BIF complies with the Tier I or Adjusted Tier I metals feed rate screening limits.

5. Adjusted Tier I Feed Rate Screening Limits May Be Used in Dispersion Situations Where the Tier I and Tier II Screening Limits Are Precluded

Sections 266.106(b)(7) and 266.107(b)(3) of the rule preclude the use of the Tier I and Tier II Screening Limits for facilities located in areas where the dispersion characteristics would be worse than were used to calculate the screening limits. Facilities in such situations must conduct dispersion modeling to ensure that the ambient concentrations will not exceed allowable levels. In drafting the final rule, the Agency inadvertently precluded the use of Adjusted Tier I when dispersion characteristics precluded the use of the Tier I and Tier II Screening Limits. Therefore, the Agency is clarifying those paragraphs to allow facilities to apply either the Tier III or Adjusted Tier I feed rate screening limits to control metals and $HC1/Cl_2$ emissions.

As explained in the final rule, the Agency established the Tier I and Tier II Screening Limits using dispersion modeling; such modeling included a number of conservative assumptions. Despite the conservatism, several situations still existed whereby the Tier I or Tier II limits could result in exposure levels that exceed those established as acceptable in the rule. These specific situations are listed in § 266.106(b)(7). In these situations, facilities are required to conduct dispersion modeling to ensure that metals (or $HC1/Cl_2$) concentrations will not exceed allowable levels. Such dispersion modeling is required under both Tier III and Adjusted Tier I standards. However, the Agency inadvertently specified that facilities must comply with Tier III limits when the facility is located in one of the specified nonconservative dispersion situations. Because the same dispersion modeling is required for the Adjusted Tier I standards as for the Tier III standards, this correction makes it clear that facilities may comply with either Adjusted Tier I or Tier III in these situations.

6. Several Requirements Are Clarified to Account for Facilities That Comply With Adjusted Tier I Limits

When prescribing requirements for certification of precompliance in § 266.103(b), the Agency did not make it clear that the requirements in paragraphs (b)(2) (ii) and (iii) that apply to facilities that choose to comply with the Tier I controls also apply to facilities that elect to comply with the Adjusted Tier I controls for metals or total chlorine and chloride, although EPA believes this result is implicit since there is no logical reason for the requirements to apply in one case but not the other. Accordingly, today's amendments simply clarifies that these provisions also are applicable to facilities that comply with Adjusted Tier I controls.

Similarly, the Agency inadvertently did not require in § 266.106(d) that facilities complying with the Adjusted Tier I controls on metals emissions to also comply with most of the requirements applicable to facilities that comply with Tier III controls, although the February 21, 1991, preamble clearly indicates that these requirements do apply. See 56 FR 7175. Accordingly, the Agency is also clarifying paragraph (d) to add an introductory sentence and revise paragraphs (d) (1) and (5) to apply the appropriate requirements to facilities complying with the Adjusted Tier I controls.

7. BIF Storage Units Are Subject to the Air Emissions Standards of Subparts AA and BB of Parts 264 and 265

The final rule subjects storage units for hazardous waste burned in BIFs to the requirements of subparts A through L of parts 264 and 265. See § 266.101(c)(1). The Agency inadvertently omitted reference to subparts AA and BB of parts 264 and 265 that establish air emission standards for process vents and equipment leaks, respectively. Given that these air emissions standards apply to other hazardous waste storage units and are necessary to protect human health and the environment, they apply to storage units for hazardous waste burned in BIFs as well.

To implement this amendment, we are revising § 266.101(c)(1) to require compliance with the requirements of parts 264 and 265 that are applicable to storage units. This approach is preferable to adding a reference specifically to subparts AA and BB because the Agency may add over time other subparts that are applicable to storage units.

In addition, we are amending § 266.101(c)(2) for the same reasons. That paragraph conditionally exempts storage units for exempt small quantity burners from applicable regulations under parts 264, 265, and 270.

8. The Definitions of Plasma Arc and Infrared Incinerators Are Clarified To Include Only Those Devices That Use an Afterburner

In the February 21, 1991 final BIF rule, EPA modified the definition of incinerator in § 260.10 to explicitly include plasma arc and infrared devices as incinerators. See 56 FR 7206. The Agency added the devices to the incinerator definition to make it clear that they were to be regulated as incinerators because: "(1) Although these devices use nonflame sources of thermal energy to treat waste in the primary chamber, they *invariably employ controlled flame afterburners* to combust hydrocarbons * * *" (emphasis added); and "(2) the incinerator standards are workable and protective for these units."

Since promulgation of the final rule, a number of questions have been raised as to whether the Agency intended to classify as incinerators those plasma arc units that treat the off-gas by methods (e.g., condensation, catalytic converters) other than by combustion in a controlled flame afterburner.[8] As indicated above, the Agency made this modification based on the (incorrect) understanding that these units invariably use controlled flame combustion in the afterburner. Given that there are plasma arc or infrared units that do not use controlled flame combustion in an afterburner or other device—that is, they do not meet the definition of incinerator (i.e., before the Agency amended the definition to include plasma arc and infrared units)—and the incinerator regulations are not appropriate for devices not employing combustion, the Agency is today clarifying the definitions of these units to specifically refer to the use of such an afterburner (as stated in the February 21, 1991, preamble).

Plasma arc and infrared devices that are not incinerators because they do not use controlled flame combustion in an afterburner are subject to regulation under subpart P, part 265 (for units in interim status) and subpart X, part 264 (for units operating under a RCRA permit).

Finally, we note that the revisions to these definitions (being non-HSWA) do not take effect in an authorized state until the state becomes authorized for the rule change.

9. Facilities That Comply With the Tier I or Adjusted Tier I Metals and Chlorine Controls and That Have Uncontrolled Emissions That Meet the Particulate Matter Standard Need Not Establish a Limit on Production Rate During Interim Status

Sections 266.103(b)(3)(v) and 266.103(c)(vi) of the rule require BIFs to establish an operating limit during interim status on maximum production rate when producing normal product. The Agency required a limit on maximum production rate as a surrogate for gas flow rate through the air pollution control system (APCS) to ensure that the collection efficiency of the system would not be compromised at higher gas flow rates—and higher production rates—than occurred during the compliance test. In drafting the final rule, the Agency inadvertently required that a limit on maximum production rate be established during interim status in a situation where a limit is not needed—when an APCS is not needed to comply with the emissions standards for metals, HCl, Cl_2, or particulate matter (PM).

Consequently, EPA is correcting the rule to indicate that the requirement to establish a maximum production rate during interim status is not necessary when: (1) The BIF complies with Tier I or Adjusted Tier I feed rate limits for all metals and total chlorine and chloride (which are conservatively based on a reasonable, worst-case dispersion scenario and assume that all metals and chlorine fed to the BIF are emitted (i.e., no partitioning to bottom ash or product and no removal by an APCS)); and (2) uncontrolled stack emissions comply with the PM standard (i.e., when there is no APCS or when emissions at the inlet to an APCS meet the PM standard).

10. Halogen Acid Furnaces That Burn Hazardous Waste as an Ingredient Are Subject to the BIF Rule

In the BIF rule published on Feb. 21, 1991, the Agency amended § 261.2(d) to list as inherently waste-like any secondary material that is identified or listed as a hazardous waste and that is fed to a halogen acid furnace (HAF). See 56 FR 7141 for the reasons for this rule. By doing this, the Agency made clear that burning of secondary materials in HAFs that exhibit a characteristic or are specifically listed would subject those

[8] See the memorandum from Sylvia Lowrance, Director, Office of Solid Waste, EPA, to Allyn M. Davis, Director, Region VI Hazardous Waste Management Division dated September 30, 1991, stating that the BIF rule unintentionally includes as incinerators plasma arc and infrared units not equipped with an afterburner, and that the Agency intends to issue a technical correction to the incinerator definition to address the error.

units to the BIF regulations. While the Agency revised § 261.2(d) by adding paragraph (d)(2), the Agency inadvertently did not make a conforming change to § 261.2(e)(2)(iv) that identifies materials that are solid wastes, even if the recycling involves use, reuse, or return to the original process. Accordingly, the Agency is today revising § 261.2(e)(2)(iv) to include a reference to paragraph (d)(2) to make it clear that inherently waste-like materials burned in a HAF are solid (and hazardous) wastes even if such burning is recycling by use, reuse, or return to the original process.

11. When Comparing Levels of Nonmetal Constituents in Residue to the Health-Based Limits for the Bevill Exclusion, the Levels Cannot Exceed the Health-Based Limits or the Level of Detection, Whichever Is Higher

Section 266.112 of the BIF rule prescribes requirements for determining whether residues from certain devices retain the Bevill exclusion. See 56 FR 7196–7200 (Feb. 21, 1991). Paragraph (b)(2)(i) of that section provides for a comparison of nonmetal constituents in the waste-derived residue to health-based limits established in the rule (see appendix VII, part 266) in determining whether the residue would retain the Bevill exclusion. This paragraph also indicates that if a health-based limit for a constituent was not included in appendix VII, then a default limit of 0.002 micrograms per kilogram or the level of detection, whichever is higher must be used. A number of questions have been raised to the Agency as to how an owner or operator is to make this determination if a health-based level is identified in appendix VII but the analytical detection level for that constituent(s) exceeds the health-based level.

As indicated above, the Agency addressed this issue for those constituents for which a health-based limit was not identified in appendix VII, part 266 (i.e., those constituents subject to the default limit of 0.002 micrograms per kilogram). In these circumstances, the owner or operator had to meet either a level of 0.002 micrograms per kilogram or the level of detection, whichever is higher. The Agency took this approach because of concern that the level of analytical detection for nonmetal constituents in kiln dust may be higher than the default limit of 0.002 micrograms per kilogram. In these situations, the owner or operator could not document compliance with the 0.002 micrograms per kilogram limit even when using the SW–846 analytical procedure providing the lowest level of detection.

For the same reason, the Agency also intended to cap the health-based limit by the level of detection for a constituent(s) for which a health-based limit (i.e., other than the default limit) is established in appendix VII, part 266. However, the rule inadvertently does not include that language. To clarify this provision, we are today modifying the rule to require that, for purposes of complying with paragraph (b)(2)(i), the concentration of each nonmetal constituent in the waste-derived residue cannot exceed the health-based limit established in appendix VII, part 266, or the level of detection, whichever is higher.

12. The Applicability of Part 266 Is Clarified

In the Technical Amendments to the final BIF rule published at 56 FR 42513 (Aug. 27, 1991), EPA amended § 266.100 (Applicability) to add paragraph (f) that exempted precious metal recovery furnaces from the BIF rule. The Agency also made a conforming revision to paragraph (a) of that section to add "and (f)" in the first sentence. The Agency subsequently made other changes to § 266.100 and published those changes at 56 FR 43877 (Sept. 5, 1991). In the September 5 notice, the Agency inadvertently neglected to include the earlier amendment by which "and (f)" was added to the first sentence of § 266.100. To correct this omission, we are reissuing in today's notice the amendment to paragraph (a) made on August 27.

13. Conforming Revisions are Made to the Applicability Sections of Parts 264 and 265

The BIF rule, which is codified as subpart H, part 266, replaced regulations for burning hazardous waste for energy recovery that were codified in subpart D, part 266. When the BIF rule was promulgated, the Agency inadvertently did not make conforming revisions to the applicability sections of parts 264 and 265. Consequently, the Agency is today revising §§ 264.1(g)(2) and 265.1(c)(6) (which exempt facilities managing recyclable materials except to the extent that requirements in those parts are referred to in subparts to part 266) to delete reference to (now reserved) subpart D, part 266, and to reference subpart H, part 266.

14. A Conforming Revision Is Made to the Rulemaking Petitions Provision of Part 260

When part 266 was established, the Agency inadvertently did not make a conforming revision to § 260.20(a) to allow rulemaking petitions to be submitted to the Administrator to modify or revoke any provisions of part 266. Section 260.20(a) already allows rulemaking petitions to parts 260 through 265 and 268. Accordingly, § 260.20(a) is amended today to also refer to part 266.

B. Technical Corrections

On July 17, 1992, and August 27, 1991, EPA published several technical corrections and amendments to the February 21 final rule (see 56 FR 32688 and 42504). Today's notice corrects several errors published in those notices.

C. Immediate Effective Date

EPA has determined to make today's action effective immediately. The Agency believes that the corrections being made in this notice are either interpretations of existing regulations which do not require prior notice and opportunity for comment (corrections 1, 3, and 11), or are technical corrections of obvious errors in the rule (for example, corrections of regulatory language that is inconsistent with the preamble or with otherwise clearly indicated Agency intent) for which comment is unnecessary (within the meaning of 5 U.S.C. 553(b)(3)(B)) (the remaining corrections).

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: August 11, 1992.

Don R. Clay,

Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR parts 260, 261, 264, 265, and 266 are amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

I. In part 260:

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. In § 260.10, the definitions for "Infrared incinerator" and "Plasma arc incinerator" are revised to read as follows:

§ 260.10 Definitions.

* * * * *

Infrared incinerator means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

* * * * *

Plasma arc incinerator means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

* * * * *

3. In § 260.20, the first sentence of paragraph (a) is revised to read as follows:

§ 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provision in parts 260 through 266 and 268 of this chapter. * * *

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

II. In part 261:

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

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

2. Section 261.2 is amended by revising paragraph (e)(2)(iv) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(e) * * *

(2) * * *

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

III. In part 264:

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.1, paragraph (g)(2) is revised to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(g) * * *

(1) * * *

(2) The owner or operator of a facility managing recyclable materials described in § 261.6(a) (2) and (3) of this chapter (except to the extent that requirements of this part are referred to in subparts C, F, G, or H of part 266 of this chapter).

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

IV. In part 265:

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. In § 265.1, paragraph (c)(6) is revised to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(6) The owner and operator of a facility managing recyclable materials described in § 261.6(a) (2) and (3) of this chapter (except to the extent that requirements of this part are referred to in subparts C, F, G, or H of part 266 of this chapter).

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

V. In part 266:

1. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

2. In § 266.100, paragraph (a) is amended by revising the first sentence to read as follows, and paragraph (f) introductory text is amended by revising, "§ 261.111" to read "§ 266.111".

§ 266.100 Applicability.

(a) The regulations of this subpart apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in § 260.10 of this chapter) irrespective of the purpose of burning or processing, except as provided by paragraphs (b), (c), (d), and (f) of this section. * * *

* * * * *

3. In § 266.101, the first sentence of paragraph (c)(1), and paragraph (c)(2) are revised to read as follows:

§ 266.101 Management prior to burning.

* * * * *

(c) *Storage Facilities.* (1) Owners and operators of facilities that store hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of parts 264, 265, and 270 of this chapter, except as provided by paragraph (c)(2) of this section. * * *

(2) Owners and operators of facilities that burn, in an onsite boiler or industrial furnace exempt from regulation under the small quantity burner provisions of § 266.108, hazardous waste that they generate are exempt from the regulations of parts 264, 265, and 270 of this chapter applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (c)(1) of this section.

4. Section 266.103 is amended by revising paragraphs (b)(2)(ii) introductory text and (iii), (b)(3)(ii)(B), (b)(3)(v), (c)(1) introductory text, (c)(1)(ii) (A) and (C), (c)(1)(iii), (c)(1)(vi), (c)(5), and (c)(7)(ii)(B) to read as follows:

§ 266.103 Interim status standards for burners.

(b) * * *

(2) * * *

(ii) Except for facilities complying with the Tier I or Adjusted Tier I feed rate screening limits for metals or total chlorine and chloride provided by §§ 266.106 (b) or (e) and 266.107 (b)(1) or (e), respectively, the estimated uncontrolled (at the inlet to the air pollution control system) emissions of particulate matter, each metal controlled by § 266.106, and hydrogen chloride and

chlorine, and the following information to support such determinations:

* * * * *

(iii) For facilities complying with the Tier I or Adjusted Tier I feed rate screening limits for metals or total chlorine and chloride provided by §§ 266.106 (b) or (e) and 266.107 (b)(1) or (e), the feed rate (lb/hr) of total chloride and chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feed stream (hazardous waste, other fuels, industrial furnace feedstocks).

* * * * *

(3) * * *

(ii) * * *

(B) Total hazardous waste feed, unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106 (b) or (e); and

* * * * *

(v) Maximum production rate of the device in appropriate units when producing normal product, unless complying with the Tier I or Adjusted Tier I feed rate screening limits for chlorine under § 266.107 (b)(1) or (e) and for all metals under § 266.106 (b) or (e), and the uncontrolled particulate emissions do not exceed the standard under § 266.105.

* * * * *

(c) * * *

(1) *Limits on operating conditions.* The owner or operator shall establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in paragraph (c)(4)(iv) of this section) or as otherwise specified and include these limits with the certification of compliance. The boiler or industrial furnace must be operated in accordance with these operating limits and the applicable emissions standards of §§ 266.104 (b) through (e), 266.105, 266.106, 266.107, and 266.103(a)(5)(I)(D) at all times when there is hazardous waste in the unit.

* * * * *

(ii) * * *

(A) Total feedstreams, except that:

(*1*) Facilities that comply with Tier I or Adjusted Tier I metals feed rate screening limits may set their operating limits at the metals feed rate screening limits determined under § 266.106 (b) or (e); and

(*2*) Industrial furnaces that must comply with the alternative metals implementation approach under paragraph (c)(3)(ii) of this section must specify limits on the concentration of each metal in the collected particulate matter in lieu of feed rate limits for total feedstreams;

(B) * * *

(C) Total pumpable hazardous waste feed (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106 (b) or (e);

(iii) Total feed rate of chlorine and chloride in total feed streams, except that facilities that comply with Tier I or Adjusted Tier I feed rate screening limits may set their operating limits at the total chlorine and chloride feed rate screening limits determined under § 266.107 (b)(1) or (e).

* * * * *

(vi) Maximum production rate of the device in appropriate units when producing normal product, unless complying with the Tier I or Adjusted Tier I feed rate screening limits for chlorine under § 266.107 (b)(1) or (e) and for all metals under § 266.106 (b) or (e), and the uncontrolled particulate emissions do not exceed the standard under § 266.105.

* * * * *

(5) *Special requirements for HC monitoring systems.* When an owner or operator is required to comply with the hydrocarbon (HC) controls provided by § 266.104(c) or paragraph (a)(5)(i)(D) of this section, a conditioned gas monitoring system may be used in conformance with specifications provided in appendix IX of this part provided that the owner or operator submits a certification of compliance without using extensions of time provided by paragraph (c)(7) of this section. However, owners and operators of facilities electing to comply with the alternative hydrocarbon provision of § 266.104(f) and requesting a time extension under § 266.103(c)(7)(ii)(B) may establish the baseline HC level and comply with the interim HC limit established by the time extension using a conditioned gas monitoring system if the Director determines that the owner or operator has demonstrated that they have made a good faith effort to operate a heated monitoring system but found it to be impracticable.

* * * * *

(7) * * *

(ii) * * *

(B) When an owner or operator requests an extension of time to enable the facility to comply with the alternative hydrocarbon provisions of § 266.104(f) and obtain a RCRA operating permit because the facility cannot meet the HC limit of § 266.104(c) of this chapter:

* * * * *

5. Section 266.104 is amended by revising paragraph (f)(1) to read as follows:

§ 266.104 Standards to control organic emissions.

* * * * *

(f) * * *

(1) When the baseline HC (and CO) level is determined, the owner or operator must demonstrate that the facility is designed and operated to minimize hydrocarbon emissions from fuels and raw materials and that the facility is producing normal products under normal operating conditions feeding normal feedstocks and fuels. The baseline HC level is defined as the average over all valid test runs of the highest hourly rolling average HC value for each run when the facility does not burn hazardous waste, adjusted as appropriate to consider the variability of hydrocarbon levels under good combustion operating conditions. The baseline CO level is determined based on the test runs used to establish the baseline HC level and is defined as the average over all test runs of the highest hourly rolling average CO value for each run. More than one baseline level must be determined if the facility operates under different modes that may generate significantly lower HC (and CO) levels;

* * * * *

6. Section 266.106 is amended by revising paragraphs (b)(7) introductory text, (d)(1), (d)(5), and by revising the equation in paragraph (d)(3) to read as follows:

§ 266.106 Standards to control metals emissions.

* * * * *

(b) * * *

(7) *Criteria for facilities not eligible for screening limits.* If any criteria below are met, the Tier I and Tier II screening limits do not apply. Owners and operators of such facilities must comply with either the Tier III standards provided by paragraph (d) of this section or with the adjusted Tier I feed rate screening limits provided by paragraph (e) of this section.

* * * * *

(d) *Tier III and Adjusted Tier I site-specific risk assessment.* The requirements of this paragraph apply to facilities complying with either the Tier III or Adjusted Tier I controls, except where specified otherwise.

(1) *General.* Conformance with the Tier III metals controls must be demonstrated by emissions testing to determine the emission rate for each metal. In addition, conformance with either the Tier III or Adjusted Tier I metals controls must be demonstrated by air dispersion modeling to predict the maximum annual average off-site ground level concentration for each

dispersion modeling to predict the maximum annual average off-site ground level concentration for each metal, and a demonstration that acceptable ambient levels are not exceeded.

* * * * *

(3) * * *

$$\sum_{i=1}^{n} \frac{\text{Predicted Ambient Concentration}_{(i)}}{\text{Risk-Specific Dose}_{(i)}} < 1.0$$

* * * * *

(5) *Multiple stacks.* Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a RCRA operating permit or interim status controls must conduct emissions testing (except that facilities complying with Adjusted Tier I controls need not conduct emissions testing) and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels.

* * * * * *

7. Section 266.107 is amended by revising paragraph (a) to read as follows:

§ 266.107 Standards to control hydrogen chloride (HCl) and chlorine gas (Cl_2) emissions.

(a) General. The owner or operator must comply with the hydrogen chloride (HCl) and chlorine (Cl_2) controls provided by paragraph (b), (c), or (e) of this section.

* * * * *

8. Section 266.108(c) is amended by revising the equation to read as follows:

§ 266.108 Small quantity on-site burner exemption.

* * * * *

(c) * * *

$$\sum_{i=1}^{n} \frac{\text{Actual Quantity Burned}_{(i)}}{\text{Allowable Quantity Burned}_{(i)}} < 1.0$$

* * * * *

9. Section 266.112 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 266.112 Regulation of residues.

* * * * *

(b) * * *

(2) * * *

(i) *Nonmetal constituents.* The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in appendix VII of this part, or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix VII of this part, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher, shall be used; and

* * * * *

Appendix IX [Amended]

10. In appendix IX, § 5.0, Hazardous Waste Combustion Air Quality Screening Procedure, Table 5.0-3.—Clarification of Land Use Types, footnote 1, revise "EPA-450/2-78-027" to read "EPA-450/2-78-027R".

11. In appendix IX, § 5.0, Hazardous Waste Combustion Air Quality Screening Procedure, in the title to Table 5.0-4, revise "ISCT" to read "ISCST", revise "PREDICATED" to read "PREDICTED", and revise "8G/M ^{3}" to read "g/m^3".

12. In appendix IX, § 5.0, Hazardous Waste Combustion Air Quality Screening Procedure, in the title to Table 5.0-5, revise "ISCT" to read "ISCST", revise "PREDICATED" to read "PREDICTED", and revise "8G/M ^{3}" to read "g/m^3".

13. In appendix IX, § 6.0—Simplified Land Use Classification Procedure for Compliance with Tier I and Tier II Limits, Subsection 6.1 Introduction: second paragraph, add a footnote "1" after "(EPA 1986)"; in footnote 1, revise "EPA-450/2-78-027" to read "EPA-450/2-78-027R"; and in the third paragraph, revise "Auer 3978" to read "Auer 1978".

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August 25, 1992

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 91N-0505]

RIN 0905-AA06

Status of Certain Additional Over-the Counter Drug Category II and III Active Ingredients

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 stating that certain ingredients in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. FDA is issuing this notice of proposed rulemaking after considering the reports and recommendations of various OTC advisory review panels and public comments on the agency's proposed regulations, which were issued in the form of a tentative final monograph (proposed rule). Based on the absence of substantive comments in opposition to the agency's proposed nonmonograph status for these ingredients, as well as the failure of interested parties to submit new data or information to FDA pursuant to 21 CFR 330.10(a)(7)(iii), FDA has determined that the presence of these ingredients in an OTC drug product would result in that drug product not being generally recognized as safe and effective or would result in misbranding. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposal before the Commissioner of Food and Drugs by October 26, 1992. Written comments on the agency's economic impact determination by October 26, 1992.

ADDRESSES: Written comments, objections, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 7, 1990 (55 FR 46914), FDA published under § 330.10(a)(7)(ii) (21 CFR 330.10(a)(7)(ii)), a final rule on the status of certain OTC drug Category II and III active ingredients. That final rule declared as not generally recognized as safe and effective certain Category II and Category III active ingredients for which, under the agency's OTC drug review, the periods for submission of comments and new data following the publication of a notice of proposed rulemaking had closed and for which no significant comments or new data to upgrade the status of these ingredients had been submitted. In each instance, a final rule for the class of ingredients involved had not been published to date.

At that time, there were other OTC drug review rulemakings for which the period for submission of comments and/or new data was still pending. Those periods have now closed, and there are a number of active ingredients for which no significant comments or new data were submitted. In each instance, a final rule for the class of ingredients involved has not been published to date. This proposal addresses the Category II and Category III active ingredients in those classes of ingredients, as discussed below.

This proposal also addresses a number of active ingredients that were considered in the rulemaking for OTC digestive aid drug products. In the advance notice of proposed rulemaking for those drug products (47 FR 454, January 5, 1982), a number of ingredients are listed for which the Advisory Review Panel on OTC Miscellaneous Internal Drug Products was neither able to locate nor was aware of any significant body of data demonstrating safety and effectiveness. These ingredients were not included in the final rule discussed above that was published on November 7, 1990. No comments or data have been submitted for any of these ingredients. Based on this lack of data, the agency is proposing these ingredients to be nonmonograph for safety and effectiveness and is adding them to the list already included in 21 CFR 310.545.

Under the OTC drug review administrative procedures (§ 330.10(a)(7)(ii)), the Commissioner of Food and Drugs (the Commissioner) may publish a separate tentative order covering active ingredients that have been reviewed and may propose that these ingredients be excluded from an OTC drug monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may include active ingredients for which no substantial comments in opposition to the advisory panel's proposed classification and no new data and information were received pursuant to § 330.10(a)(6)(iv) (21 CFR 330.10(a)(6)(iv)). While § 330.10(a)(7)(ii) authorizes the publication of a separate tentative order immediately following the close of the comment period and new data period for an advance notice of proposed rulemaking, the Commissioner has waited in the case of these ingredients until after proposed rulemakings were published and the periods for submission of comments and new data have ended, to allow for the fullest possible opportunity for public comment and receipt of new data in support of upgrading the status of these ingredients.

As mentioned, no substantive comments or new date were submitted to support reclassification of any of these ingredients to monograph status. Therefore, before a final rule on each respective drug category is published, the Commissioner is proposing that these ingredients be found not generally recognized as safe and effective and that any OTC drug product containing any of these ingredients not be allowed to continue to be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. FDA has elected to act on these ingredients in advance of finalization of other monograph conditions in order to expedite completion of the OTC drug review. Manufacturers are encouraged to comply voluntarily at the earliest possible date.

Table I below lists the titles and docket numbers of the specific rulemakings containing active ingredients that are addressed in this document, together with the publication dates of the advance notice of proposed rulemaking (ANPRM) and the notice of proposed rulemaking (NPRM), as well as the closing dates for comments and submission of new data for each rulemaking. This proposal does not constitute a reopening of the administrative record or an opportunity to submit new data to any of the specified rulemakings. A citizen petition to reopen the administrative record of any specific rulemaking, whether or not such petition is accompanied by new data, will not be accepted as a comment to this rulemaking. Should an interested person submit a comment indicating that substantive comments or new data were previously submitted to the administrative record for any of the specified rulemakings, the agency will review the record for that rulemaking

and make a determination whether the affected ingredient shall continue to be evaluated under that specified rulemaking or be included in the final rule that will issue pursuant to this proposed rule.

FDA advises that the active ingredients discussed in this document (see Table II below) will not be included in the relevant final monographs because they have not been shown to be generally recognized as safe and effective for their intended use. The agency further advises that these ingredients should be eliminated from OTC drug products 6 months after the date of publication in the **Federal Register** of a final rule in this proceeding regarding their status, regardless of whether further testing is undertaken to justify future use, and regardless of whether the relevant OTC drug monographs have been finalized at that time. The OTC drug review administrative procedures provide that any new data and information submitted after the administrative record has closed following publication of a tentative final monograph (notice of proposed rulemaking), but prior to the establishment of a final monograph, will be considered by the Commissioner only after a final monograph has been published in the **Federal Register**, unless the Commissioner finds that good cause has been shown that warrants earlier consideration. (See 21 CFR 330.10(a)(7)(v).)

The agency points out that publication of a final rule under this proceeding does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of a new drug application (NDA) that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend or establish a monograph, as appropriate. (See 21 CFR 10.30.)

TABLE I.—OTC DRUG RULEMAKINGS COVERED BY THIS NOTICE

Rulemaking and action	Publication date	Comment closing date	New data closing date
(1) Digestive Aid Drug Products: (Docket No. 81N-0106)			
ANPRM	January 5, 1982	July 5, 1982	Not Applicable (N/A).
NPRM	January 29, 1988	March 29, 1988	March 29, 1989.
(2) Topical Antifungal Drug Products:			
(i) Topical Antifungal Drug Products: (Docket No. 80N-0476)			
ANPRM	March 23, 1982	July 21, 1982	N/A.
NPRM	December 12, 1989	March 12, 1990	February 12, 1991.
(ii) Diaper Rash Drug Products: (Docket No. 80N-476D)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	June 20, 1990	December 17, 1990	August 20, 1991.
(3) External Analgesic Drug Products:			
(i) Diaper Rash Drug Products: (Docket No. 78N-301D)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	June 20, 1990	December 17, 1990	August 20, 1991.
(ii) Fever Blister and Cold Sore Treatment Drug Products: (Docket No. 78N-301F)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	January 31, 1990	May 31, 1990	April 1, 1991.
(iii) Insect Bite and Sting Drug Products: (Docket No. 78N-301P)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	October 3, 1989	January 31, 1990	December 3, 1990.
(iv) Poison Ivy, Poison Oak, and Poison Sumac Drug Products: (Docket No. 78N-301P)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	October 3, 1989	January 31, 1990	December 3, 1990.
(4) Internal Analgesic, Antipyretic Antirheumatic Drug Products: (Docket No. 77N-0094)			
ANPRM	July 8, 1977	February 6, 1978	N/A.
NPRM	November 16, 1988	May 16, 1989	January 16, 1990.
(5) Orally Administered Menstrual Drug Products: (Docket No. 82N-0165)			
ANPRM	December 7, 1982	April 6, 1983	N/A.
NPRM	November 16, 1988	March 16, 1989	January 16, 1990.
(6) Pediculicide Drug Products: (Docket No. 81N-0201)			
ANPRM	June 29, 1982	October 27, 1982	N/A.
NPRM	April 3, 1989	June 2, 1989	June 4, 1990.
(7) Skin Protectant Drug Products:			
(i) Astringent Drug Products: (Docket No. 78N-021A)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	April 3, 1989	June 2, 1989	June 4, 1990.
(ii) Diaper Rash Drug Products: (Docket No. 78N-021D)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	June 20, 1990	December 17, 1990	August 20, 1991.
(iii) Fever Blister and Cold Sore Treatment Drug Products: (Docket No. 78N-021F)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	January 31, 1990	May 31, 1990	April 1, 1991.
(iv) Insect Bite and Sting Drug Products: (Docket No. 78N-021P)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	October 3, 1989	January 31, 1990	December 3, 1990.
(v) Poison Ivy, Poison Oak, and Poison Sumac Drug Products: (Docket No. 78N-021P)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	October 3, 1989	January 31, 1990	December 3, 1990.

I. OTC Drug Category II and III Ingredients

Based on the criteria discussed above, FDA is proposing that the following ingredients are not generally recognized as safe and effective and are misbranded when labeled as OTC drugs for the following uses:

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
(1) Digestive aid drug products:		
Alcohol	II	II
Aluminum hydroxide	II	III
Amylase	II	II
Anise seed	II	II
Aromatic powder	II	II
Asafetida	II	II
Aspergillus oryza enzymes	II	II
Bacillus acidophilus	II	II
Bean	II	II
Belladonna alkaloids	II	II
Belladonna leaves, powdered extract.	II	II
Betaine hydrochloride	II	II
Bismuth subcarbonate	II	II
Bismuth subgallate	II	II
Black radish powder	II	II
Buckthorn	II	II
Calcium gluconate	II	II
Capsicum	II	II
Capsicum, fluid extract of	II	II
Carbon	II	II
Cascara sagrada extract	II	II
Catechu, tincture	II	II
Catnip	II	II
Chamomile flowers	II	II
Charcoal, wood	II	II
Chloroform	II	II
Cinnamon oil	II	II
Cinnamon tincture	II	II
Citrus pectin	II	II
Cnicus benedictus (blessed thistle).	II	II
Diastase	II	II
Diastase malt	II	II
Dog grass	II	II
Elecampane	II	II
Ether	II	II
Fennel acid	II	II
Galega	II	II
Ginger	II	II
Glycine	II	II
Hectorite	II	II
Horsetail	II	II
Huckleberry	II	II
Hydrastis canadensis (golden seal).	II	II
Hydrastis fluid extract	II	II
Hydrochloric acid	II	II
Iodine	II	II
Iron ox bile	II	II
Johnswort	II	II
Juniper	II	II
Kaolin, colloidal	II	II
Knotgrass	II	II
Lactic acid	II	II
Lactose	II	II
Lavender compound, tincture of.	II	II
Linden	II	II
Lipase	II	II
Lysine hydrochloride	II	II
Mannitol	II	II
Mycozyme	II	II

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
Myrrh, fluid extract of	II	II
Nettle	II	II
Nickel-pectin	II	II
Nux vomica extract	II	II
Orthophosphoric acid	II	II
Papaya, natural	II	II
Pectin	II	II
Peppermint	II	II
Peppermint spirit	II	II
Phenacetin	II	II
Potassium bicarbonate	II	II
Potassium carbonate	II	II
Protease	II	II
Prolase	II	II
Rhubarb fluid extract	II	II
Senna	II	II
Sodium chloride	II	II
Sodium salicylate	II	II
Stem bromelain	II	II
Strawberry	II	II
Strychnine	II	II
Tannic acid	II	II
Trillium	II	II
Woodruff	II	II
(2) Topical antifungal drug products.—(i) Topical antifungal drug products:		
Alcloxa	III	III
Alum, potassium	III	III
Aluminum sulfate	III	III
Amyltricresols, secondary	III	III
Basic fuchsin	III	III
Benzethonium chloride	III	III
Benzoic acid	III	III
Benzoxiquine	III	III
Boric acid	III	III
Camphor	II	II
Candicidin	III	III
Chlorothymol	III	III
Coal tar	II	II
Dichlorophen	III	III
Menthol	II	II
Methylparaben	III	III
Oxyquinoline	III	III
Oxyquinoline sulfate	III	III
Phenol	II	III
Phenolate sodium	II	III
Phenyl salicylate	III	III
Propionic acid	III	III
Propylparaben	III	III
Resorcinol	II	II
Salicylic acid	III	III
Sodium borate	III	III
Sodium caprylate	III	III
Sodium propionate	III	III
Sulfur	III	III
Tannic acid	II	II
Thymol	II	II
Tolindate	II	II
Triacetin	III	III
Zinc caprylate	III	III
Zinc propionate	III	III
(ii) Diaper rash drug products-Any ingredient	N/A	II
(3) External analgesic drug products.—(i) Diaper rash drug products:		
Any ingredient	N/A	II
(ii) Fever blister and cold sore treatment drug products:		
Allyl isothiocyanate	N/A	III
Aspirin	N/A	III
Bismuth sodium tartrate	N/A	III
Camphor	N/A	III
Capsaicin	N/A	III
Capsicum	N/A	III

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
Capsicum oleoresin	N/A	III
Chloral hydrate	N/A	II
Chlorobutanol	N/A	III
Cyclomethycaine sulfate	N/A	III
Eucalyptus oil	N/A	III
Eugenol	N/A	III
Glycol salicylate	N/A	III
Hexylresorcinol	N/A	III
Histamine dihydrochloride	N/A	III
Menthol	N/A	III
Methapyrilene hydrochloride	N/A	II
Methyl nicotinate	N/A	III
Methyl salicylate	N/A	III
Pectin	N/A	III
Salicylamide	N/A	III
Strong ammonia solution	N/A	III
Tannic acid	N/A	III
Thymol	N/A	III
Tripelennamine hydrochloride.	N/A	III
Trolamine salicylate	N/A	III
Turpentine oil	N/A	III
Zinc sulfate	N/A	III
(iii) Insect bite and sting drug products:		
Alcohol	II	II
Alcohol, ethoxylated alkyl	II	II
Benzalkonium chloride	II	II
Calamine	II	II
Ergot fluidextract	II	II
Ferric chloride	II	II
Panthenol	N/A	III
Peppermint oil	II	II
Pyrilamine maleate	II	II
Sodium borate	II	II
Trolamine salicylate	III	III
Turpentine oil	II	II
Zinc oxide	II	II
Zirconium oxide	II	II
(iv) Poison ivy, poison oak, and poison sumac drug products:		
Alcohol	N/A	II
Aspirin	N/A	III
Benzethonium chloride	N/A	II
Benzocaine (0.5 to 1.25 percent).	N/A	III
Bithionol	N/A	II
Calamine	N/A	II
Cetalkonium chloride	N/A	II
Chloral hydrate	N/A	II
Chlorobutanol	N/A	III
Chlorpheniramine maleate	N/A	II
Creosote, beechwood	N/A	II
Cyclomethycaine sulfate	N/A	III
Dexpanthenol	N/A	III
Diperodon hydrochloride	N/A	II
Eucalyptus oil	N/A	II
Eugenol	N/A	III
Glycerin	N/A	II
Glycol salicylate	N/A	III
Hectorite	N/A	II
Hexylresorcinol	N/A	II
Hydrogen peroxide	N/A	II
Impatiens biflora tincture	N/A	II
Iron oxide	N/A	II
Isopropyl alcohol	N/A	II
Lanolin	N/A	II
Lead acetate	N/A	II
Merbromin	N/A	II
Mercuric chloride	N/A	II
Methapyrilene hydrochloride	N/A	II
Panthenol	N/A	III
Parethoxycaine hydrochloride.	N/A	II
Phenyltoloxamine dihydrogen citrate.	N/A	II

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
Povidone-vinylacetate copolymers.	N/A	II
Pyrilamine maleate	N/A	II
Salicylamide	N/A	III
Salicylic acid	N/A	II
Simethicone	N/A	II
Sulfur	N/A	II
Tannic acid	N/A	III
Thymol	N/A	III
Trolamine	N/A	II
Turpentine oil	N/A	II
Zirconium oxide	N/A	II
Zyloxin	N/A	II
(4) Internal analgesic drug products:		
Aminobenzoic acid [1]	II	II
Antipyrine	III	III
Aspirin, aluminum	III	III
Calcium salicylate	N/A	II
Codeine	II	II
Codeine phosphate	II	N/A
Codeine sulfate	II	N/A
Iodoantipyrine	II	II
Lysine aspirin	N/A	II
Methapyrilene fumarate [1]	III	II
Phenacetin	II	II
Pheniramine maleate [1]	III	III
Pyrilamine maleate [1]	III	III
Quinine	II	II
Salsalate	III	III
Sodium aminobenzoate [1]	II	II
(5) Orally administered menstrual drug products:		
Alcohol	II	II
Alfalfa leaves	II	II
Aloes	II	II
Asclepias tuberosa	II	II
Asparagus	II	II
Barosma	II	II
Bearberry (extract of uva ursi).	II	II
Bearberry fluidextract (extract of bearberry).	II	II
Blessed thistle (cnicus benedictus).	II	II
Buchu powdered extract (extract of buchu).	II	II
Calcium lactate	II	II
Calcium pantothenate	II	II
Capsicum oleoresin	II	II
Cascara fluidextract, aromatic (extract of cascara).	II	II
Chlorprophenpyridamine maleate.	II	II
Cimicifuga racemosa	II	II
Codeine	II	II
Collinsonia (extract stone root).	II	II
Corn silk	II	II
Couch grass	II	II
Dog grass extract	II	II
Ethyl nitrite	II	II
Ferric chloride	II	II
Ferrous sulfate	II	II
Gentiana lutea (gentian)	II	II
Glycyrrhiza glabra (licorice root).	II	II
Homatropine methylbromide	II	II
Hydrangea, powdered extract (extract of hydrangea).	II	II
Hydrastis canadensis (golden seal).	II	II
Hyoscyamine sulfate	II	II
Juniper oil (oil of juniper)	II	II
Magnesium sulfate	II	II
Methapyrilene hydrochloride	II	II

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
Methenamine	II	II
Methylene blue	II	II
Natural estrogenic hormone	II	II
Niacinamide	II	II
Nutmeg oil (oil of nutmeg)	II	II
Oil of erigeron	II	II
Parsley	II	II
Peppermint spirit	II	II
Pepsin, essence	II	II
Phenacetin	II	II
Phenindamine tartrate	II	II
Phenyl salicylate	II	II
Piscidia erythrina	II	II
Pipsissewa	II	II
Potassium acetate	II	II
Potassium nitrate	II	II
Riboflavin	II	II
Saw palmetto	II	II
Senecio aureus	II	II
Sodium benzoate	II	II
Sodium nitrate	II	II
Sucrose	II	II
Sulfurated oils of turpentine	II	II
Taraxacum officinale	II	II
Theobromine sodium salicylate.	III	III
Theophylline	III	III
Thiamine hydrochloride	II	II
Triticum	II	II
Turpentine, venice (venice turpentine).	II	II
Urea	II	II
(6) Pediculicide drug products:		
Benzocaine	II	II
Benzyl alcohol	II	II
Benzyl benzoate	II	II
Chlorophenothane (dichlorodiphenyl trichloroethane).	II	II
Coconut oil soap, aqueous	II	II
Copper oleate	II	II
Docusate sodium	II	II
Formic acid [2]	N/A	N/A
Isobornyl thiocyanoacetate	II	II
Picrotoxin	II	II
Propylene glycol	II	II
Sabadilla alkaloids	II	II
Sulfur, sublimed	II	II
Thiocyanoacetate	II	II
(7) Skin protectant drug products.—(i) Astringent drug products:		
Acetone	II	II
Alcohol	II	II
Alum, ammonium	II	II
Alum, potassium	II	II
Aluminum chlorhydroxy complex.	II	II
Aromatics	II	II
Benzalkonium chloride	II	II
Benzethonium chloride	II	II
Benzocaine	II	II
Benzoic acid	II	II
Boric acid	II	II
Calcium acetate	II	II
Camphor gum	II	II
Clove oil	II	II
Colloidal oatmeal	II	II
Cresol	II	II
Cupric sulfate	II	II
Eucalyptus oil	II	II
Eugenol	II	II
Honey	II	II
Isopropyl alcohol	II	II
Menthol	II	II
Methyl salicylate	II	II
Oxyquinoline sulfate	II	II

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
P-t-butyl-m-cresol	II	II
Peppermint oil	II	II
Phenol	II	II
Polyoxytheylene laurate	II	II
Potassium ferrocyanide	II	II
Sage oil	II	II
Silver nitrate	II	II
Sodium borate	II	II
Sodium diacetate	II	II
Talc	II	II
Tannic acid glycerite	II	II
Thymol	II	II
Topical starch	II	II
Zinc chloride	II	II
Zinc oxide	II	II
Zinc phenolsulfonate	II	II
Zinc stearate	II	II
Zinc sulfate	II	II
(ii) Diaper rash drug products:		
Aluminum hydroxide	N/A	III
Cocoa butter	N/A	III
Cysteine hydrochloride	N/A	III
Glycerin	N/A	III
Protein hydrolysate	N/A	III
Racemethionine	N/A	III
Sulfur	N/A	II
Tannic acid	N/A	II
Zinc acetate	N/A	III
Zinc carbonate	N/A	III
(iii) Fever blister and cold sore treatment drug products:		
Bismuth subnitrate	N/A	II
Boric acid	N/A	II
Pyridoxine hydrochloride	N/A	II
Sulfur	N/A	II
Tannic acid	N/A	III
Topical starch	N/A	III
Trolamine	N/A	III
Zinc sulfate	N/A	III
(iv) Insect bite and sting drug products:		
Alcohol	II	II
Alcohol, ethoxylated alkyl	II	II
Ammonia solution, strong	II	II
Ammonium hydroxide	III	III
Benzalkonium chloride	II	II
Camphor	II	II
Ergot fluidextract	II	II
Ferric chloride	II	II
Menthol	II	II
Peppermint oil	II	II
Phenol	II	II
Pyrilamine maleate	II	II
Sodium borate	II	II
Trolamine	III	III
Turpentine oil	II	II
Zirconium oxide	II	II
(v) Poison ivy, poison oak, and poison sumac drug products:		
Alcohol	N/A	II
Anion and cation exchange resins buffered.	III	III
Benzethonium chloride	N/A	II
Benzocaine	N/A	II
Benzyl alcohol	N/A	II
Bismuth subnitrate	N/A	II
Bithionol	N/A	II
Boric acid	N/A	II
Camphor	N/A	II
Cetalkonium chloride	N/A	II
Chloral hydrate	N/A	II
Chlorpheniramine maleate	N/A	II
Creosote	N/A	II
Diperodon hydrochloride	N/A	II
Diphenhydramine hydrochloride.	N/A	II

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
Eucalyptus oil	N/A	II
Ferric chloride	II	II
Glycerin	N/A	II
Hectorite	N/A	II
Hydrogen peroxide	N/A	II
Impatiens biflora tincture	N/A	II
Iron oxide	N/A	II
Isopropyl alcohol	N/A	II
Lanolin	N/A	II
Lead acetate	N/A	II
Lidocaine	N/A	II
Menthol	N/A	II
Merbromin	N/A	II
Mercuric chloride	N/A	II
Panthenol	N/A	II
Parethoxycaine hydrochloride.	N/A	II
Phenol	N/A	II
Phenyltoloxamine dihydrogen citrate.	N/A	II
Povidone-vinylacetate copolymers.	N/A	II
Salicylic acid	N/A	II
Simethicone	N/A	II
Tannic acid	N/A	II
Topical starch	N/A	III
Trolamine	N/A	III
Turpentine oil	N/A	II
Zirconium oxide	N/A	II
Zyloxin	N/A	II

N/A Means that the ingredient was either not classified by the Panel or was not included in the indicated (ANPRM/NPRM) document.

[1] Ingredient used as an analgesic-antipyretic adjuvant.

[2] This ingredient was not submitted to or previously classified in the OTC drug review, but has been observed in a marketed product.

II. The Agency's Tentative Conclusions on Certain OTC Drug Category II and III Ingredients

The agency has determined that no substantive comments or additional data have been submitted to the OTC drug review to support any of the ingredients listed above as being generally recognized as safe and effective for the OTC drug uses specified in Table II. Based on the agency's procedural regulations (§ 330.10(a)(7)(ii)), the agency has determined that these ingredients should be deemed not generally recognized as safe and effective for OTC use before a final monograph for each respective drug category is established. Accordingly, any drug product containing any of these ingredients and labeled for the OTC use identified above will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of 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 21 CFR part 314 of the regulations is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to amend the appropriate monograph to include any of the above ingredients in OTC drug products. (See 21 CFR 10.30.) Any OTC drug product containing any of the above ingredients and labeled for the use identified above initially introduced or initially delivered for introduction into interstate commerce after the effective date of a final rule in this proceeding to remove these Category II and III ingredients from the market and that is not the subject of an approved application will be in violation of sections 502 and 505 of the act and, therefore, subject to regulatory action. Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the rule would be required to be in compliance with the 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 rule at the earliest possible date.

The agency has examined the economic consequences of this proposed rulemaking. The agency invited public comment in the notices of proposed rulemaking listed in Table I regarding any impact that those rulemakings would have on drug products containing the above specified OTC drug ingredients. No comments on economic impacts were received. Moreover, manufacturers of products containing these ingredients have not provided any substantive data to support their continued marketing. Accordingly, the agency concludes that there is no basis for the continued marketing of these ingredients for the indications listed in Table II. Further, in most cases, there are proposed rulemaking ingredients which manufacturers can use to reformulate affected products. In many instances, manufacturers have already reformulated their products to include monograph ingredients. As a result of this proposal, manufacturers may need to reformulate some products prior to promulgation of the applicable final monograph. However, there will be no additional costs because reformulation will be required, in any event, when the final monograph is published.

Early finalization of the nonmonograph status of the ingredients listed in this notice will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of ingredients for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Manufacturers will benefit from being able to use alternative ingredients that have been found to be generally recognized as safe and effective without incurring additional expense of clinical testing for these ingredients. Based on the above, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by October 26, 1992. Such comments should be submitted to the Dockets Management Branch (address above) and identified with the docket number found in brackets in the heading of this document and not to the docket numbers appearing in Table I. 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 October 26, 1992, submit to the Dockets Management Branch (address above) written comments, objections, or requests for oral hearing before the Commissioner on the proposed rulemaking. 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 October 26, 1992. 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 appropriate docket number found in brackets in the heading of this document and not the docket numbers appearing in Table I, 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**.

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 and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 310 be amended as follows:

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 310.545 is amended by redesignating paragraphs (a)(8) and (a)(18) as (a)(8)(i) and (a)(18)(i), respectively; by revising the heading of new paragraphs (a)(8)(i) and (a)(18)(i), (d) introductory text, and (d)(1); and by adding new (a)(8) heading and paragraphs (a)(8)(ii), (a)(10)(iv) through (a)(10)(vii), and (a)(18) heading, paragraphs (a)(18)(ii) through (a)(18)(vi), (a)(21)(i) and (a)(21)(ii), (a)(22) through (a)(24), and (d)(4) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(8) *Digestive aid drug products*—(i) *Approved as of May 7, 1991.* * * *

(ii) *Approved as of February 26, 1993.*

Alcohol
Aluminum hydroxide
Amylase
Anise seed
Aromatic powder
Asafetida
Aspergillus oryza enzymes
Bacillus acidophilus
Bean
Belladonna alkaloids
Belladonna leaves, powdered extract
Betaine hydrochloride
Bismuth subcarbonate
Bismuth subgallate
Black radish powder
Blessed thistle (cnicus benedictus)
Buckthorn
Calcium gluconate
Capsicum
Capsicum, fluid extract of
Carbon
Cascara sagrada extract
Catechu, tincture
Catnip
Chamomile flowers
Charcoal, wood
Chloroform
Cinnamon oil
Cinnamon tincture
Citrus pectin
Diastase
Diastase malt
Dog grass
Elecampane
Ether
Fennel acid
Galega
Ginger
Glycine
Golden seal (hydrastis canadensis)
Hectorite
Horsetail
Huckleberry
Hydrastis fluid extract
Hydrochloric acid
Iodine
Iron ox bile
Johnswort
Juniper
Kaolin, colloidal
Knotgrass
Lactic acid
Lactose
Lavender compound, tincture of
Linden
Lipase
Lysine hydrochloride
Mannitol
Mycozyme
Myrrh, fluid extract of
Nettle
Nickel-pectin
Nux vomica extract
Orthophosphoric acid
Papaya, natural
Pectin
Peppermint
Peppermint spirit
Phenacetin
Potassium bicarbonate
Potassium carbonate
Protease
Prolase
Rhubarb fluid extract
Senna
Sodium chloride
Sodium salicylate
Stem bromelain
Strawberry
Strychnine
Tannic acid
Trillium
Woodruff

* * * * *

(10) * * *

(iv) *Diaper rash drug products.* Any ingredient(s) labeled with claims or directions for use in the treatment and/or prevention of diaper rash.

(v) *Fever blister and cold sore treatment drug products.*

Allyl isothiocyanate
Asprin
Bismuth sodium tartrate
Camphor
Capsaicin
Capsicum oleoresin
Chloral hydrate
Chlorobutanol
Cyclomethycaine sulfate
Eucalyptus oil
Eugenol
Glycol salicylate
Hexylresorcinol
Histamine dihydrochloride
Menthol
Methapyrilene hydrochloride
Methyl nicotinate
Methyl salicylate
Pectin
Salicylamide
Strong ammonia solution
Tannic acid
Thymol
Tripelennamine hydrochloride
Trolamine salicylate
Turpentine oil
Zinc sulfate

(vi) *Insect bite and sting drug products.*

Alcohol
Alcohol, ethoxylated alkyl
Benzalkonium chloride
Calamine
Ergot fluidextract
Ferric chloride
Panthenol
Peppermint oil
Pyrilamine maleate
Sodium borate
Trolamine salicylate
Turpentine oil
Zinc oxide
Zirconium oxide

(vii) *Poison ivy, poison oak, and poison sumac drug products.*

Alcohol
Aspirin
Benzethonium chloride
Benzocaine (0.5 to 1.25 percent)
Bithionol
Calamine
Cetalkonium chloride
Chloral hydrate
Chlorobutanol
Chlorpheniramine maleate
Creosote, beechwood
Cyclomethycaine sulfate
Dexpanthenol
Diperodon hydrochloride
Eucalyptus oil
Eugenol
Glycerin
Glycol salicylate
Hectorite

Hexylrosorcinol
Hydrogen peroxide
Impatiens biflora tincture
Iron oxide
Isopropyl alcohol
Lanolin
Lead acetate
Merbromin
Mercuric chloride
Methapyrilene hydrochloride
Panthenol
Parethoxycaine hydrochloride
Phenyltoloxamine dihydrogen citrate
Povidone-vinylacetate copolymers
Pyrilamine maleateSalicylamide
Salicylic acid
Simethicone
Sulfur
Tannic acid
Thymol
Trolamine salicylate
Turpentine oil
Zirconicum oxide
Zyloxin

* * * * *

(18) *Skin protectant drug products*—(i) *Ingredients.* * * *

(ii) *Astringent drug products.*

Acetone
Alcohol
Alum, ammonium
Alum, potassium
Aluminum chlorhydroxy complex
Aromatics
Benzalkonium chloride
Benzethonium chloride
Benzocaine
Benzoic acid
Boric acid
Calcium acetate
Camphor gum
Clove oil
Colloidal oatmeal
Cresol
Cupric sulfate
Eucalyptus oil
Eugenol
Honey
Isopropyl alcohol
Menthol
Methyl salicylate
Oxyquinoline sulfate
P-t-butyl-m-cresol
Peppermint oil
Phenol
Polyoxytheylene laurate
Potassium ferrocyanide
Sage oil
Silver nitrate
Sodium borate
Sodium diacetate
Talc
Tannic acid glycerite
Thymol
Topical starch
Zinc chloride
Zinc oxide
Zinc phenolsulfonate
Zinc stearate
Zinc sulfate

(iii) *Diaper rash drug products.*

Aluminum hydroxide
Cocoa butter
Cysteine hydrochloride
Glycerin
Protein hydrolysate
Racemethionine
Sulfur
Tannic acid
Zinc acetate
Zinc carbonate

(iv) *Fever blister and cold sore treatment drug products.*

Bismuth subnitrate
Boric acid
Pyridoxide hydrochloride
Sulfur
Tannic acid
Topical starch
Trolamine
Zinc sulfate

(v) *Insect bite and sting drug products.*

Alcohol
Alcohol, ethoxylated alkyl
Ammonia solution, strong
Ammonium hydroxide
Benzalkonium chloride
Camphor
Ergot fluidextract
Ferric chloride
Menthol
Peppermint oil
Phenol
Pyrilamine maleate
Sodium borate
Trolamine
Turpentine oil
Zirconium oxide

(vi) *Poison ivy, poison oak, and poison sumac drug products.*

Alcohol
Anion and cation exchange resins buffered
Benzethonium chloride
Benzocaine
Benzyl alcohol
Bismuth subnitrate
Bithionol
Boric acid
Camphor
Cetalkonium chloride
Chloral hydrate
Chlorpheniramine maleate
Creosote
Diperodon hydrochloride
Diphenhydramine hydrochloride
Eucalyptus oil
Ferric chloride
Glycerin
Hectorite
Hydrogen peroxide
Impatiens biflora tincture
Iron oxide
Isopropyl alcohol
Lanolin
Lead acetate
Lidocaine
Menthol
Merbromin
Mercuric chloride
Panthenol
Parethoxycaine hydrochloride
Phenol
Phenyltoloxamine dihydrogen citrate
Povidone-vinylacetate copolymers
Salicylic acid
Simethicone
Tannic acid
Topical starch
Trolamine
Turpentine oil
Zirconium oxide
Zyloxin

* * * * *

(21) *Topical antifungal drug products.*

(i) *Ingredients.*

Alcloxa
Alum, potassium
Aluminum sulfate
Amyltricresols, secondary
Basic fuchsin
Benzethonium chloride
Benzoic acid
Benzoxiquine
Boric acid
Camphor
Candicidin
Chlorothymol
Coal tar
Dichlorophen
Menthol
Methylparaben
Oxyquinoline
Oxyquinoline sulfate
Phenol
Phenolate sodium
Phenyl salicylate
Propionic acid
Propylparaben
Resorcinol
Salicylic acid
Sodium borate
Sodium caprylate
Sodium propionate
Sulfur
Tannic acid
Thymol
Tolindate
Triacetin
Zinc caprylate
Zinc propionate

(ii) *Diaper rash drug products.* Any ingredient(s) labeled with claims or directions for use in the treatment and/or prevention of diaper rash.

(22) *Internal analgesic drug products.*

Aminobenzoic acid
Antipyrine
Aspirin, aluminum
Calcium salicylate
Codeine
Codeine phosphate

Codeine sulfate
Iodoantipyrine
Lysine aspirin
Methapyrilene fumarate
Phenacetin
Pheniramine maleate
Pyrilamine maleate
Quinine
Salsalate
Sodium aminobenzoate

(23) *Orally administered menstrual drug products.*

Alcohol
Alfalfa leaves
Aloes
Asclepias tuberosa
Asparagus
Barosma
Bearberry (extract of uva ursi)
Bearberry fluidextract (extract of bearberry)
Blessed thistle (cnicus benedictus)
Buchu powdered extract (extract of buchu)
Calcium lactate
Calcium pantothenate
Capsicum oleorisin
Cascara fluidextract, aromatic (extract of cascara)
Chlorprophenpyridamine maleate
Cimicifuga racemosa
Codeine
Collinsonia (extract stone root)
Corn silk
Couch grass
Dog grass extract
Ethyl nitrite
Ferric chloride
Ferrous sulfate
Gentiana lutea (gentian)
Glycyrrhiza (licorice)
Homatropine methylbromide
Hydrangea, powdered extract (extract of hydrangea)
Hydrastis canadensis
Hyoscyamine sulfate
Juniper oil (oil of juniper)
Magnesium sulfate
Methapyrilene hydrochloride
Methenamine
Methylene blue
Natural estrogenic hormone
Niacinamide
Nutmeg oil (oil of nutmeg)
Oil of erigeron
Parsley
Peppermint spirit
Pepsin, essence
Phenacetin
Phenindamine tartrate
Phenyl salicylate
Piscidia erythrina
Pipsissewa
Potassium acetate
Potassium nitrate
Riboflavin
Saw palmetto
Senecio aureus
Sodium benzoate
Sodium nitrate
Sucrose
Sulferated oils of turpentine
Taraxacum officinale
Theobromine sodium salicylate
Theophylline
Thiamine hydrochloride
Triticum
Turpentine, venice
Urea

(24) *Pediculicide drug products.*

Benzocaine
Benzyl alcohol
Benzyl benzoate
Chlorophenothane (Dichlorodiphenyl trichloroethane)
Coconut oil soap, aqueous
Copper oleate
Docusate sodium
Formic acid
Isobornyl thiocyanoacetate
Picrotoxin
Propylene glycol
Sabadilla alkaloids
Sulfur, sublimed
Thiocyanoacetate

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(4) of this section.

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(8)(i), (a)(9) through (a)(10)(iii), (a)(11) through (a)(18)(i), and (a)(19) of this section.

* * * * *

(4) February 26, 1993, for products subject to paragraphs (a)(8)(ii), (a)(10)(iv) through (a)(10)(vii), (a)(18)(ii) through (a)(18)(vi), (a)(21)(i) and (a)(21)(ii), and (a)(22) through (a)(24) of this section.

Dated: August 19, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

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Reader Aids

Federal Register

Vol. 57, No. 165

Tuesday, August 25, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

34061-34200.....3
34201-34494.....4
34495-34664.....5
34665-34850.....6
34851-35454.....7
35455-35744.....10
35745-35980.....11
35981-36350.....12
36351-36586.....13
36587-36886.....14
36887-37078.....17
37079-37392.....18
37393-37682.....19
37683-37868.....20
37869-38236.....21
38237-38402.....24
38403-38576.....25

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6463.....36349
6464.....36887

Executive Orders:
8597 (Revoked by PLO 6939 of July 22, 1992).....35467
12674 (See OGE final rule of May 7, 1992).....35006
12731 (See OGE final rule of May 7, 1992).....35006
12813.....34851

Administrative Orders:
Presidential Determinations:
No. 85-14 of July 1, 1985 (See Presidential Determination No. 92-41 of August 17, 1992)
No. 92-37 of August 3, 1992.....36587
No. 92-41 of August 17, 1992.....38235

4 CFR

Ch. III.....34167

5 CFR

531.....37393
532.....35745
575.....37393, 37394
2635.....35006

Proposed Rules:
297.....35491

7 CFR

28.....34495
246.....34500
301.....37683
302.....37079
354.....37684
400.....34665
718.....34201
719.....34201
720.....34201
907.....34203
908.....34203
932.....35745, 36351
944.....35747, 36354
945.....38403
946.....38404
967.....38405
981.....38407, 38408
982.....38410
989.....34206
993.....38412
998.....34061, 38413
1209.....34349, 35004
1413.....34201
1414.....34201
1435.....37685
1806.....36589
1863.....36589
1925.....36589
1941.....37400
1942.....35627
1944.....36589
1945.....36589
1951.....36589
1955.....36589
1962.....36589
1965.....36589

Proposed Rules:
58.....35492
300.....34349, 37732
318.....35627
319.....34349, 37732, 37735
906.....34268
915.....38445
948.....34269, 38446
1001.....36609
1002.....36609
1004.....36609
1005.....36609
1007.....36609
1011.....36609
1030.....36609
1033.....36536
1036.....36536
1040.....36609
1044.....36609
1046.....36609
1049.....36536
1065.....36609
1068.....36609
1079.....36609
1093.....36609
1094.....36609
1096.....36609
1097.....36609
1098.....36609
1099.....36609
1106.....36609
1108.....36609
1124.....34694
1126.....36609
1131.....36609
1135.....34694
1138.....36609
1209.....36610
1413.....34087
1942.....37736

8 CFR

103.....34506
240.....34506

9 CFR

77.....37686, 37869

78 ..... 37080, 37081, 37687
91 37689
92 37689
94 37081
303 34174
318 37869
327 36889
381 ..... 34174, 37869
Proposed Rules:
51 37736
92 37737
318 ..... 35505, 38448
381 38450

10 CFR
50 35455
220 36890
300 36890
320 36890
Proposed Rules:
Ch. I 34886, 37737
20 36611
50 ..... 34666, 36909
140 36909

11 CFR
110 36344
200 34508
Proposed Rules:
110 36023

12 CFR
201 34064
204 ..... 38415, 38417
226 34676
229 ..... 36593, 36599
545 37083
571 37083
584 35456
614 38237
615 38250
619 38237
1102 ..... 35004, 36356
1617 35728
1680 37400
Proposed Rules:
3 35507
34 36911
203 36024
208 35507
220 37109
225 35507
325 35507
552 37112
563 ..... 36911, 37112
Ch. VII 34090
741 34091

13 CFR
121 37690
Proposed Rules:
121 38452
125 37909

14 CFR
13 34511
21 ..... 34208–34213, 34511, 35981, 37406, 37876
23 ..... 35981, 37876
25 ..... 34208–34213, 34511, 34681, 37406
39 ..... 34065–34073, 34215–34220, 35982, 36891–36901, 37408, 37691, 37872, 37874, 38251–38269, 38430, 38432
71 ..... 34074, 35983, 36601, 37409, 37877, 37878, 38434–38437
91 34614
93 37308
95 36361
97 ..... 34221, 34512, 35984, 35986, 38271, 38273
121 34681
135 34681
Proposed Rules:
Ch. I 37480
1 35888
21 ..... 34270, 36027, 36029, 36375
25 ..... 34270, 36375
27 36027
29 36029
39 ..... 36439, 36614, 36917–36928, 37118, 37480–37488, 37738, 37914, 37915
61 35888
71 ..... 34271, 34530, 34531, 34809, 36031, 36378, 36616, 37489–37492, 38456
73 37493
91 35888
121 35888
125 35888
135 35888
141 35888
142 35888

15 CFR
903 35749
Proposed Rules:
280 37032
799 36929

16 CFR
260 36363
305 36902
1115 34222
1116 34230
Proposed Rules:
19 34532
23 34532
245 34532
453 34532
1116 34272
1145 36929
1210 36932
1700 34274

17 CFR
4 34853
30 ..... 36369, 38437
32 36369
200 36442
210 36442
228 36442
229 36442
230 36442
239 ..... 36442, 37084
240 36442
249 36442
260 36442
Proposed Rules:
1 34533
200 ..... 35070, 35202, 38352
201 ..... 35070, 38352
202 ..... 35070, 35431, 35442, 38352
210 ..... 35070, 38352
228 36502
229 ..... 35070, 35202, 38352
230 ..... 35070, 35202, 36502, 38352
232 ..... 35070, 38352
239 ..... 34701, 35070, 35202, 36502, 38352
240 ..... 34701, 35070, 35202, 36502, 38352
249 ..... 35070, 35202, 36502, 38352
250 35431
259 35070
260 ..... 35070, 35442, 36502, 38352
269 ..... 35431, 38352
270 ..... 34701, 34726, 35202
274 ..... 34701, 35202

18 CFR
271 34682
284 36128
Proposed Rules:
2 35525
284 ..... 35525, 35766

19 CFR
4 35750
18 38274
19 37692
24 35458
113 37692
122 38274
144 37692
145 37702
207 34820
Proposed Rules:
10 37591
101 ..... 34809, 35530
146 35530
151 37917

20 CFR
10 35752
416 35459

21 CFR
14 35461
155 ..... 34244, 37591
169 ..... 34245, 37591
176 34865
178 ..... 35462, 37867
510 ..... 35988, 38441
520 ..... 35988, 37318
522 37318
524 37318
526 37318
529 37318
536 37318
539 37318
540 37318
544 37318
546 37318
548 37318
555 37318
558 ..... 34515, 37410, 38441
1308 ..... 36371, 36372
Proposed Rules:
20 36617
101 37190
131 38095
182 37738
184 37738
310 38568
341 34733–34735
1301 36439
1304 36439

22 CFR
215 38276

23 CFR
1212 35989
Proposed Rules:
750 34168

24 CFR
4 34246
25 37085
202 37085
889 36338
890 36330
905 37085
Proposed Rules:
92 34640
207 37119
213 37119
220 37119
221 37119
231 37119
232 37119
234 37119
242 37119
244 37119
290 34834
886 34834

25 CFR
Proposed Rules:
515 34809
519 34349
522 34349
523 34349
524 34349
531 37656
533 37656
535 37656
537 37656
539 37656
556 34349
558 34349
571 34809
577 34809

26 CFR
1 ..... 36001, 37189, 38281
5f 36001
301 ..... 36691, 37085, 37189
602 ..... 36001, 38281
Proposed Rules:
1 ..... 34092, 34736, 34740, 34886, 35536, 37495
5h 34736, 34740
301 ..... 36031, 38457

27 CFR
4 37591

28 CFR
524 34662
571 34662

29 CFR
541 37666
1910 35630
1926 35630
2619 36602
2676 36603
Proposed Rules:
541 37678
1910 ..... 34192, 36964, 37126, 37591
1915 ..... 36964, 37126
1917 37126
1918 37126
1926 ..... 34656, 36964, 37126

1928 ... 37126

30 CFR

70 ... 34683
75 ... 34683
902 ... 37410
904 ... 37423
916 ... 37430
917 ... 37086
926 ... 37436
934 ... 37702, 37707
935 ... 37093, 37096
943 ... 37447, 37459
944 ... 37461

Proposed Rules:

48 ... 38289
75 ... 38289
77 ... 38289
250 ... 36032
718 ... 35960
720 ... 35960
901 ... 37497
913 ... 37127
914 ... 37498
916 ... 37132
920 ... 37133, 37134
935 ... 37136, 37138

31 CFR

312 ... 34684
317 ... 34684

Proposed Rules:

210 ... 34650
257 ... 37139

32 CFR

191 ... 35755
701 ... 37100
706 ... 35463, 35464

33 CFR

100 ... 34075, 37710, 38283
117 ... 34868, 37711, 37879, 37881
135 ... 36314
136 ... 36314
137 ... 36314
155 ... 36222
157 ... 36222
165 ... 35465, 35466, 35755
222 ... 35757

Proposed Rules:

117 ... 37918, 37920
154 ... 37920
165 ... 34741, 36034
179 ... 36034

34 CFR

8 ... 34646
300 ... 37652
303 ... 37652
400 ... 36720
401 ... 36720
402 ... 36720
403 ... 36720
405 ... 36720
406 ... 36720
407 ... 36720
408 ... 36720
409 ... 36720
410 ... 36720
411 ... 36720
412 ... 36720
413 ... 36720
414 ... 36720
415 ... 36720
416 ... 36720
417 ... 36720
418 ... 36720
419 ... 36720
421 ... 36720
422 ... 36720
423 ... 36720
424 ... 36720
425 ... 36720
426 ... 36720
427 ... 36720
428 ... 36720

Proposed Rules:

99 ... 35964
280 ... 36324
316 ... 34620
318 ... 34620
319 ... 34620
366 ... 36617
555 ... 34488

35 CFR

133 ... 37066

36 CFR

Proposed Rules:

251 ... 36618

37 CFR

1 ... 38190
2 ... 38190

Proposed Rules:

1 ... 36034
10 ... 36034

38 CFR

3 ... 34517, 36439
20 ... 38442
21 ... 35628
36 ... 37712

Proposed Rules:

3 ... 34536, 38095
21 ... 38458

39 CFR

111 ... 37882
232 ... 36903, 38443

40 CFR

52 ... 34249-34251, 35758, 35759, 36004, 36603, 37100, 37465, 37470
148 ... 37194
156 ... 38102
170 ... 38102
180 ... 34517, 34518, 36004, 37474
185 ... 36005
260 ... 37194, 38558
261 ... 37194, 37284, 37884, 37886, 38558
262 ... 37194
264 ... 37194, 38558
265 ... 37194, 38558
266 ... 38558
268 ... 37194
270 ... 37194
271 ... 37194, 37284
281 ... 34519
302 ... 37284
372 ... 37888
721 ... 34252

Proposed Rules:

50 ... 35542
52 ... 35769, 35771, 36040, 37743
80 ... 37744
122 ... 35774
170 ... 38167, 38175
180 ... 34537, 36042-36046
261 ... 36866, 37921, 37927
268 ... 35940
271 ... 35940
300 ... 34742, 38289
308 ... 34742
721 ... 34281-34283, 37499

41 CFR

101-14 ... 37713
101-45 ... 34253

42 CFR

405 ... 36006
406 ... 36006
409 ... 36006
410 ... 36006
411 ... 36006
412 ... 36006
413 ... 36006
418 ... 36006
420 ... 35760
489 ... 36006
493 ... 35760

Proposed Rules:

52c ... 37745
52e ... 37502
100 ... 36878
435 ... 36968
436 ... 36968

43 CFR

3100 ... 35968
5460 ... 37475
5470 ... 37475

Public Land Orders:

6932 ... 35627
6938 ... 34520
6939 ... 35467
6940 ... 35468
6941 ... 34685

Proposed Rules:

12 ... 34755
5400 ... 37936
5460 ... 37936
5470 ... 37936

44 CFR

64 ... 34685, 34688, 37714
65 ... 37715, 37717
67 ... 37718
361 ... 34868

Proposed Rules:

67 ... 37747

45 CFR

98 ... 34352
99 ... 34352
255 ... 34434
257 ... 34434
801 ... 36018
1180 ... 36903

Proposed Rules:

1224 ... 35775

46 CFR

28 ... 34188
30 ... 36222
32 ... 36222
70 ... 36222
90 ... 36222
172 ... 36222
272 ... 34689
298 ... 34690
514 ... 36248
515 ... 36248
520 ... 35761
550 ... 34076, 35761, 36248
580 ... 34076, 35761, 36248
581 ... 36248

47 CFR

0 ... 38444
1 ... 38284
2 ... 38285
22 ... 34077, 37105
43 ... 34520
61 ... 37729
64 ... 34253, 37106
73 ... 34077, 34078, 34263, 34692, 34872, 35763, 36018-36021, 36906, 37888, 38286
76 ... 35468
80 ... 34261
90 ... 34692, 37730
95 ... 36372

Proposed Rules:

Ch. I ... 35776
1 ... 36047
2 ... 37755, 38459
15 ... 36049, 37755, 37939, 38459
21 ... 34889
22 ... 34889
23 ... 34889
25 ... 34889, 37940, 37941
73 ... 34092, 34284, 34285, 36047, 36050, 36051, 36971, 38291, 38292
74 ... 36378
80 ... 38292
94 ... 34093
97 ... 34285, 37758

48 CFR

219 ... 38286
252 ... 38286
332 ... 35472
333 ... 35472
501 ... 37889
503 ... 37889
505 ... 37889
519 ... 37889
532 ... 37889
552 ... 37889
570 ... 37889
2509 ... 34881
2527 ... 34882
9900 ... 34167
9902 ... 34167
9903 ... 34078, 34167
9904 ... 34078, 34167

Proposed Rules:

803 ... 37759
852 ... 37759
1819 ... 34094
1852 ... 34094
Ch. 20 ... 37140
5415 ... 36051
5446 ... 37142
5452 ... 36051, 37142

49 CFR

107 ... 37900
171 ... 37900
571 ... 37902
1004 ... 38444
1063 ... 35763

1109.....35628
Proposed Rules:
171.....36694
172.....34542, 36694
173.....36694
178.....36694
180.....36694
225.....34756
234.....36054
Ch. III.....37392
392.....37504
395.....37504
571.....34539, 38462
1002.....35557
1003.....37761
1039.....34890, 37763, 37941
1141.....34891
1160.....37761
1162.....37761
1166.....37761
1180.....34891, 35559
1207.....36972
1249.....36972

50 CFR

17.....35473, 37478
20.....38202
215.....34081
227.....36906
630.....34264
661.....34085, 34883, 34884, 35764, 36021, 36607, 36608, 37906
663.....34266, 35765
672.....34884, 35004, 35487, 35489, 35765, 37478, 37906
675.....35487, 35489, 37731, 37906
683.....36907
Proposed Rules:
17.....34095-34100, 34892, 36380, 37507-37515, 37941
20.....35446, 38215
216.....34101
218.....34101
222.....34101
226.....36626
611.....35627
625.....34107, 36055
642.....36972
663.....34757
685.....35627

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 20, 1992

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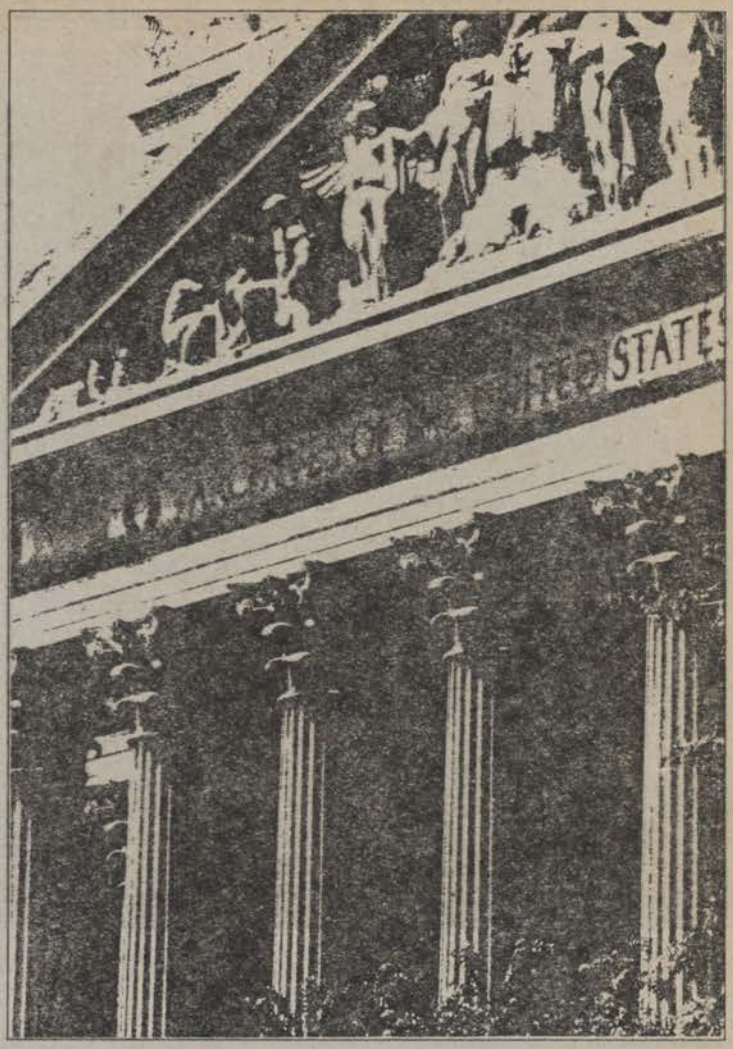

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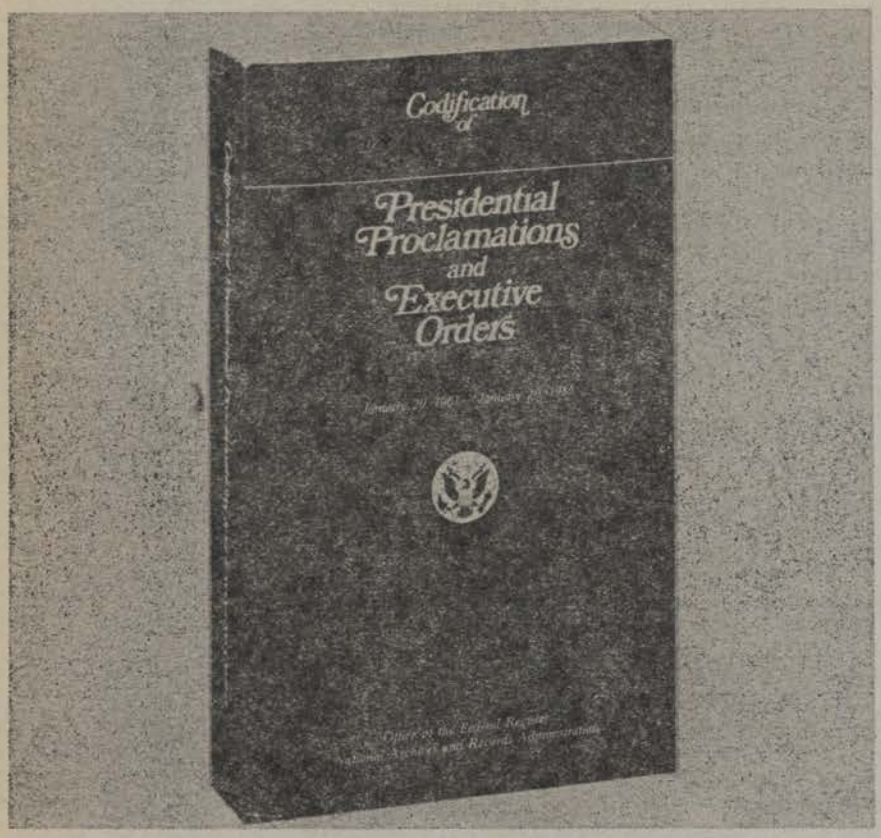

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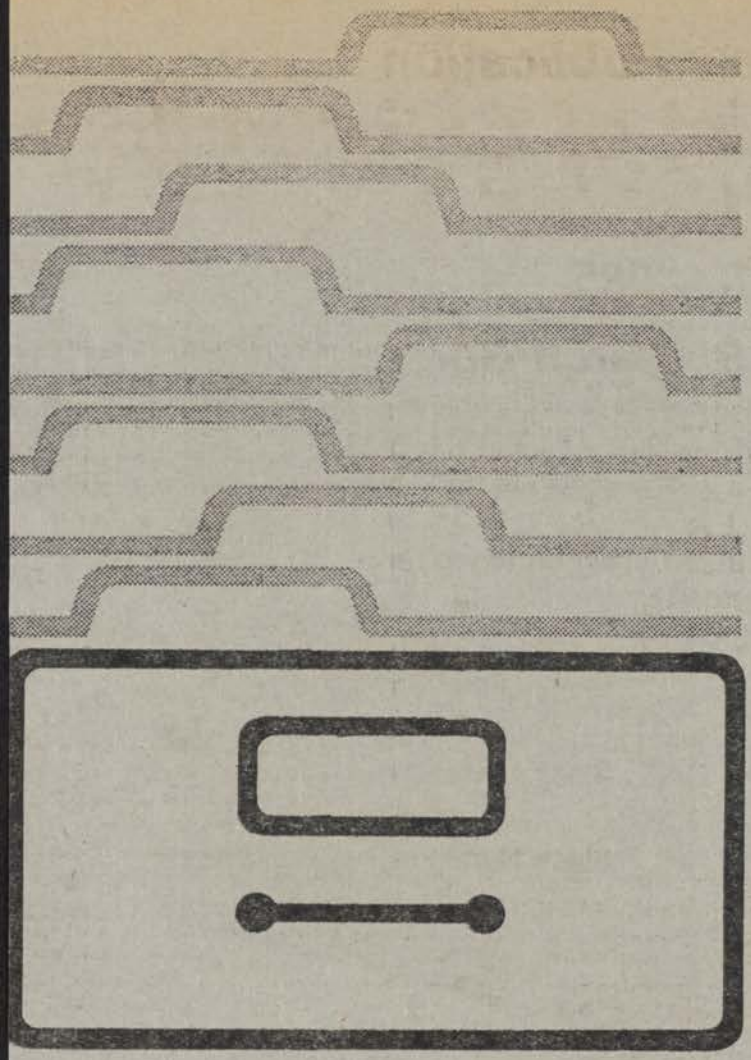

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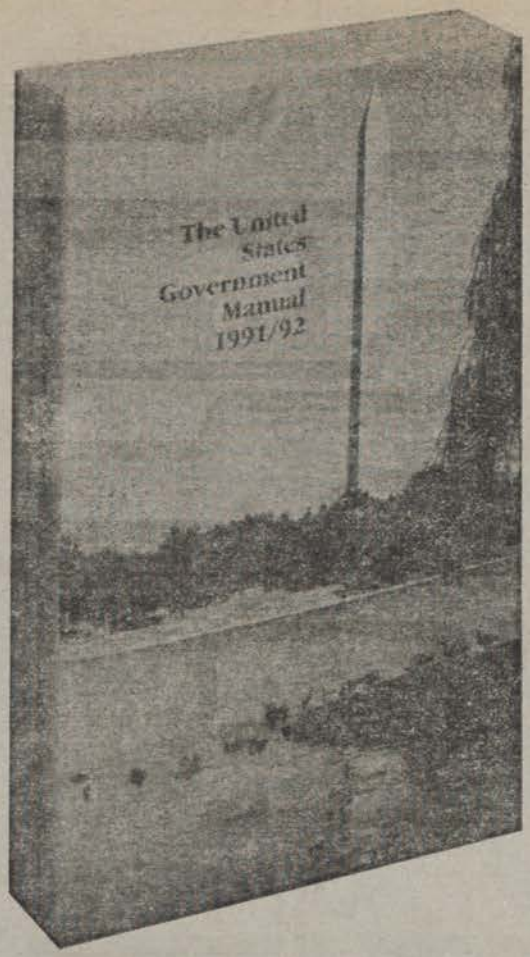

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