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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 284, and 285

[Amdt. No. 330]

Food Stamp Program; Food Stamp Application and Income Exclusion Provisions of the 1990 Farm Bill

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action adopts as final the interim Food Stamp Program (FSP) rulemaking published March 28, 1991 (56 FR 12843). The interim regulation implemented several provisions of the Mickey Leland Memorial Domestic Hunger Relief Act (title XVII, Pub. L. 101–624, enacted November 28, 1990.) These provisions simplify FSP application requirements and exclude certain annual clothing allowances and general assistance (GA) vendor payments from being counted as income. The Department accepted comments on the interim rulemaking through June 26, 1991. This final action addresses relevant issues raised by commenters.

DATES: This action was effective and required to be implemented by State agencies on August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Eligibility and Certification Rulemaking Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. The telephone number is (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this rule under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512–1. The rule's effect on the economy will be less than $100 million, and it will have no effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the ability of United States-based enterprises to compete with foreign-based enterprises. Therefore, the Department has classified this rule as nonmajor.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice of 7 CFR part 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

The Department has also reviewed this rule in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Phyllis R. Gault, Acting Administrator of the Food and Nutrition Service (FNS), has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect food stamp applicants and recipients and the State and local agencies that administer the Program. The application process will be simplified, and some currently participating households will realize an increase in Program benefits.

Paperwork Reduction Act

The requirement of the Immigration Reform and Control Act of 1986 (Pub. L. 99–603) that applicants for food stamps attest to their alien or citizenship status was implemented in regulations issued October 7, 1988 (53 FR 39433). At that time, the Office of Management and Budget (OMB) approved the signature requirement under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) under OMB No. 0584–0064. Therefore, changes required to be made in the food stamp application as a result of the provisions in 7 CFR 273.2(b) of this action do not significantly alter the methodologies used to determine the burden estimates currently approved for the application under OMB No. 0584–0064.

Background

On March 28, 1991, the Department published an interim rulemaking (56 FR 12843) implementing several provisions of the Mickey Leland Memorial Domestic Hunger Relief Act, Public Law 101–624, 104 Stat. 3783, November 28, 1990 (Leland Act), which simplify application requirements, exclude GA vendor payments from income if no payments can be made in cash under State law, and exclude annual clothing allowances from consideration as income. The Department received five comment letters from State agencies, and reviewed and considered all comments. For a full understanding of the provisions of this final rule, the reader should refer to the preamble of the interim rule.

Food Stamp Program Application Requirements—7 CFR 273.2(b)

The interim rule implemented the provision of section 1736 of the Leland Act allowing one adult representative of the household to attest, under penalty of perjury, to the truth of the information in the application, including information indicating that all members are citizens or aliens eligible for participation under the alien provisions of the Food Stamp Act. With one exception, the commenters were supportive of the change, which eliminated the requirement that each adult sign a declaration of alien or citizenship status and that an adult sign for each child in the household.

One commenter indicated that the change in food stamp procedures complicated the application process because the procedures for the Medicaid and the Aid to Families with Dependent Children (AFDC) programs still require that all adults sign a statement attesting to their citizenship or alien status. According to the commenter, this will require State agencies to provide two different sets of instructions for completing integrated applications. Also, since an individual household member who is not required to sign the food stamp application could be disqualified by the Medicaid or AFDC programs for failing to sign an alien/citizenship statement, the commenter believes a potential for error exists.

The Department had no discretion in this area. Therefore, the interim provision amending 7 CFR 273.2(b) is adopted as final without change.

Exclusion of General Assistance (GA) Payments When No Cash Payments May Be Made—7 CFR 273.9(c)(1)

Section 1722 of the Leland Act amended section 5(k)(2) of the Food Stamp Act to add an income exclusion for vendor payments provided under a State or local GA program, or another local basic assistance program comparable to GA. Under this provision, vendored GA assistance is excluded if, under State law, no assistance can be provided to the household in the form of cash. The payment may not be excluded if the prohibition against a cash payment is included only in the local law. The interim rule amended 7 CFR 273.9(c)(1) accordingly.

One commenter objected to the interim provision because it results in income being counted in one State and excluded in another. According to the commenter, households receiving GA are penalized if they live in a State that does not have a GA program which, under State law, is prohibited from providing cash benefits. The commenter also indicated that it is unfair to count as income payments from GA directly to a third party on behalf of a household when the same payments would be excluded from income if they were made by a private organization.

The Department has no discretion in implementing the GA vendor payment exclusion of the Leland Act. Therefore, the provisions of the interim rule are adopted as final. However, it should be noted that some GA vendor payments may be excluded under other parts of the Food Stamp Act and existing regulations. For example, rent or mortgage payments made to landlords or mortgage holders by State or local housing authorities and payments by a government agency to a child care institution are excluded under 7 CFR 273.9(c)(1)(i). GA vendor payments for energy assistance may be excluded, as provided in 7 CFR 273.9(c)(11). Child care assistance, medical assistance, temporary or emergency assistance to migrant or seasonal farmworkers in the job stream, and certain housing assistance may be excluded under 7 CFR 273.9(c)(1)(ii) (A) through (E). Assistance provided through vendor payments financed by State or local funds that are over and above the normal GA or public assistance grant or not normally provided as part of the grant is excluded under 7 CFR 273.9(c)(1)(iv)(B).

Another commenter suggested the regulation clarify how a GA vendor payment would be treated when only a portion of the GA grant is required by State law to be provided directly to a third party. For example, the State law may require that the shelter part of GA grant be paid directly to the landlord but provide for other household needs to be met by payments directly to the household. The language of section 1722 of the Leland Act which authorized this GA vendor payment exclusion provides that the exclusion applies only if, under State law, no assistance under the GA program may be provided in cash. Therefore, if a GA program provides some assistance in cash and some as a vendor payment, no amount may be excluded under this provision.

Exclusion of Annual Clothing Allowances—7 CFR 273.9(c)

Section 1716 of the Leland Act amended section 5(d)(5) of the Food Stamp Act to exclude from income any allowance a State agency provides no more frequently than annually to families with children for school clothes when the children enter or return to school or daycare. However, the allowance shall not be excluded if the State agency reduces the amount of monthly assistance provided by the Aid to Families with Dependent Children (AFDC) program in the month for which the allowance is provided. In accordance with the provision of section 1716, the interim rule amended 7 CFR 273.9(c)(5) to exclude from income annual school and daycare clothing allowances provided by a State agency regardless of whether they are paid in the form of cash, a voucher, or a two-party check. Annual clothing payments are excluded regardless of the age of the child or the correctness of the payment.

One commenter requested that annual clothing allowances made in the form of vendor payments also be excluded. Section 273.9(c)(5) applies to vendor payments as well as cash payments, so annual school clothing allowances provided as vendor payments are excluded. Further, the exclusion of annual (not monthly) clothing allowances made as vendor payments is allowed by regulations at 7 CFR 273.9(c)(1)(iv)(B) as assistance provided over and above the normal PA or GA grant. Therefore, the provisions of the interim rule are adopted as final without change.

Implementation

Section 1781 of the Leland Act required that the provisions of this rulemaking be effective and implemented the first day of the month beginning 120 days after publication of implementing regulations. The Department published implementing regulations March 28, 1991; therefore, the provisions of this rule were effective and State agencies were required to implement them on August 1, 1991. The implementation requirements of the interim rule at 7 CFR 272.1(g)(116) are adopted as final without change. Those requirements are: the provisions of the rule must be implemented for all households that newly apply on or after the required implementation date. The current caseload must be converted to the new provisions at recertification, at household request, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency failed to implement on the required effective date, restored benefits must be provided back to the required effective date or the date of the food stamp application, whichever is later.

The interim rule provided that any variance resulting from implementation of the provisions of this rule would be excluded from error analysis for 90 days from the required implementation date,

in accordance with 7 CFR 275.12(d)(2)(vii). One commenter requested that the final rule clarify the application of this provision when the regulations are implemented after the required implementation date. As indicated in the preamble to regulations published November 2, 1988 (53 FR 44172), a State agency is eligible for exclusion of implementation variances from the date of actual implementation by the agency through the 90th day of required implementation. Implementation at any time during the 90-day variance exclusion period entitles the State agency to exclude implementation variances for the remainder of the 90-day period. Therefore, a State agency is entitled to at least a partial exclusion if it implemented provisions of the interim rule prior to November 1, 1991.

Technical Amendment

The interim rule also revised the authority citation for parts 271 through 285 which appears after the Table of Contents for each part. The authority citation was revised to read "7 U.S.C. 2011–2031." The Department is taking this opportunity to again revise the authority citation to include an addition to the Food Stamp Act made by the Leland Act. This final rule revises the citation to read "7 U.S.C. 2011–2032."

Accordingly, the interim rule amending parts 271 through 285 which was published at 56 FR 12843–12845 on March 28, 1991, is adopted as final with the following change:

The authority citation for parts 271–285 is revised to read as follows:

Authority: 7 U.S.C. 2011–2032.

Dated: December 21, 1992.

Phyllis R. Gault,

Acting Administrator.

[FR Doc. 93–116 Filed 1–4–93; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 92–097–1]

Witchweed Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are adding sorghum to the list of regulated articles whose interstate movement is restricted to prevent the artificial spread of witchweed. We are also amending the list of suppressive areas under the witchweed quarantine and regulations by adding and deleting specified areas in 10 counties in North Carolina and 1 county in South Carolina. These actions are necessary to impose certain restrictions on the interstate movement of regulated articles and to delete certain unnecessary restrictions on the interstate movement of regulated articles. The intended effect is to prevent the artificial spread of witchweed into noninfested areas of the United States.

DATES: Interim rule effective January 5, 1993. Consideration will be given only to comments received on or before March 8, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–097–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas G. Flanigan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

Witchweed (*Striga* spp.), a parasitic plant that feeds off the roots of its host, causes degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations (contained in 7 CFR 301.80 through 301.80–10, and referred to below as the regulations) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain articles from regulated areas in the quarantined States for the purpose of preventing the artificial spread of witchweed.

Regulated articles cannot be moved interstate from any quarantined State except under conditions prescribed in the regulations. These conditions include certification, permit, and other requirements before moving certain farm products, commodities, and equipment from regulated areas.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas to prevent the artificial movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in areas designated as suppressive areas. Therefore, restrictions are also imposed on the interstate movement of regulated articles from generally infested areas into suppressive areas. Currently, there are no areas designated as generally infested areas (any part of a regulated area not designated as a suppressive area in accordance with § 301.80–2).

Designation of Articles as Regulated Articles

We are amending § 301.80(b) by adding sorghum to the list of specified regulated articles.

We are taking this action because sorghum is a host of witchweed. Until recently, sorghum production was limited in North Carolina and negligible in South Carolina. The demand for sorghum as feed for poultry has increased due to the recent growth in the poultry industry in North Carolina and South Carolina. Production of sorghum has grown to match this increased demand. We expect that interstate and intrastate movement of sorghum will result from this increased production, presenting an unacceptable risk of introducing witchweed into noninfested areas.

Designation of Areas as Suppressive Areas

We are amending § 301.80–2a of the regulations, which lists generally infested and suppressive areas, by adding areas in two new counties, Harnett and Lenoir, in North Carolina to the list of suppressive areas. We are also adding areas in Craven, Cumberland, Greene, Pender, and Wayne counties in North Carolina, and areas in Horry County in South Carolina to the list of suppressive areas.

The rule portion of this document lists the suppressive areas for each county. Nonfarm areas, if any, are listed first; farms are then listed alphabetically.

We are taking this action because surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina have established that these areas meet one or more of the following conditions specified in § 301.80–2(a) of the regulations: (1) Witchweed has been found in these areas; (2) there is reason to believe that witchweed is present in these areas; (3) it is deemed necessary to regulate these areas because of their

proximity to infestation; or (4) these areas cannot be separated for quarantine enforcement purposes from infested localities. Designation of these areas as regulated areas imposes controls on the movement of regulated articles from these areas and prevents the spread of witchweed to noninfested areas.

Removal of Areas From List of Regulated Areas

We are also amending § 301.80–2a of the regulations by removing areas in Columbus, Cumberland, Duplin, Greene, Pender, Pitt, and Wayne Counties in North Carolina from the list of suppressive areas. There are no deletions for South Carolina.

We are taking this action because we have determined that witchweed no longer occurs in these areas, and there is no longer a basis to continue listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. This action removes unnecessary restrictions on the interstate movement of regulated articles from these areas.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that a situation exists that warrants publication of this rule without prior opportunity for public comment. Because of the possibility that witchweed could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread by adding—(1) Sorghum to the list of regulated articles; and (2) specified areas to the list of suppressive areas in North Carolina and South Carolina. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

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

This interim rule affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the U.S. Department of Agriculture, we have determined that approximately 280,907 small entities move these articles interstate from North Carolina and South Carolina. However, this rule affects only 678 of these entities, by removing 593 entities from regulation and placing 85 new entities under regulation.

We have determined that the 593 deregulated entities will realize a combined annual dollar benefit of $39,731. Due, in part, to the reduction in regulatory and control costs, each deregulated entity will realize an average annual dollar benefit of $67. Approximately $40 of the $67 benefit represents increased revenue due to gained interstate markets.

Sixty-five of the newly-regulated small entities produce sorghum. The remaining 20 are affected as a result of additions to the list of suppressive areas. We estimate that the 85 newly-regulated entities will need to invest approximately $20 each, per year, in order to comply with our regulations. Implementation of this rule will also result in lost interstate markets for the newly-regulated entities. We estimate that annual income for each impacted entity will be reduced by about $40 annually. Therefore, the total cost for each of the 85 newly-regulated entities will be about $60 per year.

In the instances where this interim rule removes specified areas from the list of suppressive areas, this rule will enable freer movement of goods and services across State lines. Consumers will benefit from lower prices and quicker access to products from the 593 entities removed from the list of suppressed areas. Overall, we expect that this rule will enhance the ability of small entities to market products interstate.

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

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.80, paragraph (b) is amended by redesignating paragraphs (b)(17) through (b)(21) as paragraphs (b)(18) through (b)(22) and adding a new paragraph (b)(17) to read as follows:

§ 301.80 Quarantine; restriction on interstate movement of specified regulated articles.

* * * * *

(b) * * *

(17) Sorghum.

* * * * *

3. In § 301.80–2a, the list of suppressive areas is amended by

adding, in alphabetical order, Hartnett and Lenoir Counties in North Carolina and the following areas in the counties of Craven, Cumberland, Greene, Pender, and Wayne in North Carolina and Horry in South Carolina:

§ 301.80–2a Regulated areas; generally infested and suppressive areas.

* * * * *

North Carolina

(1) * * *
(2) * * *

* * * * *

Craven County.

* * * * *

The Nobles, Jr., Jack, farm located on the west side of State Secondary Road 1262 and located 0.7 mile south of the intersection of State Secondary Road 1258 and State Secondary Road 1262.

* * * * *

Cumberland County.

* * * * *

The Lee, Jack, farm located on the west side of State Secondary Road 1716 and 0.1 mile north of its intersection with State Secondary Road 1717.

* * * * *

Greene County. The Alexander, Jenny, farm located on the west side of State Secondary Road 1419 and 0.3 mile south of its intersection with North Carolina Highway 903.

* * * * *

The Wood, Nina, farm located on the southwest side of the intersection of State Secondary Roads 1400 and 1418.

Harnett County. The Hicks, Vashti, farm located on the south side of State Secondary Road 2039 and 0.4 mile west of its intersection with State Secondary Road 2031.

The Jeter, James, farm located down a private lane off the south side of State Highway 27 at its intersection with State Secondary Road 1200.

The Womack, E.H., farm located on the east side of State Highway 27 and 1 mile north of its intersection with State Highway 24.

Lenoir County. The Dawson, Wayne, farm located on the east side of State Secondary Road 1318 and 0.25 mile north of its intersection with State Secondary Road 1316.

The Howell, Gregor, farm located on the northeast side of the intersection of State Secondary Roads 1310 and 1318.

The Pelletier, Roger, farm located on the northeast side of State Secondary Road 1316 and 0.3 mile northwest of its intersection with State Secondary Road 1318.

The Sutton, Nancy, farm located on the south side of State Secondary Road 1330 and 0.5 mile east of its intersection with State Secondary Road 1331.

The Waters, Thomas, Estate farm located on both sides of State Secondary Road 1318 and 0.3 mile north of its intersection with State Secondary Road 1317.

Pender County.

* * * * *

The Salomon, Gwendolyn S., farm located on a field road 1.7 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

* * * * *

The Thompson, Dick, farm located on the south side of State Secondary Road 1108 and 0.5 mile northwest of its intersection with State Secondary Road 1107.

The Williams, Sidney, farm located on a field road 0.2 mile north of State Secondary Road 1102 and 1.0 mile northwest of its intersection with North Carolina Highway 210.

The Zibelin, John R., farm located 0.5 mile east of Secondary Road 1105 and 1.2 miles south of its intersection with State Secondary Road 1104.

* * * * *

Wayne County.

* * * * *

The Jones, Mary, farm located on the west side of State Secondary Road 1731 at its intersection with State Secondary Road 1730.

* * * * *

South Carolina

(1) * * *
(2) * * *

* * * * *

Horry County.

* * * * *

The Thomas, Fred, farm located on the west side of a dirt road and 0.1 mile northwest of State Primary Highway 90, this intersection being 3.2 miles south of the intersection of State Primary Road 90 with State Secondary Road 31.

The Thomas, Hubert, farm located on the west side of a dirt road and 0.3 mile northwest of State Primary Highway 90, this intersection being 3.2 miles south of the intersection of State Primary Road 90 with State Secondary Road 31.

The Thomas, J.R., farm located on the west side of a dirt road and 0.2 mile northwest of State Primary Highway 90, this intersection being 3.2 miles south of the intersection of State Primary Road 90 with State Secondary Road 31.

* * * * *

4. In § 301.80–2a, the list of suppressive areas is amended by removing the following areas in Columbus, Cumberland, Duplin, Greene, Pender, Pitt, and Wayne Counties in North Carolina:

a. In Columbus County, The Harmon,Thelma, (formerly the Lloyd Spaulding farm) and The Walters, Eugene, farm.

b. In Cumberland County, The McLaurin, McLaurin, farm; The Mclaurin, Octavious, farm; The Shirman, Harry, farm; and The Smith, Agnes, farm.

c. In Duplin County, The Holland, William, farm; The Lee, Daphne, farm; The Miller, O'Berry, farm; The Thomas, J.R., farm; and The Tyner, J.R., farm.

d. In Greene County, The Williams, Minnie, farm.

e. In Pender County, The Anderson, Julian W., farm; The Batson, Arthur, farm; The Dees, Betty, farm; The Hardie, George, farm; The Hicks, Carol, farm; The Larkins, C.E., farm; The Marshall, Crawford, farm; The Marshall, Milvin, farm; The Terrell, Nancy, farm; and The William, Leroy, farm.

f. In Pitt County, The Hodges, M.B., farm.

g. In Wayne County, The Daniels, Riley, farm; The George-Pacific Corp., farm; The Greenfield, Charlie, farm; The Greenfield, Mattie, farm; and The Humphrey, Josephine, farm.

5. In § 301.80–2a, in the list of suppressive areas for Greene County in North Carolina, the listing for "The Dun, Jo, Estate farm" is corrected to read "The Dunn, Joe, Estate farm".

Done in Washington, DC, this 30th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–65 Filed 1–4–93; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket 92–033–2]

Mexican Fruit Fly; Removal From the Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mexican fruit fly regulations by removing the quarantined area in Los Angeles County, CA, from the list of areas regulated because of the Mexican fruit fly, and by removing California from the list of States quarantined because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from California, and that restrictions are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary

restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: Interim rule effective December 30, 1992. Consideration will be given only to comments received on or before March 8, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-033-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is an extremely destructive pest of citrus and many other types of fruits. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64-10 (referred to as the regulations), quarantine infested States, designate regulated areas, and restrict the interstate movement of regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas.

In an interim rule effective December 31, 1991, and published in the **Federal Register** on January 7, 1992 (57 FR 519-522, Docket No. 91-174), we quarantined the State of California and designated a portion of Los Angeles County, near Maywood, as a regulated area because that area had been found to be infested with the Mexican fruit fly. In a document effective March 27, 1992, and published in the **Federal Register** on April 1, 1992 (57 FR 10973-10974, Docket No. 92-033), we expanded the regulated area in Los Angeles County to include an area of the county near Norwalk and Bellflower.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from the regulated area in Los Angeles County, CA. The last finding of Mexican fruit fly thought to be associated with the infestation in this area was made on March 17, 1992.

Since then, no evidence of Mexican fruit fly infestations has been found in this area. We have determined that the Mexican fruit fly no longer exists in Los Angeles County, and we are therefore removing it from the list of areas in § 301.64-3(c) regulated because of the Mexican fruit fly. As a result of this action there is no longer an area in California regulated because of the Mexican fruit fly. Because we have determined that the Mexican fruit fly no longer exists in California, we are removing California from the list in § 301.64-3 of States quarantined because of the Mexican fruit fly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The area in California affected by this document was regulated due to the possibility that the Mexican fruit fly could be spread to noninfested areas of the United States. Since this situation no longer exists, and the continued regulated status of this area would impose unnecessary restrictions on the public, we are taking immediate action to remove the restrictions.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

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

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

This regulation removes restrictions on the interstate movement of regulated articles from a portion of Los Angeles County, CA. Within this regulated area there are approximately 835 entities that could be affected, including 270 fruit/produce markets, 113 nurseries, 6 flea markets, 3 processors, 430 mobile fruit vendors, 3 farmers' markets, 5 growers of lemons and oranges on 4 acres, and 5 wholesale distributors. These entities comprise less than 1 percent of the total number of similar entities operating in the State of California.

The effect of this rule on these entities should be insignificant since most of these small entities handle regulated articles primarily for local intrastate movement, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing.

Many of these entities also handle other items in addition to the previously regulated articles so that the effect, if any, on these entities is minimal. Further, the conditions in the Mexican fruit regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allowed interstate movement of most articles without significant added costs.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings

before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.64 [Amended]

2. In § 301.64, paragraph (a), the phrase "the States of California and Texas" is removed and the phrase "the State of Texas" is added in its place.

§ 301.64–3 [Amended]

3. In § 301.64–3, paragraph (c) is amended by removing the entry for "California" and the description of the regulated area for Los Angeles County, CA.

Done in Washington, DC, this 30th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–64 Filed 1–4–93; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 354

[Docket No. 92–175–1]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing and adding commuted traveltime allowances for travel between Green Bay and Milwaukee, Wisconsin. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT: George H. McFadden, Jr., Director, Resource Management Support, PPQ, APHIS, USDA, room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing and adding commuted traveltime allowances for travel between Green Bay and Milwaukee, Wisconsin. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12291 and Regulatory Flexibility Act

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

The number of requests for overtime services of PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Effective Date

The commuted travel time allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would made additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12372

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

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. There are no administrative procedures that must be exhausted prior to any judicial

challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows;

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing or adding in the table, in alphabetical order, the information as shown below:

§354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Remove:			
* * * * *			
Wisconsin:			
Green Bay	Milwaukee	.....	6
* * * * *			
Add:			
* * * * *			
Wisconsin:			
Green Bay	Milwaukee	.....	4
* * * * *			

Done in Washington, DC, this 30th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-66 Filed 1-4-93; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 921

[Docket No. FV92-921-1]

Suspension of Provisions of Marketing Order 921; Fresh Peaches Grown in Designated Counties in Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension and referendum order.

SUMMARY: This action suspends all provisions of Federal Marketing Order No. 921 for peaches grown in designated counties in Washington, and the rules and regulations issued thereunder. This action directs that a referendum be conducted among eligible growers to determine whether they favor continuance of the Federal marketing order regulating the handling of their fruit. This action is taken as a result of a recommendation for suspension made by the Washington Fresh Peach Marketing Committee (committee), the agency responsible for local administration of the order. The committee's recommendation was based on the Washington State Department of Agriculture's promulgation of handling regulations on fresh peaches comparable to those that are in place under the Federal marketing order. The committee believes that with the duplication of regulations, continuing to fund the Federal marketing order is an unnecessary expense.

EFFECTIVE DATE: March 31, 1993. The representative production period for the referendum is July 1–September 30, 1993. The referendum will be conducted during the period November 13–December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204, telephone 503-326-2724, or Ken Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-690-3670.

SUPPLEMENTARY INFORMATION: The Marketing Agreement and Order No. 921 (7 CFR part 921) regulates the handling of peaches grown in designated counties in Washington. 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." The suspension action is being taken under the provisions of section 8c(16)(A) of the Act.

The referendum will be conducted in accordance with the procedure for the conduct of referenda to determine whether continuation of the marketing order is favored by producers, who during the representative period were engaged in the production of peaches grown in designated counties in Washington. The procedure applicable to the referenda is the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 *et seq.*). The representative period for the conduct of such referendum is hereby determined to be July 1 through September 30, 1993.

This action 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 action has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict.

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 as his or her 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 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 65 handlers of Washington peaches who are subject to regulation under the marketing order and approximately 890 peach 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. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Marketing Order 921 has been in effect since 1960. The order provides for the establishment of grade, size, quality, maturity, pack and container, and inspection requirements. In addition, the order authorizes marketing research and development. It also provides for reporting and recordkeeping requirements on affected handlers. The production and marketing season runs from late July to early October.

The committee met on May 12, 1992, and by an 11 to 1 vote recommended that the marketing order be suspended at the end of the 1992–93 fiscal period. The recommendation was made to eliminate the expense of administering the marketing order. The committee's recommendation was based on the Washington State Department of Agriculture's (State) promulgation of handling regulations on intrastate shipments of fresh peaches. The State handling regulations are similar to those regulations that are in place under the Federal marketing order. With this duplication of regulations, the committee believes that continuing to fund the Federal program is an unnecessary expense. While the marketing order authorizes marketing research and development projects, this provision has been inactive for many years.

The committee recommended suspension, not termination, of the marketing order to allow the industry an opportunity to review the effectiveness of operating only under State handling regulations. If problems develop, the committee wants the industry to have the alternative of reactivating the Federal marketing order. Evidence indicates that the committee and the industry continue to support the need for grade, size, quality, maturity, pack and container, and inspection requirements.

The industry will have the opportunity to monitor the effectiveness of the State handling regulations, without Federal marketing order regulations in effect, during the next marketing season. After that season is completed, the Department will conduct a referendum of eligible growers to determine whether they favor continuance of the Federal marketing order.

Thus, it is determined that Federal Marketing Order 921 and the rules and regulations issued thereunder do not tend to effectuate the declared policy of the Act. This action suspends, effective March 31, 1993, for an indefinite period, provisions of Federal Marketing Order 921 and the rules and regulations issued thereunder, including:

(1) Provisions of the order dealing with the establishment and responsibilities of the committee and the administration of the order;

(2) The grade, size, quality, maturity, pack and container, and inspection requirements;

(3) The administrative rules and regulations related to special purpose shipments; and

(4) Information collection and reporting requirements (In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), such requirements have been approved by the Office of Management and Budget and assigned OMB Control No. 0581–0097).

It is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure with respect to this action because:

(1) This action relieves restrictions on handlers by suspending the requirements regulating the handling of peaches pursuant to M.O. 921;

(2) Handlers are aware of this action, which was discussed and recommended at public meetings held by the committee;

(3) A grower referendum will be conducted prior to deciding whether to continue or terminate the program; and

(4) No useful purpose would be served by delaying the suspension of the marketing order.

The committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property in its possession, or under its control, including claims for any funds unpaid or property not delivered.

The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

Any person to whom funds, property, or claims have been transferred or delivered, shall be subject to the same obligation imposed upon the committee and upon the trustees.

After a statement of total claims and debts, remaining funds held in the reserve account will be returned, on a pro rata basis, to those handlers who paid assessments under M.O. 921 during one or more of the 1990–91, 1991–92 and 1992–93 fiscal years.

The Secretary of Agriculture (Secretary) has the authority to conduct a continuance referendum to determine whether growers affected by a marketing order favor continuance of their order. The Secretary has determined that continuance referenda are an effective means for ascertaining whether growers favor continuance of marketing order programs.

The Secretary would consider termination of the order if less than two thirds of the peach growers voting in the referendum and growers of less than two-thirds of the volume of such fruit represented in the referendum, favor continuance. In evaluating the merits of continuance versus termination, the Secretary would consider the results of the continuance referendum, other relevant information concerning the operation of the order, and the relative benefits and disadvantages to growers, handlers, and consumers. Through such analysis, the Secretary would determine whether continued existence of the order would tend to effectuate the declared policy of the Act.

In any event section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers favor termination, and that majority produced for market more than 50 percent of the commodity covered by the order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot material that will be used in the referendum herein ordered has been submitted to and approved by the Office of Management and Budget (OMB) and has been assigned OMB No. 0581–0097. It has been estimated that it will take an average of 10 minutes to read and complete the ballot for each of the approximately 150 growers who elect to

participate in the voluntary referendum balloting.

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether continuance of the marketing order regulating the handling of Washington peaches is approved or favored by producers who during the representative period were engaged in the production of peaches grown in designated counties in Washington.

The referendum agents of the Secretary to conduct the referendum are hereby designated as Gary D. Olson and Robert J. Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Ave., room 369, Portland, Oregon, 97204, telephone (503) 326–2724.

Ballots will be mailed to all growers of record. Ballots may also be obtained at County Extension Service Offices or by contacting the USDA Northwest Marketing Field Office.

Copies of the text of Marketing Order No. 921 may be obtained, at the above address, by contacting the referendum agents.

List of Subjects in 7 CFR Part 921

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 921 is suspended as follows:

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 921 continues to read as follows:

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

2. Part 921—Fresh Peaches Grown in Designated Counties in Washington (7 CFR part 921), and all provisions therein, is suspended effective March 31, 1993, for an indefinite period.

Dated: December 29, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–63 Filed 1–4–93; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1822, 1823, 1900, 1901, 1910, 1941, 1942, 1943, 1944, 1945, 1948, 1951, and 1980

RIN 0575–AA64

Processing and Servicing FmHA Assistance to Employees, Relatives and Associates

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: Farmers Home Administration (FmHA) issues new regulations on processing and servicing FmHA assistance to FmHA employees, members of their families, known close relatives and associates. This action is taken to prevent employees from being directly involved in the processing or servicing of authorized FmHA program assistance to those with whom they have business or close personal associations. The intended effect is to reduce agency vulnerability to employee conflict of interest.

EFFECTIVE DATE: These rules become effective February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Room 5307–S, (202) 720–1452.

SUPPLEMENTARY INFORMATION: FmHA Instruction 2045–BB, Employee Responsibilities and Conduct (available in any FmHA office), requires the maintenance of high standards of honesty, integrity, and impartiality by FmHA employees. To reduce the potential for employee conflict of interest, any processing, approval, servicing or review activity, including access to automated information systems, is conducted only by authorized FmHA employees who (1) are not themselves the recipient; (2) are not members of the family or known close relatives of the recipient; (3) do not have an immediate working relationship with the recipient, the employee related to the recipient, or the employee who would normally conduct the activity; or (4) do not have a business or close personal association with the recipient. Nothing in the rule takes precedence over individual program requirements or restrictions. A reference to this rule and its requirements is added to the regulations of each of the programs affected.

Classification

This action has been reviewed under USDA procedures in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, there will be no 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 import markets. This action is not expected to substantially affect budget outlay or affect more than one agency or to be controversial.

Background/Discussion

On July 16, 1985, the Office of Inspector General (OIG) presented results of a FmHA Nationwide Audit of County Office Operations (04642–1–Te) which revealed that the agency's internal control process, a major administrative control, did not cover program assistance provided to close relatives of FmHA employees. OIG recommended changing regulations to prevent those with loan approval authority from approving loans to their close relatives. The agency determined the OIG finding and related areas of vulnerability should be addressed in single regulation governing all stages of processing and servicing any authorized program assistance provided to FmHA employees, members of their families, known close relatives and business or close personal associates.

On July 9, 1990, FmHA published a proposed rule (55 FR 28057) on processing and servicing FmHA assistance to employees, relatives and associates. Two comments were received. One comment from an employee requested an explanation of the reasons why an employee may or may not be permitted to obtain a particular type of FmHA loan or grant assistance and indicated that a closing agent's eligibility for FmHA program benefits should be discussed. This action does not in any way affect the eligibility of an employee or a closing agent for FmHA program benefits; therefore, the requested discussions are beyond the scope of this action. Comments from an employee organization requested clarification of certain administrative provisions which will be provided with instructions for program implementation. Other changes were made to the proposed rule as a result of more detailed analysis by program officials during the final rule clearance process. These changes:

—Revised the definition of employee to clarify the status of county or area committee members and closing agents.
—Added a reference to assure that prohibited processing and servicing activity also prohibited access to automated loan records.
—To simplify reporting and review procedures, provided that assistance usually processed and serviced at the County level would be reassigned only to another County Office, and at the District level only to another District Office. This necessitated removal of proposed provisions for default servicing.
—Clarified the responsible officials for assistance processed and serviced at a State Office and for assistance to relatives or associates of a State Director.
—Added a reference to clarify the source of funds to be obligated.
—Added provisions for handling acquired property case files.
—Replaced several ambiguous references to FmHA officials with the term "processing/servicing official."
—Made several minor editorial and grammatical changes which clarify but do not affect the proposed meaning or intent.

In addition, while the proposed rule published the entire FmHA Instruction, the final rule omits internal management and operating procedures. In the past, FmHA regulations published in the **Federal Register** and FmHA Instructions distributed to FmHA field offices have been identical, comprised of regulations as well as internal management and operating procedures. The agency has adopted a policy of publishing only FmHA regulations which confer an entitlement or benefit or impose an obligation on the public. FmHA Instructions distributed to FmHA field offices will include regulations and internal management and operating procedures and are available to the public on request.

Programs Affected

The programs affected are listed in the Catalog of Federal Domestic Assistance under:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Development Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.424 Rural Business Enterprise Grants and Television Demonstration Grants
10.427 Rural Rental Assistance Payments
10.428 Economic Emergency Loans
10.433 Housing Preservation Grants
10.434 Nonprofit National Corporation Loan and Grant Program
10.437 Rural Development Loan Fund
10.438 Intermediary Relending Program

Intergovernmental Consultation

This activity affects all FmHA financial assistance programs listed above which are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR 3015, subpart V).

Environmental Impact Statement

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

List of Subjects

7 CFR Part 1822

Aged, Loan programs—Housing and community development, Low and moderate income housing, Mortgages, Nonprofit corporations, Rent subsidies, Rural housing.

7 CFR Part 1823

Credit, Indians.

7 CFR Part 1900

Administrative practice and procedure, Government employees, Conflict of interest, Federal aid programs, Rural areas, Low and moderate income housing, Loan programs—Housing and community development, Loan programs—Agriculture.

7 CFR Part 1901

Agriculture, Authority delegations.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1942

Business and industry, Community development, Community facilities, Grant programs—Housing and community development, Industrial park, Loan programs—Housing and community development, Loan programs—Natural resources, Loan security, Rural areas, Soil conservation, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—Agriculture.

7 CFR Part 1948

Business and industry, coal, Community development, Community facilities, Energy, Grant programs—Housing and community development, Housing, Nuclear energy, Planning, Rural areas, Transportation, Credit, Economic development.

7 CFR Part 1951

Account servicing, Debt restructuring, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing.

7 CFR Part 1980

Agriculture, Grant programs—Nonprofit corporations, Home improvement, Livestock, Loan programs—Agriculture, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas, Loan

programs—Community programs—Rural development assistance.

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

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for part 1822 continues to read as follows:

Authority: Sec. 510, 63 Stat. 437, 42 U.S.C. 1480; Orders of Secy. of Agr., 29 FR 16210, 32 FR 6650.

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

2. Section 1822.261 is amended by adding new text after the sentence to read as follows:

§ 1822.261 General.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

PART 1823—ASSOCIATION LOANS AND GRANTS–COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

3. The authority citation for part 1823 continues to read as follows:

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

Subpart N—Loans to Indian Tribes and Tribal Corporations

4. Section 1823.401 is amended by adding new text after the first sentence to read as follows:

§ 1823.401 General.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

PART 1900—GENERAL

5. The authority citation for part 1900 continues to read as follows:

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

6. Part 1900 is amended by adding subpart D to read as follows:

Subpart D—Processing and Servicing FmHA Assistance to Employees, Relatives, and Associates

Sec.
1900.151 General.
1900.152 Definitions.
1900.153 Identifying and reporting an employee relationship.
1900.154 Determining the need for special handling.
1900.155 Designating the processing/servicing official.
1900.156 Special handling-processing.
1900.157–1900.200 [Reserved]

PART 1900—GENERAL

Subpart D—Processing and Servicing FmHA Assistance to Employees, Relatives, and Associates

§ 1900.151 General.

(a) Farmers Home Administration (FmHA) Instruction 2045–BB (available in any FmHA office) requires the maintenance of high standards of honesty, integrity, and impartiality by employees. To reduce the potential for employee conflict of interest, any processing, approval, servicing or review activity, including access through automated information systems, is conducted only by authorized FmHA employees who:

(1) Are not themselves the recipient.

(2) Are not members of the family or known close relatives of the recipient.

(3) Do not have an immediate working relationship with the recipient, the employee related to the recipient, or the employee who would normally conduct the activity.

(4) Do not have a business or close personal association with the recipient.

(b) No provision of this subpart takes precedence over individual program requirements or restrictions, especially those restrictions found in FmHA Instruction 2045–BB (available in any FmHA office) relating to eligibility for FmHA assistance of FmHA employees, members of families of employees, close relatives, or business or close personal associates of employees.

(c) The determination of a case's need for special handling under the provisions of this subpart is not an adverse action and, therefore, is not subject to appeal.

§ 1900.152 Definitions.

Applicant or borrower. All persons or organizations, individually or collectively, applying for or receiving insured or guaranteed loan or grant assistance from or through FmHA. Referred to as recipient.

Assistance. Loans or grants made, insured or guaranteed, or serviced by FmHA.

Associates. All persons with whom an employee has a business or close personal association or immediate working relationship.

Business association. Business relationship between those with an identity of financial interest; including but not limited to a business partnership, being an officer, director, trustee, partner or employee of an organization, or other long-term contractual relationship.

Close personal association. Social relationship between unrelated residents of the same household.

Close relatives. The spouse, relatives and step-relatives of an employee or the employee's spouse, including Grandmother, Grandfather, Mother, Father, Aunt, Uncle, Sister, Brother, Daughter, Son, Niece, Nephew, Granddaughter, Grandson, and First Cousin.

Conflict of interest. A situation (or the appearance of one) in which one could reasonably conclude that an FmHA employee's private interest conflicts with his or her Government duties and responsibilities, even though there may not actually be a conflict.

Employee. All FmHA personnel, including gratuitous employees and those negotiating for or having arrangements for prospective employment, except as otherwise specifically stated. For the purposes of this instruction only, the term also refers to county or area committee members, elected or appointed, and to closing agents who, although they are not employees, have a special relationship to FmHA and therefore should be subject to these provisions.

Immediate working relationship. A relationship between a subordinate and a supervisor in a direct line, or between co-workers in the same office. For the purposes of this subpart, the relationships among a County Supervisor and members of the local County Committee are immediate working relationships.

Members of family. Blood and in-law relatives (such as by marriage or adoption) who are residents of the employee's household.

Recipient. One who has applied for or received FmHA financial assistance in the form of a loan or grant. See definition of applicant or borrower.

§ 1900.153 Identifying and reporting an employee relationship.

(a) *Responsiblity of applicant.* When an application for assistance is filed, the processing official asks if there is any

known relationship or association with an FmHA employee. The applicant is required to disclose the requested information under subpart A of part 1910 of this chapter and pertinent program regulations.

(b) *Responsibility of FmHA employee.* An FmHA employee who knows he or she is related to or associated with an applicant or recipient, regardless of whether the relationship or association is known to others, is required to notify the FmHA official who is processing or servicing the assistance, in writing. FmHA Guide Letter 1900–D–1 (available in any FmHA office) may be used as the notice. If the appropriate official is not known, the State Director should be notified. Regardless of whether the relationship or association is defined in § 1900.152 of this subpart, if the employee believes there may be a potential conflict of interest, the FmHA official who is processing or servicing the assistance may be notified and special handling requested. An employee's request that the case receive special handling is usually honored.

(c) *Responsibility of FmHA official.* When any relationship or association is identified, the FmHA official completes and submits FmHA Guide Letter 1900–D–2 (available in any FmHA office) to the State Director (or Administrator, under paragraph (e) of this section or § 1900.155(a) of this subpart). When completed FmHA Guide Letter 1900–D–3 (available in any FmHA office) is returned by the State Director, the processing official;

(1) [Reserved]

(2) [Reserved]

(3) notifies the recipient in writing of the change in responsibility and any other pertinent information,

(4) [Reserved]

(d) *Relationship or association established after application for FmHA assistance.* If a relationship or association is established after an application has been filed or assistance has been provided, both recipient and employee are required to notify the FmHA official who is processing or servicing the assistance. FmHA Guide Letter 1900–D–1 (available in any FmHA office) may be used for the notice.

(e) *Relationship or association with a State Office, Finance Office or National Office employee.* If an identified relationship or association is with an employee at a State Office (other than a State Director), Finance Office or National Office, the processing/servicing official completes and submits FmHA Guide Letter 1900–D–2 (available in any FmHA office) to the State Director in the normal manner. The State Director reviews the information, determines the need for special handling, designates the processing/servicing official, completes and submits FmHA Guide Letter 1900–D–3 (available in any FmHA office) to the Administrator for written concurrence. When the Administrator's concurrence is received, the State Director returns completed FmHA Guide Letter 1900–D–3 to the original official who completes the action described in paragraph (c) of this section.

(f) *Relationship or association with a State Director.* If an identified relationship or association is with a State Director, the processing/servicing official completes and submits FmHA Guide Letter 1900–D–2 (available in any FmHA office) to the Administrator. The Administrator reviews, determines the need for special handling, designates the processing/servicing official, completes and returns FmHA Guide Letter 1900–D–3 (available in any FmHA office) to the original official who completes the action described in paragraph (c) of this section.

(g) *Change in relationship or association, status of FmHA assistance, or employee's duty station.* If the relationship or association has changed, the application denied or the assistance otherwise terminated, or the FmHA employee's duty station changed, the designated processing/servicing official completes FmHA Guide Letter 1900–D–2 (available in any FmHA office) with the new information and submits it. The review process takes place as described in paragraphs (a) through (e) of this section to determine if processing/servicing activity may return to normal or requires another change. If the assistance is denied or otherwise terminated, the designated official notifies the original official.

§ 1900.154 Determining the need for special handling.

The State Director (or Administrator, under § 1900.153(e) or § 1900.155(a) of this subpart):

(a) [Reserved]

(b) determines whether the reported relationship or association is defined in § 1900.152 of this subpart and would violate the provisions of § 1900.151(a) of this subpart,

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) [Reserved]

§ 1900.155 Designating the processing/servicing official.

(a) *Designating an official with equivalent authority.* The State Director (or Administrator, under § 1900.253(e) of this subpart or this paragraph) designates a nonrelated or nonassociated FmHA official authorized to conduct the activity under program regulations, established delegation of authority and approval authority under subpart A of part 1901 of this chapter, and whose duty station is most convenient to the recipient and to the security property. A type and/or amount of assistance processed or serviced by a County Supervisor or at a County Office should be assigned only to another County Supervisor or County Office. A type and/or amount of assistance processed or serviced by a District Director or at a District Office should be assigned only to another District Director or District Office.

(b) *County Committee.* For processing or servicing decisions to be made by a County Committee, if the recipient is a member, a different County Committee is designated. If the recipient is related to or associated with the member, notwithstanding the provisions of § 1900.151(a)(3) of this subpart, the State Director *may* permit the decision to be made by the local committee, if the related/associated member abstains.

(c) [Reserved]

§ 1900.156 Special handling—processing.

(a) [Reserved]

(b) *Eligibility determination.* The designated processing official reviews the application and develops additional data as necessary. Upon determination of whether the assistance will be provided, the designated processing official notifies the applicant of the decision in writing under program regulations, subpart A of part 1910 of this chapter, and subpart B of part 1900. If the determination is favorable, unless otherwise designated, the complete application is returned to the original processing official for docket preparation. If the determination is unfavorable, the designated processing official as decisionmaker participates in the appeal process to its conclusion.

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) *Closing agent.* Unless there is a clear or apparent conflict of interest, closing will be at a location and by a closing agent chosen by the recipient.

(g) *Supervised bank account.* Unless there is a clear or apparent conflict of interest, any supervised bank account (or construction account) is established at a financial institution chosen by the recipient under supbart A of part 1902 of this chapter. Countersignature authority is delegated only to a nonrelated or nonassociated FmHA official.

(h) *Construction inspection.* Construction inspections are delegated to a nonrelated or nonassociated employee authorized to conduct inspections, whose duty station is nearest the construction site. The designated processing/servicing official notifies the builder (or architect/engineer) in writing of how and from whom to request inspections.

§§ 1900.157–1900.200 [Reserved]

PART 1901—PROGRAM-RELATED INSTRUCTIONS

Subpart A—Loan and Grant Approval Authorities

7. The authority citation for part 1901 continues to read as follows:

Authority: 42 U.S.C. 1480, 7 U.S.C. 1819, 5 U.S.C. 301; sec. 10, Pub.L. 93–357, 88 Stat. 392; Title II of the Emergency Agricultural Adjustment Act of 1978, 92 Stat. 429, 7 CFR 2.23; 7 CFR 2.70.

8. Section 1901.2 is amended by adding new text after the first sentence to read as follows:

§ 1901.2 Policy.

* * * Assistance to FmHA employees, members of their families, close relatives or business or close personal associates is subject to the provisions of subpart D of part 1900 of this chapter. * * *

PART 1910—GENERAL

9. The authority citation for part 1910 continues to read as follows:

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

Subpart A—Receiving and Processing Applications

10. Section 1910.3(a)(7) is added to read as follows:

§ 1910.3 Receiving applications.

* * * * *

(a) * * *

(7) Applicants are asked to identify any known relationship or association with an FmHA employee when completing the application. When there is a relationship or association, the processing official must complete the action required under subpart D of part 1900 of this chapter.

* * * * *

11. Section 1910.4 introductory text is amended by adding the following language at the end of the paragraph:

§ 1910.4 Processing applications.

* * * Applications of FmHA employees, members of their families, close relatives, or business or close personal associates are processed according to subpart D of part 1900 of this chapter.

* * * * *

PART 1941—OPERATING LOANS

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

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

Subpart A—Operating Loan Policies, Procedures, and Authorizations

13. Section 1941.1 is amended by adding new text after the fourth sentence to read as follows:

§ 1941.1 Introduction.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

PART 1942—ASSOCIATIONS

14. The authority citation for part 1942 continues to read as follows:

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

Subpart A—Community Facility Loans

15. Section 1942.1(a) is amended by adding the following language at the end of the paragraph:

§ 1942.1 General.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

* * * * *

Subpart C—Fire and Rescue Loans

16. Section 1942.101 if amended by adding new text after the first sentence to read as follows:

§ 1942.101 General.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

17. Section 1942.301 is amended by adding the following language at the end of the paragraph:

§ 1942.301 Purposes.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

18. Section 1942.351(a) is amended by adding new text after the first sentence to read as follows:

§ 1942.351 General.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Farmers Home Administration (FmHA) employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employe. * * *

* * * * *

Subpart I—Resource Conservation and Development (RCD) Loans and Watershed (WS) Loans and Watershed Advances

19. Section 1942.402(a) is amended by adding new second and third sentences to read as follows:

§ 1942.402 Policy.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify

any known relationship or association with an FmHA employee. * * *

* * * * *

Subpart J—Technical Assistance and Training Grants

20. Section 1942.451 is amended by adding the following language at the end of the paragraph:

§ 1942.451 General.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Farmers Home Administration (FmHA) employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

Subpart K—Emergency Community Water Assistance Grants

21. Section 1942.501(a) is amended by adding the following language at the end of the paragraph:

§ 1942.501 General.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

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

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

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

23. Section 1943.1 is amended by adding new text after the third sentence to read as follows:

§ 1943.1 Introduction.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

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

24. Section 1943.51 is amended by adding new text after the second sentence to read as follows:

§ 1943.51 Introduction.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

PART 1944—HOUSING

25. The authority citation for part 1944 is revised to read as follows:

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

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

26. Section 1944.1 is amended by adding the following language at the end of the paragraph:

§ 1944.1 General.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

§ 1944.37 [Amended]

27. In § 1944.37 paragraph (f) is amended by changing the reference "§ 1944.10(g)(4)" to "§ 1944.10(i)(4)," and paragraph (g) is amended by adding the words "of subpart G of part 1951" following "§ 1951.314."

28. Section 1944.39 is revised to read as follows:

§ 1944.39 RH loans to FmHA employees and loan closing officials.

FmHA employees, County Committee members, and loan closing agents, or members of their families may obtain a section 502 RH loan subject to the provisions of this subpart and the following conditions:

(a) Written evidence indicating the applicant's inability to obtain the needed credit elsewhere will be included in the application.

(b) Applications will be processed and loans will be serviced according to subpart D of part 1900 of this chapter.

(c) Loans, credit sales, or assumption agreements will not be approved for any of the following purposes:

(1) Buying FmHA inventory property.

(2) Buying FmHA security property from a borrower.

(3) Buying FmHA security property at foreclosure sale.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

29. Section 1944.151 is amended by adding the following language at the end of the paragraph:

§ 1944.151 Purpose.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures and Authorizations

30. Section 1944.201 is amended by adding the following language at the end of the paragraph:

§ 1944.201 General.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

Subpart I—Self-Help Technical Assistance Grants

31. Section 1944.401 is amended by adding new text after the first sentence to read as follows:

§ 1944.401 Objective.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or

business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

Subpart J—Section 504 Rural Housing Loans and Grants

32. Section 1944.451 is amended by adding new second and third sentences to read as follows:

§ 1944.451 General.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

Subpart K—Technical and Supervisory Assistance Grants

33. Section 1944.501 is amended by adding new text after the first sentence to read as follows:

§ 1944.501 General.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

Subpart N—Housing Preservation Grants

34. Section 1944.651(a) is amended by adding new text after the first sentence to read as follows:

§ 1944.651 General.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Farmers Home Administration (FmHA) employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

* * * * *

PART 1945—EMERGENCY

35. The authority citation for part 1945 continues to read as follows:

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

Subpart C—Economic Emergency Loans

36. Section 1945.101(a) is amended by adding the following language at the end of the paragraph:

§ 1945.101 Introduction.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

* * * * *

Subpart D—Emergency Loan Policies, Procedures and Authorizations

37. Section 1945.151(a) is amended by adding the following language at the end of the paragraph:

§ 1945.151 Introduction.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

* * * * *

PART 1948—RURAL DEVELOPMENT

38. The authority citation for part 1948 continues to read as follows:

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

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

39. Section 1948.51 is amended by adding the following language at the end of the paragraph:

§ 1948.51 General.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

Subpart C—Intermediary Relending Program (IRP)

40. Section 1948.101(a) is amended by adding the following language at the end of the paragraph:

§ 1948.101 Introduction.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

41. The authority citation for part 1951 continues to read as follows:

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

Subpart S—Farmer Programs Account Servicing Policies

42. Section 1951.901 is amended by adding the following language at the end of the paragraph:

§ 1951.901 Purpose.

* * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

PART 1980—GENERAL

43. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70; Pub. L. 100–387; Pub. L. 101–82.

Subpart B—Farmer Program Loans

44. Section 1980.101(a) is amended by adding new text after the fourth sentence to read as follows:

§ 1980.101 Introduction.

(a) * * * Any processing or servicing activity conducted pursuant to this

subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

* * * * *

Subpart C—Emergency Livestock Loans

45. Section 1980.201(a) is amended by adding new text after the first sentence to read as follows:

§ 1980.201 Introduction.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

* * * * *

46. In § 1980.207, the introductory text is revised to read as follows:

§ 1980.207 Definition.

The following general definitions are applicable to this subpart. Additional definitions may be found in § 1980.6 of subpart A of this part.

* * * * *

Subpart D—Rural Housing Loans

47. Section 1980.301(a) is amended by adding the following language at the end of the paragraph:

§ 1980.301 Introduction.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

* * * * *

Subpart E—Business and Industrial Loan Program

48. Section 1980.401(a) is amended by adding the following language at the end of the paragraph:

§ 1980.401 Introduction.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

* * * * *

Subpart F—Economic Emergency Loans

49. Section 1980.501(a) is amended by adding new text after the first sentence to read as follows:

§ 1980.501 Introduction.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. * * *

* * * * *

Subpart G—Nonprofit National Corporations Loan and Grant Program

50. Section 1980.601 is amended by adding the following language at the end of the paragraph:

§ 1980.601 Purpose.

* * *Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

Subpart I—Community Programs Guaranteed Loans

51. Section 1980.801(a) is amended by adding the following language at the end of the paragraph:

§ 1980.801 Introduction.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

* * * * *

Subpart J—Agricultural Resource Conservation Demonstration Program

52. Section 1980.901(a) is amended by adding the following language at the end of the paragraph:

§ 1980.901 Introduction.

(a) * * * Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

* * * * *

Dated: November 18, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 93-21 Filed 1-4-93; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 27101]

High Density Traffic Airports; Slot Allocation and Transfer Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Statement of policy; denial of petition for exemption.

SUMMARY: This policy statement and denial of petition are issued in response to a petition for exemption filed with the Federal Aviation Administration (FAA) on December 22, 1992, by the Air Transport Association (ATA) on behalf of 11 of its members. In its petition, ATA requests a 90-day exemption for its member air carriers operating at any of the high density traffic airports from the increased slot usage requirement or, in the alternative, a delay of the effective date of the final rule that will require the higher minimum slot usage of 80 percent effective January 1, 1993. This action denies ATA's petition to grant either a 90-day exemption or delay the effective date of the higher minimum slot usage requirement. Also, this action

explains the FAA's response to and treatment of requests for waivers submitted by air carriers or commuter operators that are predicated on the nonuse of slots due to the implementation of a deicing or ground delay program at any of the four high density traffic airports.

EFFECTIVE DATES: January 5, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

New Entrant Slot Final Rule

On August 12, 1992, the FAA issued a final rule (New Entrant Slot Final Rule) amending the Federal Aviation Regulations governing the allocation and transfer of air carrier and commuter slots effective November 1, 1992 (57 FR 37308; August 18, 1992). Congress subsequently passed a bill postponing the effective date of the rule until January 1, 1993. A "slot" is the authority to conduct an instrument flight rule (IFR) landing or takeoff during certain periods at four high density traffic airports: JFK International, LaGuardia, O'Hare International, and Washington National. The rule changes the slot lottery and withdrawal procedures to enhance the opportunities for carriers holding no or few slots at a high density traffic airport to obtain the necessary authority to conduct landings and takeoffs at such an airport. The rule also increases the minimum slot use requirements from 65 percent to 80 percent. Section 206 of the FAA reauthorization bill (H.R. 6168), passed by Congress on October 8, 1992, delayed the rule's effective date until January 1, 1993.

Deicing Rule

The Aircraft Ground Deicing and Anti-Icing Program interim final rule became effective on November 1, 1992. (57 FR 44924; September 29, 1992.) The rule requires part 121 certificate holders to develop and comply with an FAA-approved ground deicing/anti-icing program.

The FAA received a number of comments in response to the Aircraft Ground Deicing and Anti-Icing Program Notice of Proposed Rulemaking (NPRM), including comments relating to the roles of airport operators and air traffic control (ATC) and the delays resulting from deicing. Some commenters stated that ATC's role must be fully coordinated with the actions of air carriers and airports to ensure the proper use of holdover times and smooth traffic flows during icing conditions. Involvement of ATC and airport operators is essential for increasing safety in potential icing conditions. The FCC acknowledges that there may be delays affiliated with the new rule, especially if aircraft return for secondary deicing.

The FAA, in cooperation with the airports, engages in a national effort to manage departure delays during airline deicing operations. For example, at Washington National Airport, an objective of the airport deicing plan is to assist users to manage the flow of traffic from deicing through takeoff to minimize the time after deicing. ATC regulates the arrival flow at Washington National to accommodate timely departures of deiced aircraft. Similarly, JFK International Tower has developed a deicing plan to manage the time a deiced aircraft waits for departure. LaGuardia Tower has developed a deicing plan to ensure an effective departure flow from the aircraft ramps to the active departure runway. O'Hare International Tower has also established procedures to minimize departure delays during ground deicing operations.

ATA's Petition

On December 22, 1992, ATA filed with the FAA a petition for exemption on behalf of its carriers operating at any of the four high density traffic airports. In its petition, ATA requests the FAA to grant a 90-day exemption from the increased slot used requirement for 11 of its member carriers, i.e., American, American Trans Air, Continental, Delta, DHL, Federal Express, Northwest, TWA, United, UPS, and USAir. In the alternative, ATA is requesting a delay of the effective date of the New Entrant Slot Final Rule (57 FR 37308), which will require the higher minimum slot usage.

In support of its petition, ATA states that the juxtaposition of the interim deicing rule and the higher slot usage requirement places operators in an untenable position. On the one hand, the FAA will require that slots be used 80 percent of the time over a 2-month period. On the other hand, the deicing and ground delay programs will cause carriers to forego the use of some slots. The interaction among the deicing program, ground delay programs, and the higher minimum slot usage requirement, the ATA says, will force the carriers to operate slots that will "choke" the airport during these programs or to operate the slots in nonproductive times, i.e., the weekend. For this reason, ATA is requesting the specified relief.

In the interest of responding to ATA's urgent request as expeditiously as possible, the FAA has waived the requirements for publishing a summary of this petition in the **Federal Register**. Although comments were not solicited, America West submitted a response nonetheless, urging denial of the petition. The FAA's analysis of ATA's petition is set forth as follows.

Request for a Delay of the Effective Date

When the Department of Transportation (Department) issued the New Entrant Slot Final Rule, it considered the comments of air carriers, commuters, communities, and other interested parties concerning the minimum slot usage that should be required. In determining a slot usage minimum, the Department wanted to achieve a balance that would not jeopardize the viability of the smaller carriers and still promote the efficient use of slots. To that end, the Department considered the comments raising the potential problems of sporadic cancellations cased by weather, mechanical failure, or holiday schedule reductions in relation to the achievement of the goal of encouraging carriers to hold no more slots than their markets demand, potentially freeing up underutilized slots for use by other carriers without imposing impractically stringent use requirements.

The Department's objective of increasing the slot use efficiency and potentially freeing up underutilized slots has not changed. The Department still believes that the 80 percent usage requirement may accomplish the twin objectives of improving efficiency and increasing potential access for new entrants without substantially disrupting existing air service. The Department sees no benefit to be derived that warrants delaying the effective date of the final rule. The delay will not force operators to release underutilized slots to those operators that could use them, nor will it solve the relationship between slot usage and bad weather. (Operators have commented on that issue for almost every slot rule that has been published in the **Federal Register**.)

Request for a 90-Day Exemption

When the New Entrant Slot Final Rule was originally published for comment as an NPRM, some commenters mentioned the effect of weather and mechanical breakdowns on slot usage. After reviewing the comments, the FAA determined that the 80 percent usage requirement would allow for routine

nonuse of slots due to bad weather and mechanical difficulties without placing an undue burden on the operator. At the time that the NPRM was published, however, the FAA had not yet implemented the rule prescribing the deicing requirements (56 FR 44924; September 29, 1992). The FAA recognizes that there might be some inherent conflict between the need for the reduction of operations during a deicing program and the continued 80 percent operation of slots. But this potential can be adjusted without the need for a blanket 90-day exemption. Disagreeing with the contention in ATA's petition that differentiating the slots affected by deicing delays would not be practical or efficient, the FAA will adjust the slot usage for those operators affected by the implementation of a deicing program as described below.

Statement of Policy

When an operator submits its bimonthly use-or-lose report, it may designate those slots that were adversely affected by the implementation of a deicing program. The FAA Office of Chief Counsel, Slot Administration Office, will verify with the carrier that a deicing program was in effect that affected the carrier's operations. Upon sufficient verification that use of a slot was delayed or foregone because of a deicing program, the FAA will give credit for, i.e., treat as used, any slot that the holder-of-record or operator-of-record designates as either not used or used outside its allocated time as a result of the program's implementation. In this way, no operator will be in jeopardy of losing a slot merely because its use has been adversely affected by a deicing program. As a result, safety would remain unaffected and the public interest in maximizing to the extent feasible the efficient use of slots would also be served.

Conclusion

For the above stated reasons, the FAA is denying ATA's request for either a 90-day exemption from the minimum slot usage requirement or a delay of the effective date of the higher minimum slot usage. The FAA will consider an operator's request to give credit of usage for those slots that are either not used or used in a different time period due to the implementation of an airport deicing program that adversely affects usage of the slots in question.

Signed in Washington, DC, on December 30, 1992.

Thomas C. Richards,

Administrator.

[FR Doc. 92-31954 Filed 12-31-92; 12:54 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8464]

RIN 1545-AQ44

Change in Functional Currency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to adjustments and transition rules with respect to a change in functional currency. These regulations are issued under section 985 of the Internal Revenue Code of 1986 (Code), which was added to the Code by the Tax Reform Act of 1986. These regulations provide guidance for taxpayers with qualified business units (QBUs) that change functional currency and provide special rules for taxpayers with QBUs operating in a hyperinflationary environment that elect the dollar as their functional currency for their first post-1986 taxable year.

EFFECTIVE DATE: These regulations are effective February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Jacob Feldman of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (202-622-3870, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1989, proposed and temporary regulations §§ 1.985-5T and 1.985-6T were adopted (as part of T.D. 8263) and published in the **Federal Register** at 54 FR 38649 (September 20, 1989). No public hearing was requested, and none was held. Very few comments were received. The issues raised by these comments are discussed below. After consideration of the comments and related issues with respect to §§ 1.985-5T and 1.985-6T, these sections of the proposed regulations are adopted as a Treasury decision effective 30 days after publication, with the modifications discussed below. In addition, in an accompanying notice of proposed rulemaking, § 1.985-7 provides special rules for cases in which a QBU changes from the profit and loss method of accounting (P&L method) to the dollar approximate separate transactions method (DASTM). These revised rules are proposed to be effective in taxable years beginning 30 days after the publication of final regulations.

Explanation of Provisions

Section 1.985-5T, which contains adjustments required upon a change in functional currency, is finalized substantially as proposed. However, a new § 1.985-7 is being proposed to apply to a QBU that uses the P&L method in a post-1986 taxable year and that subsequently begins to use the dollar as its functional currency using DASTM accounting. The proposed regulation responds to taxpayers' comments and would permit the use of historical exchange rates to establish the QBU's DASTM balance sheet, rather than the spot rate provided under § 1.985-5, provided that the taxpayer makes a section 481 adjustment. The proposed regulation would permit taxpayers that elected DASTM in an open taxable year beginning before the proposed rule is finalized to use § 1.985-7 instead of the temporary or final versions of § 1.985-5 and § 1.985-6.

The final regulations contain several clarifying amendments to the temporary regulations. Section § 1.985-5T(e)(1), providing for translation of a corporation's earnings and profits into its new functional currency at the spot exchange rate, is expanded to clarify that pre-1987 creditable income taxes and accumulated profits of a foreign corporation maintained in foreign currency for purposes of section 902 also are translated at the spot rate when the foreign corporation changes its functional currency. Pre-1987 earnings and taxes must be translated at the same rate in order to implement the rule of section 902(c)(6) that the tax effects of distributions out of pre-1987 earnings are governed by pre-1987 law. See Bon Ami Co., 39 B.T.A. 825 (1939).

One taxpayer suggested that income or loss required to be recognized under the proposed regulations at the time a QBU changes functional currency should be taken into account over several years. See § 1.985-5(b) with respect to section 988 transactions denominated in the new functional currency, § 1.985-5(d)(2) with respect to a deemed branch termination when a branch changes to the taxpayer's functional currency, and § 1.985-5(e)(2)

with respect to a deemed distribution of previously taxed earnings and profits when a controlled foreign corporation changes its functional currency to the dollar. This suggestion was not adopted for several reasons.

In the case of the required section 988 adjustment to the subpart F income and earnings and profits of a foreign corporation changing functional currency, a multi-year spread period would be particularly difficult to implement because of the need for additional information reporting with respect to the foreign corporation, and the administrative complexity that would result from spreading a subpart F inclusion and associated deemed paid foreign tax credits at the shareholder level. Spreading the adjustments resulting from a deemed branch termination and a deemed distribution of previously taxed income also would be particularly complex because, for example, of their effect on the U.S. taxpayer's foreign tax credit. In addition, the Service is concerned that if a spread period were allowed taxpayers could use distributions in connection with a change in functional currency to manipulate the time these amounts are taken into account.

Section § 1.985–6T, which contains transition rules for QBUs that use DASTM accounting for their first taxable year beginning in 1987, is finalized essentially as proposed, except that a new paragraph (d)(1) provides for a spot exchange rate translation of pre-1987 section 902 accumulated profits and deficits as well as foreign income taxes attributable to such accumulated profits. In addition, new paragraph (d)(2) provides that only the translated amount of a pre-1987 section 902 deficit in accumulated profits is carried over into the foreign corporation's post-1986 undistributed earnings pool. The amount of any pre-1987 deficit in retained earnings determined under § 1.964–1(e) is not carried over. These rules are the same as those applicable under Notice 87–54, 1987–2 C.B. 363, and Notice 88–70, 1988–2 C.B. 369, to QBUs whose functional currency in 1987 is the same currency in which the taxpayer kept the QBU's books and records for purposes of section 902 prior to 1987.

One commentator suggested that in the case of a DASTM CFC, a pre-1987 section 964 accumulated deficit (and not a section 902 deficit) should be carried forward into the post-1986 undistributed earnings pool. This suggestion was not adopted because under section 902(c)(6) of the Internal Revenue Code the tax effects of distributions out of pre-1987 accumulated profits must be determined under pre-1987 law. Accordingly, the total amount of earnings and profits available for distribution as a dividend from a controlled foreign corporation that begins to use DASTM accounting in 1987 is the sum of (1) the pre-1987 accumulated profits (or deficits) computed in foreign currency under a P&L method in accordance with the rules of section 902 prior to amendment in 1986 and translated into dollars in 1987 in accordance with the principles of Notice 88–70, and (2) the post-1986 undistributed earnings pool, consisting of earnings and profits computed in dollars under the DASTM method in post-1986 years. The Service believes that reducing the post-1986 undistributed earnings pool (which is the denominator of the section 902 fraction) by a pre-1987 deficit computed in dollars for purposes of section 964 would contravene the rule that the pre-1987 section 964 amounts are not relevant for purposes of determining the tax effects of dividend inclusions. Similarly, excluding a pre-1987 section 902 deficit from the post-1986 undistributed earnings pool would be inconsistent with the rule referring to (positive) pre-1987 accumulated profits in determining the effect of a distribution in excess of the post-1986 pool.

A rule bringing forward a pre-1987 section 964 deficit into the post-1986 pool of a DASTM CFC would also create a difference in treatment between a DASTM CFC and a CFC with a dollar functional currency that uses a separate transactions profit and loss method. Finally, the commentators' proposed rule, to the extent it created a negative post-1986 pool, could increase the incidence of inclusions without credits should the foreign corporation realize subpart F income or pay a "nimble dividend" in a post-1986 year.

Paragraphs (d) and (e) of § 1.985–6T are renumbered as paragraphs (e) and (f), respectively, in the final regulations. An alternative transition rule for a branch that used a profit and loss method of accounting in pre-1987 taxable years and that now uses DASTM because the taxpayer elected to use the dollar as the branch's functional currency in its first post-1986 taxable year is provided in the accompanying notice of proposed rulemaking.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, it has been determined that the notice was not required by 5 U.S.C. 553 since the regulations proposed in that notice and adopted by this Treasury decision are interpretative. Therefore, a final Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

Personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR 1.985–0 Through 1.989(c)–1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by removing the entry for "Sections 1.985–OT through 1.985–5T" and adding a citation to read as follows:

Authority: 26 U.S.C. 7805 * * * Sections 1.985–0 through 1.985–5 also issued under 26 U.S.C. 985. * * *

Par. 2. Section 1.985–5T and 1.985–6T are removed.

Par. 3. Section 1.985–0 is amended as follows:

1. The introductory text for section 1.985–0 is revised.

2. The section heading in the entry for § 1.985–5T is removed and a section heading for § 1.985–5 is added in its place.

3. The entry for § 1.985–6T is removed and an entry for § 1.985–6 is added.

4. The revisions and additions read as follows:

§ 1.985–0 Outline of regulations.

This section lists the paragraphs contained in § § 1.985–1 through 1.985–6.

* * * * *

Section 1.985–5 Adjustments required upon change in functional currency.

* * * * *

Section 1.985–6 Transition rules for a QBU that uses the dollar approximate separate transactions method for its first taxable year beginning in 1987.

(a) In general.

(b) Certain controlled foreign corporations.
(c) All other foreign corporations.
(d) Pre-1987 section 902 amounts.
(e) Net worth branch.
(f) Profit and loss branch.

Par. 4. New §§ 1.985–5 and 1.985–6 are added to read as follows:

§ 1.985–5 Adjustments required upon change in functional currency.

(a) *In general.* This section applies in the case of a QBU that changes from one functional currency (old functional currency) to another functional currency (new functional currency). A taxpayer or QBU subject to the rules of this section shall make the adjustments set forth in the 3-step procedure described in paragraphs (b) through (e) of this section. The adjustments shall be made on the last day of the taxable year ending before the year of change as defined in § 1.481–1(a)(1). Gain or loss required to be recognized under paragraphs (b), (d)(2), and (e)(2) of this section is not subject to section 481 and, therefore, the full amount of the gain or loss must be included in income or earnings and profits on the last day of the taxable year ending before the year of change. Except as provided in § 1.985–6, a QBU with a functional currency for its first taxable year beginning in 1987 that is different from the currency in which it had kept its books and records for United States accounting and tax accounting purposes for its prior taxable year shall apply the principles of this § 1.985–5 for purposes of computing the relevant functional currency items, such as earnings and profits, basis of an asset, and amount of a liability, as of the first day of a taxpayer's first taxable year beginning in 1987.

(b) *Step 1—Taking into account exchange gain or loss on certain section 988 transactions.* The QBU shall recognize or otherwise take into account for all purposes of the Code the amount of any unrealized exchange gain or loss attributable to a section 988 transaction (as defined in section 988(c)(1)(A), (B), and (C)) that, after applying section 988(d), is denominated in terms of or determined by reference to the new functional currency. The amount of such gain or loss shall be determined without regard to the limitations of section 988(b) (*i.e.*, whether any gain or loss would be realized on the transaction as a whole). The character and source of such gain or loss shall be determined under section 988.

(c) *Step 2—Determining the new functional currency basis of property and the new functional currency amount of liabilities and any other relevant items.* The new functional currency adjusted basis of property and the new functional currency amount of liabilities and any other relevant items (*e.g.*, items described in section 988(c)(1)(B)(iii)) shall equal the product of the amount of the old functional currency adjusted basis or amount multiplied by the new functional currency/old functional currency spot exchange rate on the last day of the taxable year ending before the year of change (spot rate).

(d) *Step 3A—Additional adjustments that are necessary when a branch changes functional currency*—(1) *Branch changing to a functional currency other than the taxpayer's functional currency*—(i) *Rule.* If a QBU that is a branch of a taxpayer changes to a functional currency other than the taxpayer's functional currency, the branch shall make the adjustments set forth in either paragraph (d)(1)(ii) or (d)(1)(iii) of this section for purposes of section 987. See § 1.987–5(d) for rules for computing the branch's equity pool and basis pool.

(ii) *Where prior to the change the branch and taxpayer had different functional currencies.* If the branch and the taxpayer had different functional currencies prior to the change, the branch's new functional currency equity pool shall equal the product of the old functional currency amount of the equity pool multiplied by the spot rate. No adjustment to the basis pool is necessary.

(iii) *Where prior to the change the branch and taxpayer had the same functional currency.* If the branch and the taxpayer had the same functional currency prior to the change, the branch's basis pool shall equal the difference between the branch's total old functional currency basis of its assets and its total old functional currency amount of its liabilities. The branch's equity pool shall equal the product of the basis pool multiplied by the spot rate.

(2) *Branch changing to the taxpayer's functional currency.* If a branch changes its functional currency to the taxpayer's functional currency, the branch shall be treated as if it terminated on the last day of the taxable year ending before the year of change. In such a case, the taxpayer shall realize gain or loss attributable to the branch's equity pool under the principles of section 987.

(e) *Step 3B—Additional adjustments that are necessary when a taxpayer changes functional currency*—(1) *Corporations.* The amount of a corporation's new functional currency earnings and profits and the amount of its new functional currency paid-in capital shall equal the product of the old functional currency amounts of such items multiplied by the spot rate. The foreign income taxes and accumulated profits or deficits in accumulated profits of a foreign corporation that were maintained in foreign currency for purposes of section 902 and that are attributable to taxable years of the foreign corporation beginning before January 1, 1987, also shall be translated into the new functional currency at the spot rate.

(2) *Collateral consequences to a United States shareholder of a corporation changing to the United States dollar as its functional currency.* A United States shareholder (within the meaning of section 951(b) or section 953(c)(1)(A)) of a controlled foreign corporation (within the meaning of section 957 or section 953(c)(1)(B)) changing its functional currency to the dollar shall recognize foreign currency gain or loss computed under section 986(c) as if all previously taxed earnings and profits, if any, (including amounts attributable to pre-1987 taxable years that were translated from dollars into functional currency in the foreign corporation's first post-1986 taxable year) were distributed immediately prior to the change. Such a shareholder shall also recognize gain or loss attributable to the corporation's paid-in capital to the same extent, if any, that such gain or loss would be recognized under the regulations under section 367(b) if the corporation was liquidated completely.

(3) *Taxpayers that are not corporations.* [Reserved]

(4) *Adjustments to a branch's accounts when a taxpayer changes functional currency*—(i) *Taxpayer changing to a functional currency other than the branch's functional currency.* If a taxpayer changes to a functional currency that differs from the functional currency of a branch of the taxpayer, the branch shall adjust its basis pool in the manner prescribed in paragraph (d)(1)(ii) of this section for adjusting the equity pool, if the taxpayer's old functional currency was different from the branch's functional currency. If the taxpayer's old functional currency was the same as the branch's functional currency, the branch shall determine its equity pool and basis pool in the manner set forth in paragraph (d)(1)(iii) of this section for determining the basis pool and equity pool, respectively.

(ii) *Taxpayer changing to the same functional currency as the branch.* If a taxpayer changes to the same functional currency as a branch of the taxpayer, the taxpayer shall realize gain or loss as set forth in paragraph (d)(2) of this section.

(f) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. S, a calendar year foreign corporation, is wholly owned by domestic corporation P. The Commissioner granted permission to change S's functional currency from the LC to the FC beginning January 1, 1993. The LC/FC exchange rate on December 31, 1992 is 1 LC/2 FC. The following shows how S must convert the items on its balance sheet from the LC to the FC.

	1:2	
	LC	FC
Assets:		
Cash on hand	40,000	80,000
Accounts Receivable	10,000	20,000
Inventory	100,000	200,000
100,000 FC Bond (100,000 LC historical basis)	[1]50,000	100,000
Fixed assets:		
Property	200,000	400,000
Plant	500,000	1,000,000
Accumulated Depreciation	(200,000)	(400,000)
Equipment	1,00,000	2,000,000
Accumulated Depreciation	(400,000)	(800,000)
Total Assets	1,300,000	2,600,000
Liabilities:		
Accounts Payable	50,000	100,000
Long-term Liabilities	400,000	800,000
Paid-in-Capital	800,000	1,600,000
Retained Earnings	[2] 50,000	100,000
Total Liabilities and Equity	1,300,000	2,600,000

[1] Under § 1.985–5(b), S will recognize a 50,000 LC loss (100,000 LC basis–50,000 LC value) on the bond resulting from the change in functional currency. Thus, immediately before the change, S's basis in the FC bond (taking into account the loss) is 50,000 LC.

[2] The amount of S's LC retained earnings reflects the 50,000 LC loss on the bond.

Example 2. P, a domestic corporation, operates a foreign branch, S. The Commissioner granted permission to change S's functional currency from the LC to the FC beginning January 1, 1993. As of December 31, 1992, S's equity pool was 2,000 LC and its basis pool was $4,000. The LC/FC exchange rate on December 31, 1992 is 1 LC/2 FC. On January 1, 1993, the new functional currency amount of S's equity pool is 4,000 FC. The basis pool is not affected.

§ 1.985–6 Transition rules for a QBU that uses the dollar approximate separate transactions method for its first taxable year beginning in 1987.

(a) *In general.* This section sets forth transition rules for a QBU that used the dollar approximate separate transactions method of accounting set forth in § 1.985–3 or § 1.985–3T (as contained in the April 1, 1989 edition of 26 CFR part 1 (1.908 to 1.1000)) for its first taxable year beginning in 1987 (DASTM QBU). A DASTM QBU must determine the dollar and hyperinflationary currency basis of its assets and the dollar and hyperinflationary currency amount of its liabilities that were acquired or incurred in taxable years beginning before January 1, 1987. In addition, a DASTM QBU must determine its net worth, including its retained earnings, at the end of the QBU's last taxable year beginning before January 1, 1987. This section provides rules for controlled foreign corporations (as defined in section 957 or section 953(c)(1)(B)), other foreign corporations, and branches of United States persons that must make these determinations.

(b) *Certain controlled foreign corporations.* If a DASTM QBU was a controlled foreign corporation for its last taxable year beginning before January 1, 1987, and it had a significant event as described in § 1.964–1(c)(6) in a taxable year beginning before January 1, 1987, then the rules of this paragraph (b) shall apply.

(1) *Basis in assets and amount of liabilities.* The hyperinflationary currency adjusted basis of the QBU's assets and the hyperinflationary currency amount of the QBU's liabilities acquired or incurred by the QBU in a taxable year beginning before January 1, 1987, shall be the basis or the amount as determined under § 1.964–1(e) prior to translation under § 1.964–1(e)(4). The dollar adjusted basis of such assets and the dollar amount of such liabilities shall be the adjusted basis or the amount as determined under the rules of § 1.964–1(e) after translation under § 1.964–1(e)(4).

(2) *Retained earnings.* The dollar amount of the QBU's retained earnings at the end of its last taxable year beginning before January 1, 1987, shall be the dollar amount determined under § 1.964–1(e)(3).

(c) *All other foreign corporations.* If a foreign corporation is a DASTM QBU that is not described in paragraph (b) of this section, then the hyperinflationary currency and dollar adjusted basis in the QBU's assets acquired in taxable years beginning before January 1, 1987, the hyperinflationary currency and dollar amount of the QBU's liabilities acquired or incurred in taxable years beginning before January 1, 1987, and the dollar amount of the QBU's net worth, including its retained earnings, at the end of its last taxable year beginning before January 1, 1987, shall be determined by applying the principles of § 1.985–3T or § 1.985–3. Thus, for example, the dollar basis of plant and equipment shall be determined using the appropriate historical exchange rate.

(d) *Pre-1987 section 902 amounts*—(1) *Translation of pre-1987 section 902 accumulated profits and taxes into United States dollars.* The foreign income taxes and accumulated profits or deficits in accumulated profits of a foreign corporation that were maintained in foreign currency for purposes of section 902 and that are attributable to taxable years of the foreign corporation beginning before January 1, 1987, shall be translated into dollars at the spot exchange rate on the first day of its first taxable year beginning after December 31, 1986. Once translated into dollars, these accumulated profits and taxes shall (absent a change in functional currency) remain in dollars for all federal income tax purposes.

(2) *Carryforward of accumulated deficits in accumulated profits from pre-1987 taxable years to post-1986 taxable years.* For purposes of sections 902 and 960, the post-1986 undistributed earnings of a foreign corporation that is subject to the rules of this section shall be reduced by the dollar amount of the corporation's deficit in accumulated profits, if any, determined under section 902 and the regulations thereunder, that was accumulated at the end of the corporation's last taxable year beginning before January 1, 1987. The dollar amount of the accumulated deficit shall be determined by multiplying the foreign currency amount of such deficit by the spot exchange rate on the last day of the corporation's last taxable year beginning before January 1, 1987, and shall be taken into account on the first day of the corporation's first taxable year beginning after December 31, 1986. Post-1986 undistributed earnings may not be reduced by the dollar amount of a pre-1987 deficit in retained earnings determined under § 1.964–1(e).

(e) *Net worth branch.* If a DASTM QBU is a branch of a United States person and the QBU used a net worth method of accounting for its last taxable year beginning before January 1, 1987, then the rules of this paragraph (e) shall apply. A net worth method of accounting is any method of accounting under which the taxpayer calculates the taxable income of a QBU based on the net change in the dollar value of the QBU's equity (assets minus liabilities) during the course of a taxable year, taking into account any contributions or remittances made during the year. See, *e.g.*, Rev. Rul. 75–106, 1975–1 C.B. 31. (See § 601.601(d)(2)(ii)(*b*) of this chapter).

(1) *Basis in assets and amount of liabilities*—(i) *Hyperinflationary amounts.* For the first taxable year beginning in 1987, the hyperinflationary currency adjusted basis of a QBU's assets or the hyperinflationary currency amounts of its liabilities acquired or incurred in a taxable year beginning before January 1, 1987 is the

hyperinflationary currency basis or amount at the date when acquired or incurred, as adjusted according to United States generally accepted accounting and tax accounting principles. If a hyperinflationary currency basis or amount was not determined at such date, the dollar basis or amount, as adjusted according to United States generally accepted accounting and tax accounting principles, shall be translated into hyperinflationary currency at the spot exchange rate on the date when the asset or liability was acquired or incurred.

(ii) *Dollar amounts.* For the first taxable year beginning in 1987, the dollar adjusted basis of the QBU's assets and the amounts of its liabilities shall be those amounts reflected on the QBU's dollar books and records at the end of the taxpayer's last taxable year beginning before January 1, 1987, after adjusting the books and records according to United States generally accepted accounting and tax accounting principles.

(2) *Ending net worth.* The dollar amount of the QBU's net worth at the end of its last taxable year beginning before January 1, 1987 shall equal the QBU's net worth at that date as determined under paragraph (e)(1)(ii) of this section.

(f) *Profit and loss branch.* If a DASTM QBU is a branch of a United States person and the QBU used a profit and loss method of accounting for its last taxable year beginning before January 1, 1987, then the United States person shall first apply the transition rules of § 1.987–5 in order to determine the beginning amount and dollar basis of the branch's EQ pool, the hyperinflationary currency basis of the branch's assets, and the hyperinflationary currency amounts of its liabilities. A profit and loss method of accounting is any method of accounting under which the taxpayer calculates the profits of a QBU by computing the QBU's profits in its functional currency and translating the net result into dollars. See *e.g.*, Rev. Rul. 75–107, 1975–1 C.B. 32. (See § 601.601(d)(2)(ii)(*b*) of this chapter). The QBU and the taxpayer must then make the adjustments required by § 1.985–5, *e.g.*, the QBU must take into account unrealized exchange gain or loss on dollar-denominated section 988 transactions, the taxpayer must account for the deemed termination of the branch, and the taxpayer must translate the QBU's balance sheet items from hyperinflationary currency into dollars at the spot rate.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: November 30, 1992.

Alan J. Wilensky,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 92–31467 Filed 12–31–92; 8:45 am]

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26 CFR Part 1

[T.D. 8465]

RIN 1545–AN83

Deduction of Amounts Owed To Related Foreign Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations describing when an otherwise deductible amount owed to a related foreign person may be deducted. Changes to the applicable tax law were made by the Tax Reform Act of 1984 and the Tax Reform Act of 1986. These final regulations provide guidance needed to comply with these changes and affect persons that owe otherwise deductible amounts to a related foreign person.

EFFECTIVE DATES: January 5, 1993.

FOR FURTHER INFORMATION CONTACT: Lisa G. Sams of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL–625–89) (202–622–3840, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1991, the Internal Revenue Service published in the **Federal Register** proposed amendments (56 FR 11531) to the Income Tax Regulations (26 CFR part 1) under sections 163 and 267 of the Internal Revenue Code (Code). Written comments responding to this notice were received. The significant points raised by these comments and the changes made to the proposed amendments are discussed in the following sections of this preamble.

Discussion of Major Comments and Revisions to Proposed Regulations

Section 163(a)(3) generally requires a taxpayer to use the cash method of accounting with respect to the deduction of original issue discount owed to a related foreign person. Section 1.163–12 of the proposed regulations describes this general rule, and provides certain exceptions. In response to comments received, special rules are provided for original issue discount owed to a related foreign person that is a foreign personal holding company, a controlled foreign corporation, or a passive foreign investment company. These special rules are appropriate because there is a proper matching of income and deduction with respect to original issue discount owed to a related foreign corporation that is required to compute its taxable income and earnings and profits for United States tax purposes pursuant to the foreign personal holding company, subpart F, or passive foreign investment company provisions.

Section 267(a)(3) also generally requires a taxpayer to use the cash method of accounting with respect to the deduction of amounts owed to a related foreign person. Section 1.267(a)–3 of the proposed regulations describes this general rule and the amounts covered, and also provides certain exceptions. Stated broadly, the exceptions apply to certain amounts treated as income effectively connected with the conduct of a trade or business in the United States by the recipient of the income, and to certain amounts reported as income of the related foreign person pursuant to the foreign personal holding company, controlled foreign corporation, and passive foreign investment company provisions of the Code. Amounts excepted under the regulations generally remain subject to the rules described in section 267(a)(2), however.

A commentator stated that sections 267(a) (2) and (3) does not provide authority to place a taxpayer on the cash method of accounting with respect to amounts owed to related foreign persons, arguing that the rules announced in the proposed regulations exceed the direction of Congress to apply the principles of section 267(a)(2). This comment is rejected, since the legislative history of section 267(a)(3) states clearly that a taxpayer may be placed on the cash method of accounting with respect to amounts owed to a related foreign person. See H.R. Rept. No. 426, 99th Cong., 2d Sess. 939–940 (1985).

A related foreign person, for purposes of sections 163(e)(3) and 267(a) (2) and (3), is defined as any person that is not a United States person within the meaning of section 7701(a)(30) that has a relationship with the issuer described in section 267(b). Pursuant to section 267(b)(3), two corporations are related if they are members of the same

"controlled group" within the meaning of section 1563(a), subject to certain modifications. The final regulations clarify that this definition applies without regard to any of the limitations under section 1563(b).

Several commentators argued that the regulations under section 267(a)(3) governing the treatment of interest should be applied only prospectively, contending that the public had no notice that the statute would be applied in the manner described in the regulations. This comment also was rejected. Section 267(a)(2) provides generally that an otherwise deductible amount may not be deducted by the payor until the amount is includible in the gross income of the recipient. The legislative history makes clear that its provisions apply to otherwise deductible amounts owed to related foreign persons, and that regulations under section 267 (a)(3) would be necessary only to clarify the application of the matching principle of section 267(a) (2) and (3) to amounts not includible in the gross income of the recipient for United States tax purposes. See H.R. Rept. No. 426, 99th Cong., 2d Sess. 939–940 (1985).

Therefore, it was determined that the general principles of section 267(a)(2) should be applied to interest amounts from the effective date of its provisions. The effective dates for the application of the rules governing stated interest thus are consistent with those under section 163(e)(3) governing the treatment of original issue discount, ensuring general uniformity of treatment of items of stated interest and original issue discount.

A commentator argued that these regulations may violate the non-discrimination provisions of certain income tax treaties. The Service rejects this comment, since domestic tax principles are applied uniformly to determine the timing of a deduction for otherwise deductible amounts owed by a taxpayer to a related person (whether domestic or foreign) under sections 163(e)(3) and 267(a) (2) and (3).

Lastly, an amount owed to a foreign sales corporation that is exempt foreign trade income of the foreign sales corporation for purposes of section 921 *et seq.*, is not an amount to which these regulations apply, because the amount is treated as foreign source income of the foreign sales corporation that is not effectively connected with the conduct of a trade or business within the United States. Pursuant to section 924(f)(2), foreign trading gross receipts do not include interest and other investment income. Interest and other investment income is never characterized as exempt foreign trade income. For this reason, the special rule in the proposed regulations excluding from the application of these regulations interest owed to a foreign sales corporation is not necessary. Accordingly, the rule described in § 1.267(a)–3(c)(4) of the proposed regulations is removed. No contrary inference is intended.

Additional clarifying or editorial changes also have been made. For example, the special rule described in §§ 1.163–12(b)(3)(iii) and 1.267(a)–3(c)(4)(iii) governing amounts owed to a related foreign person that is a passive foreign investment company applies if the person that owes the amount to the related foreign person has made and has in effect an election under section 1295 (and not section 1291) with respect to the passive foreign investment company to which the amount is owed.

Change in Method of Accounting

A revenue procedure is issued contemporaneously with the issuance of these final regulations that describes the procedures for a change in method of accounting to conform with these rules. See § 601.601(d)(2)(ii)(*b*) of this chapter.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has 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 thus a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is James K. Sams formerly of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.161–1 Through 1.280H–1T

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805 * * * Section 1.267(a)–3 issued under 26 U.S.C. 267(a)(3). * * *

Par. 2. Section 1.163–12 is added to read as follows:

§ 1.163–12 Deduction of original issue discount on instrument held by related foreign person.

(a) *General rules*—(1) *Deferral of deduction.* Except as provided in paragraph (b) of this section, section 163(e)(3) requires a taxpayer to use the cash method of accounting with respect to the deduction of original issue discount owed to a related foreign person. A deduction for an otherwise deductible portion of original issue discount with respect to a debt instrument will not be allowable as a deduction to the issuer until paid if, at the close of the issuer's taxable year in which such amount would otherwise be deductible, the person holding the debt instrument is a related foreign person. For purposes of this section, a related foreign person is any person that is not a United States person within the meaning of section 7701(a)(30), and that is related (within the meaning of section 267(b)) to the issuer at the close of the taxable year in which the amount incurred by the taxpayer would otherwise be deductible. Section 267(f) defines "controlled group" for purposes of section 267(b) without regard to the limitations of section 1563(b). An amount is treated as paid for purposes of this section if the amount is considered paid for purposes of section 1441 or section 1442 (including an amount taken into account pursuant to section 871(a)(1)(C), section 881(a)(3), or section 884(f)). The rules of this paragraph (a) apply even if the original issue discount is not subject to United States tax, or is subject to a reduced rate of tax, pursuant to a provision of the Internal Revenue Code or a treaty obligation of the United States. For purposes of this section, original issue discount is an amount described in section 1273, whether from sources inside or outside the United States.

(2) *Change in method of accounting.* A taxpayer that uses a method of accounting other than that required by

the rules of this section must change its method of accounting to conform its method to the rules of this section. The taxpayer's change in method must be made pursuant to the rules of section 446(e), the regulations thereunder, and any applicable administrative procedures prescribed by the Commissioner. Because the rules of this section prescribe a method of accounting, these rules apply in the determination of a taxpayer's earnings and profits pursuant to § 1.312–6(a).

(b) *Exceptions and special rules*—(1) *Effectively connected income.* The provisions of section 267(a)(2) and the regulations thereunder, and not the provisions of paragraph (a) of this section, apply to an amount of original issue discount that is income of the related foreign person that is effectively connected with the conduct of a United States trade or business of such related foreign person. An amount described in this paragraph (b)(1) thus is allowable as a deduction as of the day on which the amount is includable in the gross income of the related foreign person as effectively connected income under sections 872(a)(2) or 882(b) (or, if later, as of the day on which the deduction would be so allowable but for section 267(a)(2)). However, this paragraph (b)(1) does not apply if the related foreign person is exempt from United States income tax on the amount owed, or is subject to a reduced rate of tax, pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of business profits).

(2) *Certain obligations issued by natural persons.* This section does not apply to any debt instrument described in section 163(e)(4) (relating to obligations issued by natural persons before March 2, 1984, and to loans between natural persons).

(3) *Amounts owed to a foreign personal holding company, controlled foreign corporation, or passive foreign investment company*—(i) *Foreign personal holding companies.* If an amount to which paragraph (a) of this section otherwise applies is owed to a related foreign person that is a foreign personal holding company within the meaning of section 552, then the amount is allowable as a deduction as of the day on which the amount is includible in the income of the foreign personal holding company. The day on which the amount is includible in income is determined with reference to the method of accounting under which the foreign personal holding company computes its taxable income and earnings and profits for purposes of sections 551 through 558. See section 551(c) and the regulations thereunder for the reporting requirements of the foreign personal holding company provisions (sections 551 through 558).

(ii) *Controlled foreign corporations.* If an amount to which paragraph (a) of this section otherwise applies is owed to a related foreign person that is a controlled foreign corporation within the meaning of section 957, then the amount is allowable as a deduction as of the day on which the amount is includible in the income of the controlled foreign corporation. The day on which the amount is includible in income is determined with reference to the method of accounting under which the controlled foreign corporation computes its taxable income and earnings and profits for purposes of sections 951 through 964. See section 6038 and the regulations thereunder for the reporting requirements of the controlled foreign corporation provisions (sections 951 through 964).

(iii) *Passive foreign investment companies.* If an amount to which paragraph (a) of this section otherwise applies is owed to a related foreign person that is a passive foreign investment company within the meaning of section 1296, then the amount is allowable as a deduction as of the day on which amount is includible in the income of the passive foreign investment company. The day on which the amount is includible in income is determined with reference to the method of accounting under which the earnings and profits of the passive foreign investment company are computed for purposes of sections 1291 through 1297. See sections 1291 through 1297 and the regulations thereunder for the reporting requirements of the passive foreign investment company provisions. This exception shall apply, however, only if the person that owes the amount at issue has made and has in effect an election pursuant to section 1295 with respect to the passive foreign investment company to which the amount at issue is owed.

(c) *Application of section 267.* Except as limited in paragraph (b)(1) of this section, the provisions of section 267 and the regulations thereunder shall apply to any amount of original issue discount to which the provisions of this section do not apply.

(d) *Effective date.* The rules of this section are effective with respect to all original issue discount on debt instruments issued after June 9, 1984.

Par. 3. Section 1.267(a)–3 is added to read as follows:

§ 1.267(a)–3 Deduction of amounts owed to related foreign persons.

(a) *Purpose and scope.* This section provides rules under section 267(a) (2) and (3) governing when an amount owed to a related foreign person that is otherwise deductible under Chapter 1 may be deducted. Paragraph (b) of this section provides the general rules, and paragraph (c) of this section provides exceptions and special rules.

(b) *Deduction of amount owed to related foreign person*—(1) *In general.* Except as provided in paragraph (c) of this section, section 267(a)(3) requires a taxpayer to use the cash method of accounting with respect to the deduction of amounts owed to a related foreign person. An amount that is owed to a related foreign person and that is otherwise deductible under Chapter 1 thus may not be deducted by the taxpayer until such amount is paid to the related foreign person. For purposes of this section, a related foreign person is any person that is not a United States person within the meaning of section 7701(a)(30), and that is related (within the meaning of section 267(b)) to the taxpayer at the close of the taxable year in which the amount incurred by the taxpayer would otherwise be deductible. Section 267(f) defines "controlled group" for purposes of section 267(b) without regard to the limitations of section 1563(b). An amount is treated as paid for purposes of this section if the amount is considered paid for purposes of section 1441 or section 1442 (including an amount taken into account pursuant to section 884(f)).

(2) *Amounts covered.* This section applies to otherwise deductible amounts that are of a type described in section 871(a)(1) (A), (B) or (D), or in section 881(a) (1), (2) or (4). The rules of this section also apply to interest that is from sources outside the United States. Amounts other than interest that are from sources outside the United States, and that are not income of a related foreign person effectively connected with the conduct by such related foreign person of a trade or business within the United States, are not subject to the rules of section 267(a) (2) or (3) or this section. See paragraph (c) of this section for rules governing the treatment of amounts that are income of a related foreign person effectively connected with the conduct of a trade or business within the United States by such related foreign person.

(3) *Change in method of accounting.* A taxpayer that uses a method of accounting other than that required by the rules of this section must change its method of accounting to conform its

method to the rules of this section. The taxpayer's change in method must be made pursuant to the rules of section 446(e), the regulations thereunder, and any applicable administrative procedures prescribed by the Commissioner. Because the rules of this section prescribe a method of accounting, these rules apply in the determination of taxpayer's earnings and profits pursuant to § 1.1312–6(a).

(4) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example 1. (i) FC, a corporation incorporated in Country X, owns 100 percent of the stock of C, a domestic corporation. C uses the accrual method of accounting in computing its income and deductions, and is a calendar year taxpayer. In Year 1, C accrues an amount owed to FC for interest. C makes an actual payment of the amount owed to FC in Year 2.

(ii) Regardless of its source, the interest owed to FC is an amount to which this section applies. Pursuant to the rules of this paragraph (b), the amount owed to FC by C will not be allowable as a deduction in Year 1. Section 267 does not preclude the deduction of this amount in Year 2.

Example 2. (i) RS, a domestic corporation, is the sole shareholder of FSC, a foreign sales corporation. Both RS and FSC use the accrual method of accounting. In Year 1, RS accrues $z owed to FSC for commissions earned by FSC in Year 1. Pursuant to the foreign sales company provisions, sections 921 through 927, a portion of this amount, $x, is treated as effectively connected income of FSC from sources outside the United States. Accordingly, the rules of section 267(a)(3) and paragraph (b) of this section do not apply. See paragraph (c) of this section for the rules governing the treatment of amounts that are effectively connected income of FSC.

(ii) The remaining amount of the commission, $y, is classified as exempt foreign trade income under section 923(a)(3) and is treated as income of FSC from sources outside the United States that is not effectively connected income. This amount is one to which the provisions of this section do not apply, since it is an amount other than interest from sources outside the United States and is not effectively connected income. Therefore, a deduction for $y is allowable to RS as of the day on which it accrues the otherwise deductible amount, without regard to section 267 (a)(2) and (a)(3) and the regulations thereunder.

(c) *Exceptions and special rules*—(1) *Effectively connected income subject to United States tax.* The provisions of section 267(a)(2) and the regulations thereunder, and not the provisions of paragraph (b) of this section, apply to an amount that is income of the related foreign person that is effectively connected with the conduct of a United States trade or business of such related foreign person. An amount described in this paragraph (c)(1) thus is allowable as a deduction as of the day on which the amount is includible in the gross income of the related foreign person as effectively connected income under sections 872(a)(2) or 882(b) (or, if later, as of the day on which the deduction would be so allowable but for section 267(a)(2)). However, this paragraph (c)(1) does not apply if the related foreign person is exempt from United States income tax on the amount owed, or is subject to a reduced rate of tax, pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of business profits).

(2) *Items exempt from tax by treaty.* Except with respect to interest, neither paragraph (b) of this section nor section 267 (a)(2) or (a)(3) applies to any amount that is income of a related foreign person with respect to which the related foreign person is exempt from United States taxation on the amount owed pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of business profits). Interest that is effectively connected income of the related foreign person under sections 872(a)(2) or 882(b) is an amount covered by paragraph (c)(1) of this section. Interest that is not effectively connected income of the related foreign person is an amount covered by paragraph (b) of this section, regardless of whether the related foreign person is exempt from United States taxation on the amount owed pursuant to a treaty obligation of the United States.

(3) *Items subject to reduced rate of tax by treaty.* Paragraph (b) of this section applies to amounts that are income of a related foreign person with respect to which the related foreign person claims a reduced rate of United States income tax on the amount owed pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of royalties).

(4) *Amounts owed to a foreign personal holding company, controlled foreign corporation, or passive foreign investment company*—(i) *Foreign personal holding companies.* If an amount to which paragraph (b) of this section otherwise applies is owed to a related foreign person that is a foreign personal holding company within the meaning of section 552, then the amount is allowable as a deduction as of the day on which the amount is includible in the income of the foreign personal holding company. The day on which the amount is includible in income is determined with reference to the method of accounting under which the foreign personal holding company computes its taxable income and earnings and profits for purposes of sections 551 through 558. See section 551(c) and the regulations thereunder for the reporting requirements of the foreign personal holding company provisions (sections 551 through 558).

(ii) *Controlled foreign corporations.* If an amount to which paragraph (b) of this section otherwise applies is owed to a related foreign person that is a controlled foreign corporation within the meaning of section 957, then the amount is allowable as a deduction as of the day on which the amount is includible in the income of the controlled foreign corporation. The day on which the amount is includible in income is determined with reference to the method of accounting under which the controlled foreign corporation computes its taxable income and earnings and profits for purposes of sections 951 through 964. See section 6038 and the regulations thereunder for the reporting requirements of the controlled foreign corporation provisions (sections 951 through 964).

(iii) *Passive foreign investment companies.* If an amount to which paragraph (b) of this section otherwise applies is owed to a related foreign person that is a passive foreign investment company within the meaning of section 1296, then the amount is allowable as a deduction as of the day on which amount is includible in the income of the passive foreign investment company. The day on which the amount is includible in income is determined with reference to the method of accounting under which the earnings and profits of the passive foreign investment company are computed for purposes of sections 1291 through 1297. See sections 1291 through 1297 and the regulations thereunder for the reporting requirements of the passive foreign investment company provisions. This exception shall apply, however, only if the person that owes the amount at issue has made and has in effect an election pursuant to section 1295 with respect to the passive foreign investment company to which the amount at issue is owed.

(iv) *Examples.* The rules of this paragraph (c)(4) may be illustrated by the following examples. Application of the provisions of sections 951 through 964 are provided for illustration only, and do not provide substantive rules concerning the operation of those provisions. The principles of these examples apply equally to the provisions of paragraphs (c)(4) (i) through (iii) of this section.

Example 1. P, a domestic corporation, owns 100 percent of the total combined

voting power and value of the stock of both FC1 and FC2. P is a calendar year taxpayer that uses the accrual method of accounting in computing its income and deductions. FC1 is incorporated in Country X, and FC2 is incorporated in Country Y. FC1 and FC2 are controlled foreign corporations within the meaning of section 957, and are both calendar year taxpayers. FC1 computes its taxable income and earnings and profits, for purposes of sections 951 through 964, using the accrual method of accounting, while FC2 uses the cash method. In Year 1 FC1 has gross income of $10,000 that is described in section 952 (a) ("subpart F income"), and which includes interest owed to FC1 by P that is described in paragraph (b) of this section and that is otherwise allowable as a deduction to P under chapter 1. The interest owed to FC1 is allowable as a deduction to P in Year 1.

Example 2. The facts are the same as in *Example 1*, except that in Year 1 FC1 reports no subpart F income because of the application of section 954 (b)(3)(A) (the subpart F de minimis rule). Because the amount owed to FC1 by P is includible in FC1's gross income in Year 1, the interest owed to FC1 is allowable as a deduction to P in Year 1.

Example 3. The facts are the same as in *Example 1*. In Year 1, FC1 accrues interest owed to FC2 that would be allowable as a deduction by FC1 under chapter 1 if FC1 were a domestic corporation. The interest owed to FC2 by FC1 is paid by FC1 in Year 2. Because FC2 uses the cash method of accounting in computing its taxable income for purposes of subpart F, the interest owed by FC1 is allowable as a deduction by FC1 in Year 2, and not in Year 1.

(d) *Effective date.* The rules of this section are effective with respect to interest that is allowable as a deduction under chapter 1 (without regard to the rules of this section) in taxable years beginning after December 31, 1983, but are not effective with respect to interest that is incurred with respect to indebtedness incurred on or before September 29, 1983, or incurred after that date pursuant to a contract that was binding on that date and at all times thereafter (unless the indebtedness or the contract was renegotiated, extended, renewed, or revised after that date). The regulations in this section issued under section 267 apply to all other deductible amounts that are incurred after July 31, 1989, but do not apply to amounts that are incurred pursuant to a contract that was binding on September 29, 1983 and at all times thereafter (unless the contract was renegotiated, extended, renewed, or revised after that date).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: December 17, 1992.

Alan J. Wilensky,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 92-31618 Filed 12-31-92; 8:45 am]

BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

Records and Reports for Local Unions.

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Extension of deadline for filing report.

SUMMARY: Notice is hereby given that the deadline for filing the 1992 Local Union report (EEO-3) required by 29 CFR 1602.22 is extended from December 31, 1992 to February 28, 1993. The two month period required to report certain information in Schedule I of that report may be any consecutive period of two months beginning no earlier than August 1, 1992 and ending no later than November 30, 1992.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division at (202) 663-4958 (voice) or (202) 663-4593 (TDD).

For the Commission:

Evan J. Kemp, Jr.,

Chairman.

[FR Doc. 93-7 Filed 1-4-93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 40a

Defense Contracting; Reporting Procedures on Defense Related Employment

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule is the fiscal year 1992 revision of the section listing DoD contractors receiving contract awards of $10 million or more. This part is published to comply with the provisions of section 1 of the Public Law on Employees or Former Employees of Defense Contractors: Reports.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. J.R. Sungenis, Director, Directorate for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA, 22202-4302. Telephone (703) 746-0334.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 40a

Armed Forces, Conflict of interests, Government employees, Government procurement, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 40a is revised to read as follows:

PART 40a—DEFENSE CONTRACTING: REPORTING PROCEDURES ON DEFENSE RELATED EMPLOYMENT

Authority: 10 U.S.C. 2397.

40a.1—Department of Defense contractors receiving awards of $10 million or more.

Fiscal Year 1992

3D/International, Inc.
3M
A&E Industries, Inc.
AAI Corp.
AAR Allen Airmotive Inc.
AAR Brooks & Perkins Corp.
ABB Flakt, Inc.
ACC Construction Co. Inc.
AEL Defense Corp.
AIL Systems, Inc.
AM General Corp.
AMCA International Construction Corp.
AT&T Communications, Inc.
AW & Associates Inc.
Abacus Technology Corp.
Abbott Laboratories
Accudyne Corp.
Actus Corp. & Sundt Corp. JV
Advanced Marine Enterprises
Advanced Research & Applications
Aepco, Inc.
Aerojet
Aeromet, Inc.
Aeroquip Corp.
Aerospace Corp., The
Afram Lines, Ltd., USA
Age Marketing Co.
Agip Petroli SPA
Ahntech, Inc.
Air Treads, Inc.
Aksarben Foods, Inc.
Alascom, Inc.
Alberici, J.S. Construction Co.
Alisud Handling SPA
All Bann Enterprises, Inc.
All Star Maintenance, Inc.
Alliant Techsystems, Inc.
Allied Signal Aerospace Co.
Allied Signal, Inc.
Altama Delta Corp.
Amerada Hess Corp.
American Auto Carriers
American Engineer Corp.
American Fuel Cell & Coated Fabrics
American International Contractors
American Management Systems, Inc.
American President Lines, Ltd.
American Systems Corp.
American Systems Engineering Corp.

American Telephone & Telegraph Co.
American Trans Air & Connie Kalitta Services JV
American Transport Lines, Ltd.
American Vision Systems, Inc.
Amerind, Inc.
Ametek, Inc.
Amoco Oil Corp.
Amron Corp.
Amtec Corp.
Anadac, Inc.
Analysis & Technology, Inc.
Analytic Science Corp., The
Analytic Services, Inc.
Analytical Systems Engineering Corp.
Andrulis Research Corp.
Applied Data Technology, Inc.
Applied Research Associates, Inc.
Applied Technology Associates, Inc.
Arcata Associates, Inc.
Arco Power Technologies, Inc.
Arinc, Inc.
Arinc Research Corp.
Armtec Defense Products Co.
Arrow Construction, Inc.
Association Momentanee Entre
Assurance Technology Corp.
Astronautics Corp. of America
Atherton Construction
Atlantic Dry Dock Corp.
Atlantic Industries, Inc.
Atlantic Research Corp.
Atlantic Richfield Co.
Atlas Processing Co.
Autec Range Services
Automated Sciences Group, Inc.
Automation Research Systems, Ltd.
Avco Corp.
Avondale Industries, Inc.
BAMSI, Inc.
BBDO Worldwide, Inc.
BBN Communications Corp.
BDM International, Inc.
BDM Management Services Co.
BEI Electronics, Inc.
BFM Aerospace Corp.
BP Oil Co.
BT Marine, Ltd
Babcock & Wilcox Co., The
Bahrain National Oil Co.
Baker TSA, Inc.
Balimoy Mfg. Co. of Venice
Ball Corp.
Baltimore Gas & Electric Co.
Barnhart, Douglas E., Inc.
Barrett Refining Corp.
Basil & Trataros JV
Basil, Frank E., Inc.
Bateson, J.W. Co., Inc.
Bath Iron Works Corp.
Battelle Memorial Institute
Bay Tankers, Inc.
Bean Dredging Corp.
Bechtel National, Inc.
Beech Aerospace Services, Inc.
Beech Aircraft Corp.
Bell Atlantic Corp.
Bell Helicopter Textron & Boeing Co., JV
Bell Helicopter Textron, Inc.
Belleville Shoe Mfg. Co.
Bender, Allen L., Inc.
Bender, Shipbuilding & Repair Co.
Beneco Enterprises, Inc.
Beretta U.S.A. Corp.
Betac Corp.
Bethlehem Steel Corp.
Biehn Construction, Inc.
Big Bear Oil Co., Inc.
Bionetics Corp.
Black & Decker Corp.
Black & Veatch
Black River Constructors
Blake Construction Co., Inc.
Blount, Inc.
Blount/Universal City Construction JV
Blue Cross & Blue Shield of South Carolina
Boeing Aerospace Operations
Boeing Co. & Sikorsky Aircraft JV
Boeing Co., The
Boland, David, Inc.
Bolt Beranek & Newman, Inc.
Booz Allen & Hamilton, Inc.
Braintree Maritime Corp.
Braswell Services Group, Inc.
Brazos Roofing International
British Aerospace PLC
Broughton, T.T. & Sons
Brown & Root, Inc.
Brown & Root International, Inc.
Brown & Root Services Corp.
Browning Construction Co.
Brunswick Corp.
Buckner & Moore, Inc.
Bulova Technologies Inc.
Bundesamt Fuer Wehrtechnik
Burgos Fred Construction Co.
Burns & Roe Services Corp.
Burnside Ott Aviation Training Center
C3, Inc.
CACI, Inc.
CACI International, Inc.
CAE Link Corp.
CAS, Inc.
CBC Enterprises, Inc.
CFM International, Inc.
CFS Aircargo, Inc.
CRS Sirrine Metcalf & Eddy JV
CTA, Inc.
Cabot Corp.
Caddell Construction Co., Inc.
Calcasieu Refining Co.
California Microwave, Inc.
California Pacific Associates
Calspan Corp.
Caltex Oil Products Co.
Campbell Industries
Canon USA, Inc.
Cargill Petroleum, Inc.
Carnegie Mellon University
Carolina Power & Light Co.
Carothers Construction, Inc.
Casde Corp.
Case, J.I. Co.
Caterpillar, Inc.
Celikcilik San Ve Tic As
Center For Naval Analyses
Central Gulf Lines, Inc.
Centre Mfg. Co., Inc.
Century Technologies, Inc.
Ceridian Corp.
Chamberlain Mfg. Corp.
Chem-Nuclear Systems, Inc.
Chemical Waste Management, Inc.
Chesapeake & Potomac Tel Co VA
Chevron USA, Inc.
Childers Construction Co.
Chrysler Technologies Airborne Systems
Cincinnati Gear Co., The
Cincinnati Milacron Mktg Co.
Coastal Aruba Refining NV
Coastal Eagle Point Oil Co.
Coastal Group, Inc.
Coastal Refining & Marketing
Cobro Corp.
Codar Technology, Inc.
Codex Corp.
Coleman Research Corp.
Collins International Service Co.
Colsa, Inc.
Columbia Research Corp.
Comarco, Inc.
Comcon, Inc.
Communications Satellite Corp.
Compania Espanola De Petroleos
Compliance Corp.
Comprehensive Technologies International
Comptek Research, Inc.
Computer Associates International
Computer Dynamics, Inc.
Computer Sciences Corp.
Conagra, Inc.
Condor Systems, Inc.
Conoco, Inc.
Consolidated Electronics, ITT & Westinghouse JV
Consolidated Services, Inc.
Contel Corp.
Continental Maritime of San Diego
Contraves Goerz Corp.
Control Data Corp.
Cormorant Shipholding Corp.
Cortana Corp.
Cox Construction Co.
Craddock, Terry, Inc.
Craft Machine Works, Inc.
Crowley Marine Services, Inc.
Crysen Refining Inc.
Cubic Corp.
Cummins Engine Co., Inc.
Curtis Wright Corp.
DBA Systems, Inc.
DCS Corp.
Dames & Moore
Dataproducts News England, Inc.
Day & Zimmerman, Inc.
Day & Zimmerman/Basil Corp. JV
De Bra, Fred B. Co., The
De Filippis
Del Jen, Inc.
Delta Air Lines, Inc.
Delta Dental Plan of California
Detroit Diesel Corp.
Detyens Shipyards, Inc.
Deutsche Bundespost

Deval Corp.
Diagnostic Retrieval Systems
Diamond Shamrock Refining
Digital Equipment Corp.
Digital Systems Research, Inc.
Dillingham Construction Corp.
Dipl Ing Hans Schiebel
Dock Express Contractors, Inc.
Douglas Aircraft Co.
Draper, Charles Stark Laboratories, Inc.
Dreyfus Louis Corp.
Du Pont, E.I. De Nemours & Co.
Dual & Associates, Inc.
Dycom Industries, Inc.
Dynamic Science, Inc.
Dynamics Research Corp.
Dyncorp
Dynetics, Inc.
EA Engineering & Science Technology
EC III JV
ECC International Corp.
ECI Construction, Inc.
EDP Enterprises, Inc.
EER Systems Corp.
EG&G, Inc.
EG&G Management Systems
EG&G Riticon
EG&G Washington Analytical Services Center
EOS Technologies, Inc.
ERC Environmental & Energy Service
ESL, Inc.
E Systems, Inc.
Eagle Technology, Inc.
Earl Industries, Inc.
Earth Technology Corp.
East Penn Mfg. Co.
Eastman Kodak Co.
Eaton Corp.
Ebasco Constrs Gust Newberg JV
Ebasco Services, Inc.
Eberharter Construction Group, Inc.
Economics Technology Associates
El Paso Refining Co., Ltd.
Elbit Computers, Ltd.
Eldyne, Inc.
Electro Methods, Inc.
Electronic Data Systems Corp.
Electronics & Space Corp.
Electrospace Systems, Inc.
Elkem Metals Co.
Emco, Inc.
Emergency Medical Services Assoc.
Engineered Air Systems, Inc.
Engineering & Economics Research
Engineering Science, Inc.
Ensco, Inc.
Environmental Research Institute of Michigan
Environmental Technologies Group
Equa Industries, Inc.
Esso Nederland BV
Ex Cell O Corp.
Executive Resource Associates
Exide Electronics Corp.
Expeditor Transport Corp.
Exporter Transport Corp.
Expressor Transport Corp.
Exxon Co., USA
Exxon Corp.
F2M, Inc.
FEL Corp.
FKW, Inc.
FMC Corp.
FMS Corp.
FN Mfg., Inc.
Face, Edward W., Co., Inc.
Fairchild Aircraft Corp.
Fairchild Industries, Inc.
Fairchild Space & Defense Corp.
Falcon Microsystems, Inc.
Farrell Lines, Inc.
Federal Express, Northwest Airlines, PanAm World Airways, Tower Air & United Parcel Service JV
Federal Computer Corp.
Federal Data Corp.
Federal Hoffman, Inc.
Felec Services, Inc.
Ferguson Williams, Inc.
First Hospital Corp.
Flight International Group, Inc.
Flightsafety International, Inc.
Flightsafety Service Co.
Flintco, Inc.
Fluke, John Mfg. Co., Inc.
Fluor Engineers, Inc.
Foley Co.
Fordice Construction Co.
Foundation Health Corp.
Freightliner Corp.
Frito Lay, Inc.
Frontier Engineering, Inc.
Fuller, George A. Co.
G&C Enterprises, Inc.
G&F Co.
GEC Avionics, Ltd.
GEC Marconi Electronic Systems
GLR Constructors JV
GNB Industrial Battery Co.
GTE Government Systems Corp.
Garcia, Luis E., Inc.
Gaskins, L.C., Construction Co.
General Atomics
General Dynamics Corp.
General Dynamics & FMC Corp. JV
General Dynamics & Westinghouse JV
General Electric Co.
General Foods USA
General Mills, Inc.
General Motors Corp.
General Physics Corp.
General Research Corp.
General Ship Corp.
Gentex Corp.
Geo Centers, Inc.
Georgia Power Co.
Georgia Tech Research Corp.
Giant Refining Co.
Gibbs & Cox, Inc.
Giddings & Lewis, Inc.
Gilbert Corp of Delaware
Gold Line Refining, Ltd.
Golden Mfg Co., Inc.
Goodrich, B.F. Co., The
Goodyear Tire & Rubber Co., The
Government Micro Resources
Government Systems, Inc.
Government Technology Services
Granite Construction Co.
Great Lakes Dredge & Dock Co.
Greenbrier Industries, Inc.
Greenwich Air Services, Inc.
Grimberg, John C. Co., Inc.
Grumman Aerospace Corp.
Grumman Corp.
Grumman Data Systems Corp.
Grumman Technical Services, Inc.
Gulf Coast Trailing Co.
Gulfstream Aerospace Corp.
Guyco Engineering Co.
HFSI, Inc.
Halifax Engineering, Inc.
Halter Marine, Inc.
Harbert International, Inc.
Harcon, Inc.
Hardaway Co., Inc., The
Harnischfeger Corp.
Harris Corp.
Harsco Corp.
Hawaiian Airlines, Inc.
Hawaiian Electric Co., Inc.
Hawaiian Independent Refinery
Haworth, Inc.
Hazeltine Corp.
Health Strategies International
Hellenic Fuels & Lubricants
Hensel Phelps Construction Co.
Hercules Construction Corp.
Hercules Engines, Inc.
Hercules, Inc.
Hermes Consolidated, Inc.
Heroux, Inc.
Hewlett Packard Co.
Hilton Systems, Inc.
Hitt Electric Corp.
Hoffman La Roche, Inc.
Holmes & Narver Inc.
Holston Defense Corp.
Honam Oil Refinery Co., Ltd.
Honeywell, Inc.
Hooks, Mike, Inc.
Horizons Technology, Inc.
Horst Mosolf International Sped
Hospital Klean
Howmet Corp.
Hubbard Construction Co.
Hughes Aircraft & Raytheon Co. JV
Hughes Aircraft Co.
Hughes Data Systems & BTG, Inc. JV
Hughes Danbury Optical Systems
Hughes Electronic Technologies
Hughes Training Systems, Inc.
Hunt Building Corp.
Huttenbauer, E. & Son, Inc.
Hyman, George Construction Co.
Hyster Co.
I Net, Inc.
IBP, Inc.
ICF, Inc.
ICI Americas, Inc.
IIT Research Institute
ILC Dover
ILC Industries, Inc.
IPAC
IRISS Co.
IT Corp.

ITT Corp.
ITT Federal Services Corp.
Illinois Glove Co.
Imo Industries, Inc.
Industrial Acoustics Co., Inc.
Industrial Data Link Corp.
Information Handling Services Group
Information Spectrum, Inc.
Information Technology, Inc.
Infotec Development, Inc.
Ingalls Shipbuilding, Inc.
Institute for Defense Analyses
Integrated Systems Analysts
Intel Corp.
Intelcom Support Services, Inc.
Intergraph Corp.
Intermarine, USA
Intermetrics, Inc.
International Business Machines Corp.
International Marine
International Technology Corp.
International Terminal Operating Co.
Interstate Electronics Corp.
Interstate Landscaping Co., Inc.
Ireco, Inc.
Irvin Industries, Inc.
Israel Aircraft Industries, Ltd.
Israeli Military Industries
Isratex, Inc.
Itek Corp.
J&J Maintenance, Inc.
JT Construction Co., Inc.
JWK International Corp.
Jacobs Engineering Group, Inc.
James, T.L. & Co., Inc.
Japan Aircraft MFG Co., Ltd
Jaycor
Jered Brown Brothers, Inc.
Jersey Central Power & Light Co.
Joeris, Inc.
Johns Hopkins University
Johnson, Al Construction Co.
Johnson Controls World Service
Johnson G.E. Construction Co.
Johnson Technology, Inc.
Jonathan Corp., The
Jones Group, Inc., The
Jones, John T. Construction Co.
Jordan, W.M. Co., Inc.
Jowett, Inc.
Junghans Feinwerktechik
K&K Industries, Inc.
K&M Maintenance Services
Kaiser Aerospace & Electronics Corp.
Kaman Aerospace Corp
Kaman Sciences Corp.
Kay & associates, Inc.
Kearfott Guidance & Navigation Corp.
Keco Industries, Inc.
Kidde, Inc.
Kiewit & Johnson, Al JV
Kilgallon Construction Co.
Kilgore Corp.
Koch Fuels, Inc.
Koh Systems, Inc.
Kokosing Construction Co., Inc.
Kollmorgen Corp.
Korea Electric Power Corp.
Korean Air Lines Co., Ltd.
Kraft General Foods, Inc.
Krempp Lumber Co.
Krystal Gas Marketing Co.
Kvaas Construction Co.
Kyung IN Energy Co.
La Barge Products, Inc.
Ladd, Roy E., Inc.
Laguna Industries, Inc.
Laidlaw Environmental Services
Laketon Refining, Inc.
Lane Construction Corp.
Law Co., Inc., The
Law Environmental, Inc.
Lawrence Associates, Inc.
Lear Astronics Corp.
Lear Siegler Management Services
Learjet Corp.
Leland Electrosystems, Inc.
Lewis, Lee General Contractor
Libby Corp.
Life Cycle Engineering, Inc.
Light Helicopter Turbine Engine Co.
Lilly, David B. Co., Inc.
Lilly, Eli & Co.
Little, Arthur D., Inc.
Litton Industries, Inc.
Litton Systems, Inc.
Lockheed Aeromod Center, Inc.
Lockheed Aeronautical Systems Co.
Lockheed Aircraft Service Co.
Lockheed Corp.
Lockheed Missiles & Space Co.
Lockheed Sanders, Inc.
Locus, Inc.
Loggins Meat Co., Inc.
Logicon, Inc.
Logistics Management Institute
Loral Aerospace Corp.
Loral Corp.
Loral Training & Tech Svcs.
Loral Vought Systems
Lott Constructors, Inc.
Louisville Gas & Electric Co.
Luhr Brothers, Inc.
Lykes Brothers Steamship Co., Inc.
MCC Construction Corp.
MCI Constructors, Inc.
MCI International, Inc.
MCI Telecommunications Corp.
MG Refining & Marketing
MK Ferguson Group
MW Builders
Mac H.B., Inc.
Macalloy Corp.
Macaulay Brown, Inc.
Maden Tech Consulting, Inc.
Maersk, Inc.
Maersk Stevedoring Co.
Magann, W.F. Corp.
Magnavox Government & Industrial Electronics Co.
Mandex, Inc.
Manson Construction & Engineering Co.
Mantech International Corp.
Mantech, VSE, & Potomac Research JV
Mar Ship Operators, Inc.
Marconi Command & Control Systems, Ltd.
Marine Hydraulics International
Mark Diversified, Inc.
Martech USA, Inc.
Martin Baker Aircraft Co., Ltd
Martin Electronics, Inc.
Martin Marietta Corp.
Martin Marietta, Diehl Co's., Thorn & Thompson JV
Martin Marietta Corp. & Westinghouse Electric Co. JV
Marvin Engineering Co., Inc.
Maryland Air International, Inc.
Mason Hanger Silas Mason, Inc.
Massachusetts Institute of Technology
Maxima Corp.
Maxwell Laboratories, Inc.
Mayer, Oscar Foods Corp.
McCarthy Construction Co.
McDonnell Douglas Corp.
McDonnell Douglas Electronic Systems
McDonnell Douglas Helicopter Co.
McDonnell Douglas Missile & Space Systems Co.
McDonnell Douglas Space Systems Co.
McDonnell Douglas Training Systems, Inc.
McKnight Construction Co., Inc.
McLaghlin Research Corp.
McMaster Construction Inc.
McMullan, Robert & Son, Inc.
McMullen, John J. Associates, Inc.
Mercer University
Merchants National Corp.
Merck & Co., Inc.
Meredith, W.B., II., Inc.
Metal Trades, Inc.
Metcalf & Eddy, Inc.
Metric Construction Co., Inc.
Metric Constructors, Inc.
Metric Systems Corp.
Metro Machine Corp.
Metters Industries, Inc.
Mevatec Corp.
Michelin Tire Corp.
Micro Lithics, Inc.
Midgard DSAG
Milcom Systems Corp.
Miles Biological Laboratories
Miller Herman, Inc.
Mills Mfg. Corp.
Miltope Corp.
Mine Safety Appliances Co.
Mip Instandsetzungsbetric
Misener Marine Construction
Mission Research Corp.
Mitre Corp.
Mobil Corp.
Mobility, Inc.
Modern Technologies Corp.
Modular Computer Systems, Inc.
Mohamed A. Kharafi
Monarch Construction Co.
Montgomery, J.M., Consulting Engineers
Moon Engineering Co., Inc.
Morrison Knudsen Co., Inc.
Mortenson, M.A. Companies
Motor Oils Hellas Corinth Refinery
Motorola Communications & Electronics
Motorola, Inc.
NASP National Contractor Team

NCR Comten, Inc.
NUS Corp.
Natco Limited Partnership
National Academy of Sciences
National Airmotive Corp.
National Apparel, Inc.
National Beef Packing Co.
National Forge Co.
National Steel & Shipbuilding Co.
National Systems & Research Co.
Navcom Defense Electronics, Inc.
Navcom Systems, Inc.
Navistar International Transportation
Nero & Associates, Inc.
Net Fed, Inc.
New Mexico State University
Newport News Shipbuilding & Dry Dock Co.
Ni Industries, Inc.
Nichols Research Corp.
Nomura Enterprise, Inc.
Norden Systems, Inc.
Norfolk Dredging Co., Inc.
Norfolk Shipbuilding & Dry Dock Corp.
North American Mechanical Services
North Atlantic Industries, Inc.
North Carolina Dept. of Human Resources
Northeast Construction Co.
Northern Telecom, Inc.
Northrop Corp.
Northrop Worldwide Aircraft Services, Inc.
Northwest Enviro Service, Inc.
Nova Group, Inc.
Nuclear Research Corp.
OH Materials Corp.
Ocean Star Shipping, Inc.
Ohbayashi Corp.
Oil Refineries, Ltd.
Okinawa Electric Power Co.
Olin Corp.
Olin Ordnance
Olmos Equipment Co., Inc.
Oracle Complex System Corp.
Oregon Iron Works, Inc.
Orincon Corp.
Oshkosh Truck Corp.
Owl International, Inc.
PAE GMBH
PCC Technical Industries, Inc.
PCL Construction Associates, Inc.
PHH Homequity Corp.
PHP Healthcare Corp.
PRC Environmental Management
PRC, Inc.
Pacer Systems, Inc.
Pacific Architects & Engineers, Inc.
Pacific Ship Repair & Fabrication
Pacific Sierra Research Corp.
Pacifica Services, Inc.
Paramax Systems Corp.
Parker Hannifin Corp.
Parsons, Ralph M. Co., The
Patrol Ofisi A S Genel Mud
Patton Tully Transportation Co.
Peat Marwick Mitchell & Co.
Peerless Petrochemicals, Inc.
Pemco Aeroplex, Inc.
Pence, Howard W., Inc.
Pennsylvania State University
Pentastar Electronics, Inc.
Perini Corp. & O&G Industries JV
Perland Environmental
Peterson Builders, Inc.
Philip Morris, Inc.
Phillips & Jordan, Inc.
Phillips Petroleum Co.
Phoenix Construction Services
Physics International Co.
Picker International, Inc.
Pile Foundation, Inc.
Pillsbury Co., The
Pine Bluff Sand & Gravel Co.
Pinner Construction Co., Inc.
Pioneer Recovery Systems, Inc.
Piquniq Management Corp.
Pizzagalli Construction Co.
Placid Oil Co.
Planning Systems, Inc.
Pneumo Abex Corp.
Potomac Electric Power Co.
Potomac Systems Engineering
Power Conversion, Inc.
Powertronic Systems, Inc.
Prestolite Electric, Inc.
Pride Pipeline Co.
Proctor & Gamble Co., The
Producto Electronic Industries
Propellex Corp.
Puerto Rico Sun Oil Co., Inc.
Puget Sound Tug & Barge Co.
Pulau Electronics Corp.
QED Systems, Inc.
Questech, Inc.
Quintron Corp.
R&D Associates
RJO Enterprises, Inc.
Racal Communications, Inc.
Racal Tacticom, Ltd.
Radian Corp.
Rados, Steve P., Inc.
Rafael Armaments Development
Ram Systems GMBH
Rand Corp., The
Rasmussen, C.A., Inc.
Raymond Engineering, Inc.
Raytheon Co.
Raytheon Service Co.
Raytheon Support Services, Co.
Red River Carriers
Refinery Associates of Texas
Reflectone, Inc.
Research Analysis & Maintenance
Resource Consultants, Inc.
Rexon Technology Corp.
Reynolds Metals Co.
Rich International Airways
River City Construction Co.
Riverside Research Institute
Robbins Gioia, Inc.
Rockwell International Corp.
Rockwell Power Systems
Rolls Royce, PLC
Roofing Constructors, Inc.
Rooney, Frank J., Inc.
Rosenblatt, M. & Son, Inc.
Ross, R.G., Construction Co., Inc.
Royal Norwegian Naval Material
Ryan Co., Inc.
Ryan Walsh, Inc.
S Systems Corp.
S&H Mechanical Contractors
S&M Sakamoto, Inc.
SAIC Engineering, Inc.
SCI Systems, Inc.
SCI Technology, Inc.
SFA, Inc.
SMS Data Products Group, Inc.
SPSA Southeastern Public Service
SRA Technologies, Inc.
SRI International
SRS Technologies
Saab Training Systems AB
Sabreliner Corp.
Saco Defense, Inc.
Sacramento Municipal Utility
Sadelmi New York, Inc.
Saft America, Inc.
Salk Institute for Biological Studies
Salomon, Inc.
San Diego Community College District
Sargent Fletcher Co.
Saudi Operations & Maintenance Co.
Schafer, W.J. Associates, Inc.
Schneider, Inc.
Science & Technology, Inc.
Science Applications International Corp.
Scientific Atlanta, Inc.
Scientific Research Corp.
Sea Land Service, Inc.
Sealift, Inc.
Sears Roebuck & Co.
Sechan Electronics, Inc.
Semcor, Inc.
Sequa Corp.
Serv Air, Inc.
Service Engineering Co., Inc.
Sevenson Construction Corp.
Shadrock Petroleum Products
Sharp Construction Co., Inc.
Sharp, George G., Inc.
Shell Oil Co.
Sherikon, Inc.
Shin Cheon Co., Ltd.
Shirley Construction Corp.
Short Brothers PLC
Short, John & Associates
Siemens Elektrogeraete GMBH
Sierra Nevada Corp.
Silicon Graphics, Inc.
Silverton Construction Co., Inc.
Simms Industries, Inc.
Simplex Wire & Cable Co.
Sippican, Inc.
Sisters of Charity
Sligsby Aviation, Ltd.
Smiths Industries, Inc., USA
Sohio Oil Co.
Sonalysts, Inc.
Sony Corporation of America
South Carolina Research Authority
Southeast Atlantic Cargo Operators
Southern Air Transport, Inc.
Southern California Edison Co.
Southern Systems, Inc.

Southfork Systems, Inc.
Southwest Marine, Inc.
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Southwest Research Institute
Space & Sensors Associates
Space Applications Corp.
Space Data Corp.
Sparta, Inc.
Sparton Corp.
Sparton Electronics Florida
Spectrum Emergency Care, Inc.
Sperry Marine, Inc.
Ssangyong Oil Refining Co., Ltd.
Standard Technology, Inc.
Stanford Telecommunications
Stanford University
Statoil North America, Inc.
Sterling Federal Systems, Inc.
Stewart & Stevenson Services, Inc.
Storage Technology Corp.
Strand, Inc.
Strong Bill Enterprises, Inc.
Sumaria Systems, Inc.
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Summa Technology, Inc.
Sun Microsystems, Inc.
Sun Refining & Marketing Co.
Sundstrand Corp.
Sundt Corp.
Sunkyoung, Ltd.
Superfos A/S
Supreme Beef Processors, Inc.
Sverdrup Corp.
Sverdrup Technology, Inc.
Synetics Corp.
Syscon Corp.
System Planning Corp.
System Resources Corp.
Systems & Electronics, Inc.
Systems Control Technology
Systems Engineering & Management Associates
Systems Engineering & Management Co.
Systems Engineering Associates
Systems Planning & Analysis
Systems Research & Applications Corp.
Systems Research Laboratories
TDS, Inc.
TGS Technology, Inc.
TSC, Inc.
TRW, Inc.
Tadiran Israel Electronic Industries
Talley Defense Systems, Inc.
Tampa Shipyards, Inc.
Techmatics, Inc.
Technical & Management Services Corp.
Technology Applications, Inc.
Technology Scientific Services
Tecolote Research, Inc.
Tecom, Inc.
Tektronix, Inc.
Teledyne Industries, Inc.
Telephonics Corp.
Telos Corp.
Tennessee Apparel Corp.
Tennier Industries, Inc.
Texaco Caribbean, Inc.
Texaco International Trader, Inc.
Texaco Instruments & Martin Marietta JV
Texas Instruments Inc.
Texas Utilities Electric Co.
Texcom, Inc.
Textron, Inc.
Thermo Electronic Technologies Corp.
Thiokol Corp.
Thomasville Furniture Industries
Thompson, J. Walter Co.
Tilley Constructors & Engineers
Titan Corp.
Titan Wheel International
Todd Pacific Shipyards Corp.
Tohoku Denryoku KK
Tokyo Denryoku KK
Tracor Aerospace, Inc.
Tracor Applied Sciences, Inc.
Tracor, Inc.
Trans World Airlines, Inc.
Translant, Inc.
Trescomp, Inc.
Tri State Design, Inc.
Trinity Industries, Inc.
Trinity Marine Group
Triton Marine Construction
Tucson Electric Power Co.
Turtle Mountain Mfg. Co.
Tyger Construction Co., Inc.
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U.S. Sprint Communications Co.
UNC, Inc.
URS Corp.
Unified Industries, Inc.
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Uniroyal Chemical Co., Inc.
Unisys Corp.
United Engineers & Constructors
United International Engineers
United Technologies Corp.
United Telecontrol Electronics
Universal Maritime Service
University of California
University of Dayton
University of Florida
University of Minnesota
University of Pennsylvania
University of Pittsburgh
University of Southern California
University of Texas System
University of Washington
Utah Power & Light Co.
Utah State University
VSE Corp.
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Valmac Industries, Inc.
Varian Associates, Inc.
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Vector Research, Inc.
Veda, Inc.
Viereck Co., Inc.
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Vinnell Corp., & Brown & Root JV
Virtexco Corp.
Vitro Corp.
Vitronics, Inc.
Vought Aircraft
WMP Security Service Co.
Wang Laboratories, Inc.
Waterman Steamship Corp.
Wellco Enterprises, Inc.
Western Gear Corp.
Western Petroleum Co.
Westinghouse Electric Corp.
Westmont Industries
Weston, Roy F., Inc.
Wheeler Brothers, Inc.
Whitesell Green, Inc.
Whittaker Corp.
Willbros Butler Engineers, Inc.
Williams International Corp.
Wisconsin Physicians Service Insurance
Woodward, Clyde Consultants
World Airways, Rosenbalm Aviation, Key Airlines, American Airlines, Evergreen International & Emery Worldwide JV
Wyle Laboratories
Wynn Construction Co.
Xerox Corp.
Xontech, Inc.
Yates, W.G. & Sons Construction Co.
Yeager, E.L. Construction Co.
Young & Rubicam, Inc.
Zachry, H.B. Co.
Zodiac of North America Inc.

Dated: December 28, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–12 Filed 1–4–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 194

[Docket No. PS–130]

RIN 2137–AC30

Response Plans for Onshore Oil Pipelines

December 28, 1992.

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes regulations requiring response plans for certain pipelines that transport oil. These regulations are mandated by the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA 90). The purpose of these requirements is to improve response capabilities and minimize the environmental impact of oil discharges from pipelines. Although RSPA is issuing an interim final rule, it invites comments and will, if appropriate, make changes to the rule.

DATES: The effective date of this interim final rule is January 5, 1993. Comments must be received on or before February 19, 1993.

ADDRESSES: The RSPA Dockets Unit maintains the public docket for this rulemaking. Written comments must be submitted in duplicate and mailed or hand-delivered to: RSPA Dockets Unit, room 8421, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments will become part of this docket and will be available for inspection or copying at the Dockets Unit in room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001.

All comments and docketed material will be available for inspection and copying each business day between 8:30 a.m. and 5 p.m. in room 8421. For information concerning comments or copies of this interim final rule, the telephone number of the Dockets Unit is 202–366–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd W. Ulrich, Office of Pipeline Safety Regulatory Programs, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, 202–366–4556, or Mr. Robert A. Monniere, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, 202–366–4400, regarding the contents of this interim final rule; or the RSPA Dockets Unit, room 8421, 400 Seventh Street, SW., Washington, DC 20590–0001, 202–366–5046, regarding copies of this interim final rule or other information in the docket.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with 5 U.S.C. 553(b)(3)(B), this interim final rule is being issued without a prior notice of proposed rulemaking and opportunity to comment. The Oil Pollution Act of 1990, Pub. L. No. 101–380, 104 Stat. 484, (OPA 90) which amends the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, contains statutory deadlines for the preparation and submission of response plans for onshore pipelines. After these deadlines, a pipeline operator whose pipeline is not in compliance with the statutory requirements would be prohibited from using that pipeline to handle, store, or transport oil.

In order to allow the timely implementation of OPA 90, RSPA has determined that good cause exists for finding that notice and comment is impracticable and contrary to public interest. RSPA believes that any further delay in issuing these regulations would create an undue hardship on the regulated community and have the potential to disrupt the sale and delivery of oil. In order to encourage the prompt filing of response plans and thus avoid the disruptive effect this rule could have on the oil industry, this rule is effective on its publication date.

Although an opportunity for public comment has not been provided prior to issuing this interim final rule, RSPA seeks public comment to assure that the rule is feasible and workable. If appropriate, RSPA will amend the provisions of this rule. RSPA will consider holding public hearings to obtain comments at a later date, if needed. As an interim final rule, this regulation is fully in effect and binding upon publication in the **Federal Register.**

Although no further regulatory action by RSPA is essential to implement this rule, RSPA encourages interested persons to participate in this rulemaking by submitting written views, data, or information on this interim final rule. Persons submitting comments should include their names and addresses, identify this rulemaking by the docket number stated in the heading of this rule and the specific section of the rule to which each comment applies, and give the basis for each comment. RSPA will consider all public comments and will make changes to this rule if public comments indicate a change is necessary.

Prior to the issuance of this rule, the Department engaged in preliminary data-gathering from various sources in order to define such terms as "substantial harm," "significant and substantial harm" and "worst case discharge." A summary of these contacts has been placed in the docket.

Background and Purpose

In recent years, several catastrophic oil spills have damaged the marine environment of the United States. These spills had extensive environmental impact, including the loss of fish and wildlife. In response to these catastrophic spills, Congress passed OPA 90 to establish a new national planning and response system. This system includes the development of facility response plans.

On October 18, 1991, the President, in Executive Order (E.O.) 12777, 56 FR 54757 (October 22, 1991) delegated authority to the Secretary of Transportation (the Secretary) to establish procedures, methods, and requirements for equipment to prevent and contain discharges of oil from pipelines.

The Secretary delegated certain OPA 90 prevention authority to the Administrator, Research and Special Programs Administration (RSPA), 57 FR 8581 (March 11, 1992). Specifically, the Secretary granted the RSPA Administrator (Administrator) authority to establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges from, and to contain oil and hazardous substances in, pipelines, motor carriers, and railways." 33 U.S.C. 1321(j)(1)(C). RSPA believes that, with respect to pipelines, these prevention concerns have been addressed and satisfied by the existing regulations in 49 CFR part 195 (e.g., 49 CFR 195.402, 195.416, 195.418, 195.428, and 195.430). In a subsequent rulemaking, the Secretary also delegated to the appropriate modal administrators the authority to require, review, and approve response plans for pipelines, motor carriers, and railroads. Under a delegation from RSPA's Administrator, the Office of the Associate Administrator for Pipeline Safety will implement this regulation. This rule implements OPA 90 requirements as they apply to response planning for oil discharges from pipelines. Response planning for hazardous substance discharges from pipelines will be the subject of a separate rulemaking.

This rule applies to all oil pipelines whether or not such pipelines are exempt from existing Federal pipeline safety regulations or statutes (e.g., 49 CFR part 195 currently exempts pipelines operating at a stress level of 20 percent or less of specified minimum yield strength (SMYS), onshore gathering lines in rural areas, and pipelines operated by gravity).

This rule implements section 4202(a) and section 4202(b) of OPA 90. Section 4202(a) amended section 311(j) of the FWPCA, 33 U.S.C. 1321(j), and sets out in paragraph (j)(5) response planning requirements relating to pipelines. Section 4202(b) of OPA established the implementation schedule for these provisions. These requirements include the preparation and submission of a response plan addressing a worst case discharge or a substantial threat of a worst case discharge of oil or a hazardous substance.

Definitions

The OPA 90 defines "facility" as "any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing,

handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes." 33 U.S.C. 2701(9). In addition, "onshore facility" is defined as "any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land." 33 U.S.C. 2701(24).

As defined in this rule, oil includes but is not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils. This definition includes animal, vegetable, and mineral oils in addition to petroleum oil. In addition, the term "navigable waters," as used in section 1001 of FWPCA and this rule, means the waters of the United States, including the territorial sea. This would include such waters as lakes, rivers, streams, waters which are used for public drinking water supplies, recreation, and waters from which fish or shellfish are taken and sold in interstate or foreign commerce. The term "worst case discharge" is defined as the largest foreseeable discharge in adverse weather conditions. 33 U.S.C. 1321(a)(24)(B).

Recommendations of Oil Spill Response Plan Negotiated Rulemaking Committee

The Coast Guard has been drafting regulations requiring response plans for tank vessels and onshore marine transportation-related facilities. To assist with the development of its rules, the Coast Guard established the Oil Spill Response Plan Negotiated Rulemaking Committee. (57 FR 1139, January 10, 1992).

Many of the recommendations developed through the negotiated rulemaking process are relevant to pipeline transportation and have been included in this rule. These include recommendations on definitions of "adverse weather" and "maximum extent practicable."

A copy of the final Committee report is available in the RSPA public docket (Docket No. PS–130).

Response Plans for Onshore Oil Pipelines

Section 4202(b)(4) of OPA 90 establishes statutory deadlines for the submission and approval of response plans regarding onshore oil pipelines. After February 18, 1993, a pipeline for which a response plan is required to be submitted may not be used to handle, store, or transport oil unless a plan for the pipeline has been submitted to RSPA. After August 18, 1993, a pipeline for which a response plan is required, may not handle, store, or transport oil unless the facility is operating in compliance with the applicable response plan.

For those plans addressing "significant and substantial harm" caused by an oil discharge and thus requiring RSPA approval, RSPA may authorize the operation of an onshore oil pipeline for up to two years after the operator has submitted a response plan. The two year authorization is based on the operator certifying, no later than July 18, 1993, that it has obtained sufficient private personnel and equipment to respond to a worst case discharge or a substantial threat of a worst case discharge. RSPA has set the July 18, 1993 deadline for receipt of certifications to allow adequate processing time prior to the statutory deadline. The terms "respond" and "response" include the containment and removal of oil from water and shorelines, the temporary storage and disposal of recovered oil, and other actions needed to minimize or mitigate damage to the environment.

In the vast majority of cases, the operator's response plan will consist of a core plan covering the entire company's pipeline facilities and separate response zone appendices. Each appendix will address a response zone which is a geographic area along a length of pipeline, containing one or more adjacent line sections, for which the operator must provide response capabilities. The size of the response zone is determined by the operator after considering available spill response capability, resources, and geographic characteristics, including number and location of navigable waters, public drinking water intakes and environmentally sensitive areas in or adjacent to navigable waters. An operator must provide sufficient response equipment and response personnel, either by the operator's organization or through contract, to reach a worst case discharge, or a substantial threat of such a discharge, within the times prescribed in this rule. RSPA requires operators to ensure by their response plans that resources can be deployed in required time frames. RSPA requests comments on the definition for response zone.

RSPA believes that many operators already have in place response plans that satisfy, or substantially satisfy, the intent of OPA 90. RSPA intends that the definition for "response zone," as proposed in this rule, will conform with those planning areas already delineated in the operators' existing plans. RSPA's purpose in asking for appendices applicable to separate response zones is to: (1) Allow the operator to add incrementally to the existing plans the information elements required by OPA 90 and (2) provide the operator the convenience of grouping appropriate line sections for which a common set of planning elements would apply in one response zone.

A major objective of OPA 90 is to utilize effective response planning to reduce the likelihood that an accidental oil discharge will reach navigable waters. OPA 90 emphasized facility location as a key element in determining the environmental threat posed by a facility. Therefore, this interim final rule requires operators to identify, within a response zone, areas of greatest vulnerability to an oil discharge, including navigable waters, public drinking water intakes, and environmentally sensitive areas.

RSPA is requiring operators of onshore pipelines that handle, store or transport oil and could reasonably be expected to cause either "substantial harm" or "significant and substantial harm" to the environment by discharging oil into or on the navigable waters or adjoining shorelines, to prepare and submit response plans for a worst case discharge or the substantial threat of a worst case discharge.

In the event of a worst case discharge, or a substantial threat of such a discharge, operators must then take action to protect these navigable waters, public drinking water intakes, and environmentally sensitive areas in accordance with a response plan. Soon after the discovery of a discharge, an operator must determine whether or not it is a substantial threat of becoming a worst case discharge, based on pipe diameter, operating pressure, flow rate, topography, weather conditions and shut down capability. By activating its response plan, the operator can reduce the likelihood that the discharge will become a "worst case" discharge. In determining the adequacy of equipment and personnel involved in responding to such a discharge in vulnerable areas, an operator must consider the range of geographic factors.

This rule requires operators to compute a "worst case discharge" as a basis for response planning. This hypothetical discharge is the largest volume of oil that could reasonably be expected to be discharged in a single event within a response zone, regardless of spill location in that zone. This rule includes factors the operator must use to determine a worst case discharge for each response zone. This computation is a way of measuring discharge volume to ensure the necessary response capability for any location in the response zone.

Since the computation of worst case discharge is hypothetical, operators must consider the need to respond in vulnerable environmentally sensitive areas within the zone, whether or not the worst case discharge is calculated for that specific location.

RSPA encourages operators to plan for responses to discharges that are less severe than the worst case discharge. Although OPA 90 does not require submission of plans for less than worst case discharge, the Coast Guard (USCG) and the Environmental Protection Agency (EPA) are proposing response planning that specifies three separate and distinct planning levels. RSPA is not requiring response planning for less than a worst case discharge; however, an operator may benefit by planning responses to smaller discharges since they are more likely to occur and would likely require different types and quantities of response equipment.

OPA 90 requires that response plans must: (1) Identify the qualified individual with full authority to implement response actions, including liaison with the Federal On-Scene Coordinator (OSC) and response contractors; (2) identify and ensure, by contract or other approved means, the availability of private personnel and equipment sufficient to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from the facility; (3) describe the training, equipment testing, periodic unannounced drills, and response activities of persons at the facility to ensure the safety of the facility and mitigate the effects of an oil discharge; (4) include procedures for periodically updating or resubmitting the response plan for approval when significant changes occur; and (5) be consistent with the National Contingency Plan (NCP) and any Area Contingency Plan (ACP) for the geographic area in which the facility operates.

The NCP provides general organizational structure and procedures for addressing discharges of oil and hazardous substances and specifies responsibilities among all levels of government, resources available for response, emergency planning requirements and procedures for undertaking removal actions. ACPs are prepared by Area Committees, composed of Federal, state and local personnel, under the direction of the Federal OSC for each area, who is either a Captain of the Port for coastal areas, or an EPA regional administrator for inland areas.

ACPs address the removal of a worst case discharge from a facility operating in or near the area covered by the plan and the mitigation and prevention of such a discharge. Further, they describe areas of environmental importance; responsibilities of operators and agencies in removing, mitigating and preventing discharges; equipment available to an operator to ensure effective removal, mitigation or prevention of a discharge, or a threat of such a discharge; procedures for decisions on use of dispersants; and other operating procedures.

ACPs are in early stages of development. As these plans evolve, OPA 90 requires operators to update their facility plans so as to be consistent with corresponding procedures and activities, including any response equipment limitations identified by the Area Committee.

As noted above, OPA 90 requires that response plans identify and ensure the availability of private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge, including a discharge resulting from fire or explosion. For the purposes of this rule, this requirement applies to each response zone covered by a response plan.

Although the intent of OPA 90 is to create a system in which private parties supply the bulk of any equipment and personnel needed for oil spill response in a given area, in the event of a worst case discharge, the private resources are likely to be supplemented by public response resources. Therefore, this rule requires that the response plan identify private resources, either maintained by the operator or other approved means, and the names and telephone numbers of any government agencies expected to assume pollution control responsibilities. The integration and coordination of public and private response resources will be addressed in the applicable ACP. As prescribed in OPA 90, this rule requires that the response plans be consistent with the ACP and the NCP. An operator must certify that it has reviewed the NCP and each applicable ACP and that its response plan is consistent with the NCP and applicable ACPs.

Statutory Criteria: "Substantial Harm" and "Significant and Substantial Harm"

OPA 90 requires that operators of onshore oil pipelines that may reasonably be expected to cause "substantial harm" or "significant and substantial harm," prepare and submit response plans. It also requires RSPA to review and approve those response plans for any onshore oil pipeline that may reasonably be expected to cause "significant and substantial harm."

OPA 90 does not define "substantial harm" or "significant and substantial harm." The OPA 90 Conference Report (H.R. Conf. Report No. 653, 101st Cong., 2d Sess., 101, reprinted in 1990 U.S. Code Cong. & Admin. News 779) states that the President should develop nationwide criteria to determine those facilities which could reasonably be expected to cause "substantial harm" and are therefore required to submit response plans. (OPA Conference Report, p. 829) The report indicates that the criteria should result in a broad requirement for facility owners and operators to prepare and submit plans, but that only a subset of these plans (i.e., those addressing significant and substantial harm) will actually be reviewed and approved. (OPA Conference Report, p. 829)

Substantial Harm; Significant and Substantial Harm

Section 4202(b)(4) of OPA 90 established statutory deadlines for the submission and approval of response plans regarding onshore oil pipelines. After February 18, 1993, a pipeline for which a response plan is required to be submitted may not be used to handle, store, or transport oil unless a response plan for the pipeline has been submitted to RSPA. After August 18, 1993, a pipeline for which a response plan is required, may not handle, store, or transport oil unless the facility is operating in compliance with the applicable response plan.

RSPA has determined that most onshore oil pipelines, because of their locations, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. This determination is based on the volume of oil transported by pipelines and the fact that they often cross, or are located adjacent to, navigable waters. Thus, most onshore oil pipeline operators will be required to prepare and submit response plans.

Because of varying environmental conditions along the route of a pipeline, RSPA is requiring, in addition to a company-wide core plan, submission of response zone appendices which address geographic variables. Operators will compute a worst case discharge for each response zone. A response zone may include one or more adjacent line sections.

A "line section" is defined in this rule as "a continuous run of pipe that is contained between adjacent pressure pump stations, between a pressure pump station and a terminal or breakout

tank, between a pressure pump station and a block valve, or between adjacent block valves."

Under the rule, the operator must make a determination of whether a response zone contains a line section that may reasonably be expected to cause "significant and substantial harm." The operator must provide this information in the response plan's information summary.

This rule provides exceptions from the requirement to submit plans to certain pipelines operators and establishes criteria developed by RSPA for operators to use in determining which onshore oil pipelines may reasonably be expected to cause "significant and substantial harm" to the environment. If any line section within a response zone is determined to be likely to cause "significant and substantial harm", then, for the purpose of plan review and approval, RSPA will consider all of the operator's pipelines contained in that particular response zone as likely to cause "significant and substantial harm" in the event of a discharge. The operator must be able to deliver response resources adequate for a worse case discharge to any location in that zone.

RSPA will review and approve only those response plans for response zones which include a line section that may reasonably be expected to cause "significant and substantial harm" to the environment. The prohibition on operation of a pipeline without an approved response plan applies only to those pipelines within a response zone containing one or more "significant and substantial harm" line sections.

Exceptions and Requirements for "Small" Pipelines and "Distant" Pipelines

Some pipelines, based on their length and size, are too small to transport a large volume of oil and, consequently, do not have the capacity to discharge a volume of oil large enough to cause substantial harm to the environment. RSPA believes there is no reasonable expectation that these pipelines will cause substantial harm to the environment in the event of a discharge. Therefore, RSPA has created an exception from the response plan submission requirements under this regulation for certain pipelines, unless an OSC recommends otherwise, or they are in proximity to navigable waters, public drinking water intakes or environmentally sensitive areas which are in or adjacent to navigable waters. For the purposes of this rule, "in proximity" means the pipeline is within a distance of navigable waters, public drinking water intakes or environmentally sensitive areas which are in or adjacent to navigable waters such that a discharge could cause substantial harm, even though the pipeline is transporting a "small" volume of oil.

The "small pipeline" exception applies only to a pipeline which is 6⅝ inches or less in outside nominal diameter, is 10 miles or less in length, and meets all of the following conditions:

(1) The pipeline has not experienced a release greater than 1,000 barrels within the previous five years;

(2) The pipeline has not experienced two or more reportable releases, as defined in 49 CFR 195.50, within the previous five years;

(3) A pipeline containing any electric resistance welded pipe, manufactured prior to 1970, does not operate at a maximum operating pressure established under § 195.406 that corresponds to a stress level greater than 50 percent of the specified minimum yield strength of the pipe as defined in this rule; and

(4) The pipeline is not in proximity to public drinking water intakes, navigable waters, or environmentally sensitive areas as defined in this rule.

If the small pipeline meets all of these conditions, it qualifies for the exception, and the operator does not have to submit a response plan. RSPA has determined that even a "small" pipeline can cause "substantial harm" to the environment in the event of a discharge, when it is in proximity to navigable waters, public drinking water intakes or environmentally sensitive areas. Environmentally sensitive areas are those areas of environmental importance which are in or adjacent to navigable waters. These areas may include, wetlands, national parks, wilderness and recreational areas, wildlife refuges marine sanctuaries, and conservation areas. As required by statute, an ACP must describe those areas covered by the ACP that are of environmental importance. The statute also requires that an operator's response plan be consistent with the ACP. Thus, an operator must compare its response plan with the applicable ACP(s) to ensure consistency.

Some other pipelines are located at a distance far enough away from any navigable waters, public drinking water intakes or environmentally sensitive areas that it is not reasonable to expect that a discharge at any point on the pipeline would have an adverse affect within 12 hours after the time of release. RSPA believes it is reasonable to except these "distant" pipelines or line sections of pipelines from the requirement to submit response plans. RSPA encourages an operator to plan a response to such a discharge within 12 hours, so as to prevent it from reaching navigable waters, public drinking water intakes or environmentally sensitive areas.

RSPA believes that a similar distance exception should apply for small pipelines. Therefore, where it is not reasonable to expect that a distance at any point on the small pipeline would have an adverse affect within 4 hours after the time of release, RSPA is not requiring the submission of a response plan.

RSPA was unable to develop specific procedures for determining whether a pipeline would meet this distance exception. Therefore, RSPA is requesting comments on procedures for determining the time it takes for oil to travel from a release site to navigable waters, public drinking water intakes or environmentally sensitive areas and whether the travel time of 4 hours for small pipelines or 12 hours for other pipelines from the time of release to navigable waters is an appropriate criteria for determining "distant" pipelines.

If after February 18, 1993, an operator determines that an exception no longer applies to a previously excepted pipeline, then the operator must prepare and submit a response plan for that pipeline.

While this rule provides exceptions from the requirement to submit response plans for certain pipeline operators, it does not relieve operators from their responsibilities under 49 CFR 195.402 which requires operators to have procedures to provide safety when an emergency condition occurs.

Requirements for All Other Pipelines

Onshore oil pipelines not qualifying for the "small pipeline" or "distant pipeline" exceptions are expected to cause "substantial harm" in the event of a discharge, and the operators of those pipelines must submit response plans to RSPA. Each plan must identify each response zone covered by the plan, and the operator must determine if any line section within a response zone could reasonably be expected to cause "significant and substantial harm" to the environment. If a response zone contains a line section that is expected to cause significant and substantial harm, then the entire response zone must, for response plan approval purposes, be treated as if it is expected to cause significant and substantial harm.

As adopted in the rule, a line section can reasonably be expected to cause "significant and substantial harm" if the pipeline is greater than 6⅝ inches in outside nominal diameter, greater than 10 miles in length, and any of the following conditions exist:

(1) The line section has experienced a release greater than 1,000 barrels within the previous five years;

(2) The line section has experienced at least two reportable releases, as defined in § 195.50, within the previous five years;

(3) A line section containing any electric resistance-welded pipe, manufactured prior to 1970, operates at a maximum operating pressure established under § 195.406 that corresponds to a stress level greater than 50 percent of the specified minimum yield strength of the pipe as defined in this rule;

(4) The line section is located within a five-mile radius of potentially affected public drinking water intakes and could reasonably be expected to reach public drinking water intakes; or

(5) The line section is located within a one-mile radius of potentially affected environmentally sensitive areas, as defined in this rule, and could reasonably be expected to reach these areas.

Potentially affected means that an oil discharge could reach a public drinking water intake or environmentally sensitive area by moving downstream or downhill from the pipeline.

In determining the proximity of a line section to public drinking water intakes and environmentally sensitive areas, until the ACPs are developed, the operator should use its regional knowledge and the existing Local Contingency Plan (LCP), developed by the OSC, for its area of operation.

RSPA requests comments on the criteria it has established to determine which line sections could reasonably be expected to cause significant and substantial harm to the environment. RSPA specifically requests comments on whether it should consider additional facility characteristics and the appropriateness of using the specified distances from navigable waters, public drinking water intakes and environmentally sensitive areas, as criteria.

As a result of new information, changing circumstances, the recommendation of an OSC, and the development of ACPs, RSPA may in the future identify facilities as having the potential to cause either "substantial harm" or "significant and substantial harm".

Requirements for Information Summary

In order to facilitate RSPA's review and approval of response plans, this rule requires all operators to submit an information summary as part of its response plans. The information summary will provide RSPA with the necessary information to determine which response plans require review and approval by RSPA.

The information summary for a core plan must include:

- The name and address of the operator; and
- A listing and description of all response zones, including county(s) and state(s), in which a worst case discharge could cause significant and substantial harm to the environment.

The information summary for a response zone appendix must include:

- The name and telephone number of the qualified individual, available on a 24-hour basis;
- A description of the response zone, including county(s) and state(s), in which a worst case discharge could cause substantial harm to the environment;
- A listing of the line sections in the zone, identified by milepost or survey station number or other operator designation;
- The basis on which the operator determined that the zone meets the criteria for "significant and substantial harm"; and
- The type of oil and volume of the worst case discharge.

Additionally, operators must provide a duplicate copy of the information summary sheet from the core plan with each response zone appendix to assure availability of complete information during the review of the response zone appendices.

Certification

OPA 90 provides the opportunity for an operator, with response zones that contain line sections which can reasonably be expected to cause significant and substantial harm, to seek a waiver from the requirement to have an approved response plan by August 18, 1993. In order to receive a waiver, the operator must submit to RSPA a certification by the qualified individual or appropriate corporate officer that the operator has obtained, through contract or other approved means, the necessary private personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge, or the substantial threat of such a discharge, in each of its response zones.

Given the large number of plans requiring review and approval which RSPA expects to receive in February 1993, RSPA may not complete all the required approvals by August 18, 1993. Therefore, operators may choose to provide a certification at the time of submission of the plan, or up until July 18, 1993. Operators who opt to provide certification are granted an automatic extension for up to two years after plan submission or until the date RSPA approves or disapproves the plan, whichever occurs first. During this period they may operate without response plan approval. Operators who choose this option may provide the certification with the information summary sheet for their core plans.

General Response Plan Requirements

1. Immediate Communications Procedures

Each response plan must provide the name and telephone number of a qualified individual for each response zone and describe a communications network, such as a spill response telephone list, to identify those parties (i.e., Federal, state, and local officials, contractors, and company personnel) who must be immediately contacted in the event of any discharge.

2. Planning for Worst Case Discharge

Each response plan must describe the means by which an operator will respond, to the maximum extent practicable, to its worst case discharge in each response zone. Response to a worst case discharge includes planning for a discharge of the largest foreseeable volume in environmentally sensitive areas.

The definition of "maximum extent practicable," as used in this rule, is based on a recommendation made by the USCG's negotiated rulemaking committee. "Maximum extent practicable" means the limits of available technology and the practical and technical limits on an individual pipeline operator in planning the response resources required to provide the on-water recovery capability and the shoreline protection and cleanup capability to conduct response activities for a worst case discharge from a pipeline in adverse weather.

As used in this rule, a worst case discharge is the largest foreseeable discharge in adverse weather conditions that a pipeline could discharge in a response zone. It is based on a comparison between several factors. First, it could result from the calculation of the rate of flow times the maximum time to detect the spill, plus the rate of flow times the time to shut-down the pipeline, plus the drainage volume after shutdown of the pipeline. The operator must determine and utilize a realistic shut down time based on the pipeline's

operating and design characteristics, including leak detection and shut down capability.

Second, the worst case discharge could be the largest foreseeable discharge for the line section(s) within a response zone, expressed in barrels, based on the maximum historic discharge, if one exists, adjusted for any subsequent corrective or preventive action taken. Subsequent corrective or preventive action may include installation of a Supervisory Control and Data Acquisition (SCADA) based leak detection subsystem, replacement of defective pipe, or the installation of block valves.

Third, if a response zone contains breakout tanks, it could be the total volume of the single largest breakout tank or battery of breakout tanks within a single containment system, adjusted for the capacity of the containment system.

An operator must select the largest of these numbers as the volume for a worst case discharge.

If the worst case discharge is based on one or more breakout tanks, an adjustment or credit can be applied to the capacity of the tank or tanks. This credit in reducing the worst case discharge volume is permissible if the tank is protected by a secondary containment system providing containment of a minimum of 110% of the capacity of the tank. This credit is granted based on the fact that it is unlikely that a facility, with adequate secondary containment, will discharge its entire contents since the secondary containment system will retain a substantial portion of the discharge.

RSPA requests comments on the worst case discharge for pipeline breakout tanks, including the credit adjustment for an adequate secondary containment system. In addition, what other criteria are appropriate for the definition of worst case discharge? Should there be one definition used for pipelines or should there be a separate definition based on each pipeline's unique set of operating conditions and equipment installed? Should there be a tiered approach to the worst case discharge with consideration given to a pipeline having in place a Supervisory and Data Acquisition (SCADA) system with a SCADA-based leak detection subsystem? Should RSPA consider other criteria on the types and locations of valves, the operating parameters of a leak detection systems, and, in the case of breakout tanks, secondary containment?

As stated earlier, the computation of worst case discharge is a method of measuring response capability needed for any location in a response zone. In planning response capabilities and strategies, operators must consider the need to respond in vulnerable areas, where greatest damage could occur, whether or not the worst case discharge could occur in that location.

Several reasons exist for RSPA requiring operators to provide their computation of worst case discharge with the summary of response plan information. In the operator's preparation of plans and in RSPA's review of plans, the operator and RSPA must consider the unique set of variables that determine the potential volume, including line drainage volume after shutdown, which might be discharged at any location along the pipeline. Pipe diameter, operating pressure, flow rate and the topography surrounding the pipeline are among the factors which RSPA believes are most critical in planning and determining the need for personnel and equipment. Operator submission of these data will allow RSPA to effectively assess the operator's leak detection and control measures and other aspects of discharge prevention and mitigation, and thereby improve the response planning process.

Additionally, under this rule, RSPA retains discretion to consider, on a case-by-case basis, the above-mentioned and other risk-based factors in making final determinations of which line sections in response zones could cause significant and substantial harm to the environment, and therefore require review and approval. RSPA believes that the amount of a worst case discharge is a relevant factor for future consideration in determining which zones require review and approval.

3. Consistency with the NCP and ACPs

The rule requires response plans to be consistent with requirements in the NCP and ACPs, as these plans evolve. An operator must certify that it has reviewed the NCP and each applicable ACP and its response plan is consistent with the NCP and ACPs.

Because revisions to the NCP were not completed by the EPA and the USCG prior to August 18, 1992, response plans should be based on the existing NCP published in 40 CFR part 300. ACPs are in various stages of development and, in most cases, will not be completed in time for operators to consult when developing their response plans. Until the applicable ACPs are completed, response plans submitted to meet the February 18, 1993 deadline should be consistent with the LCP or ACP in effect on August 18, 1992.

A response plan submitted after February 18, 1993 must be consistent with the applicable contingency plan (LCP or ACP) in effect when the response plan is submitted. If the NCP or ACP has been revised within six months of the date of submission, the operator's response plan may conform to the prior NCP or ACP.

4. Requirement for Updates

Unless a change in the NCP or an ACP has significant impact on equipment appropriate for response or other geographic-specific considerations, approved response plans will not be required to be resubmitted for approval based solely on a subsequent revision of ACP or an NCP. However, the OPA 90 requires that the operators update their plans "periodically." This rule requires that after a plan is submitted, an operator must perform a periodic update every three years. RSPA believes that significant changes in procedures are not likely to occur once the operator has completed the response planning to comply with the requirements of this regulation. In exercising its enforcement authority for comparable situations (e.g., 49 CFR part 195), OPS has adopted this triennial requirement.

Consistent with the statute, however, an operator must resubmit a response plan in the event of a significant change that affects the response plan's implementation. Significant changes include:

- Change in the type of oil transported,
- Relocation or replacement of a pipeline or a line section in a manner that operationally affects the response plan or the worst case discharge,
- Change in the person(s) qualified to activate the response plan,
- Contracting with new cleanup operators, or
- Any change to information relating to circumstances likely to affect full implementation of the plan.

RSPA may also request a pipeline operator to revise and resubmit a response plan based on the agency's review of the plan, due to a recent discharge from the facility, or at the request of the OSC.

5. Availability of Response Resources

Operators must identify and ensure, by contract or other acceptable means, the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge.

Operators may find it advantageous to place cleanup contractors or spill cooperatives on retainer to ensure their response services are available.

(Operators are reminded that cleanup contractors who may be hired to perform an emergency response function regulated by 49 CFR part 195 may be subject to the drug testing requirements of 49 CFR part 199.)

In order to ensure the availability of private personnel and equipment necessary to remove a worst case discharge, operators need to determine the capabilities of response resources needed for the specific operating environments. Limitations for particular response zones will be identified in the ACPs, including types of equipment permissible for response. Response resources should include sufficient boom, oil recovery devices and storage capacity to recover a worst case discharge. RSPA encourages operators, as part of the planning process, to identify storage location and the make, model and effective daily recovery rate of oil recovery devices.

The USCG, in its Navigation and Vessel Inspection Circular (NVIC) No. 7–92 issued September 15, 1992, provided an appendix with guidelines on what type and amount of equipment are required for a specific discharge volume from a facility based on its capacity. A copy of this NVIC is available in the public docket for this rulemaking. Operators may use this as a reference for determining equipment requirements. Other factors such as the facility's location, the environmental sensitivity of the area, the facility's proximity to public drinking water intakes, and the type of oil transported by the facility (i.e., persistent or non-persistent) need to be considered by the operator in determining the type and amount of required response equipment.

Tiering Response Resources for On Water Recovery

RSPA has structured the requirements for responding, to the maximum extent practicable, to a worst case discharge in a tier system. RSPA has specified the times by which certain response equipment must be present at discharge sites. This rule establishes three tiers to allow the operator to identify response resources from outside a facility's specific geographic location to satisfy its response requirements.

Some fraction of the personnel and equipment necessary to respond to a worst case discharge must be available for each tier standard. For instance, it might be appropriate for the resources to arrive in the first tier to be prepared to address immediate requirements to keep the maximum amount of oil from getting into the water. The second tier might address containment equipment to prevent the discharge from disbursing. The third tier might concentrate on cleanup and storage of the discharge. The intent is to provide the operator latitude in staging resources most efficiently.

The tier approach recognizes two levels of concern based on the areas traversed by pipelines. "High volume areas" means those areas where an oil pipeline having a nominal outside diameter of 20 inches or more crosses a major river or other navigable waters, which, because of the velocity of the river flow and vessel traffic on the river, would require a more rapid response in case of a worst case discharge or substantial threat of such a discharge. "All other areas" include smaller rivers, canals, inland and nearshore areas. The list of "high volume" areas, provided in Appendix B, may not be complete for the purposes of this regulation. Operators should determine, based on their regional knowledge, if there are other areas that contain rivers or other navigable waters which, because of their velocity or traffic, would, in case of discharge, require a more rapid response.

On-scene arrival times in hours for each tier are as follows:

	Tier 1	Tier 2	Tier 3
High volume areas	6	30	54
All other areas	12	36	60

Tier 1 response activities must begin after discovery of a worst case discharge or substantial threat of such a discharge and be completed within the hours prescribed. Response activities must be operational by the tier 3 time. As required by OPA 90, the response plan must identify and ensure the availability of personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge. RSPA believes this should include consideration of mobilization and travel time. In calculating the travel time for personnel and equipment, an on-water speed of 10 knots and a land speed of 35 miles per hour is assumed unless the operator can demonstrate otherwise. RSPA is requesting comments on this approach to tiering response resources.

Recognizing the diversity of situations to be addressed, RSPA has not specified the equipment and personnel to be provided. The operator needs to determine the amount of response resources that need to be mobilized and delivered to respond to a worst case discharge, consistent with the times established in this rule. USCG's NVIC 7–92 lists the response resource mobilization factors.

These factors reflect the organization of on-water oil recovery capacity to be mobilized and delivered within the response times for each tier in order to maximize the oil recovery potential.

The operator is responsible for ensuring that sufficient numbers of trained personnel, boats, aerial spotting aircraft, sorbent materials, boom anchoring materials and other supplies are available to sustain response operations. The operator needs to evaluate the availability of adequate temporary storage capacity to sustain effective daily recovery rates. Based on USCG guidance in NVIC 7–92, temporary storage should be equivalent to twice the daily oil recovery rate due to inefficiency of oil recovery devices which collect approximately equal amounts of oil and water. Since the water is contaminated, storage must be provided for the contaminated water. This capacity may be reduced if the operator can demonstrate a better efficiency rate. The operator needs to also arrange for disposal of recovered oil products, consistent with specifications of the ACP.

6. Training, Equipment Testing, Drills and Response Actions

Each response plan must address training, equipment testing, periodic unannounced drills, and the response actions of operator personnel. This rule establishes levels of training. The amount of training required depends on the complexity of functions performed. Additionally, Occupational Safety and Health Administration (OSHA) rules require that all personnel who are expected to respond to, and control, hazardous discharges will undergo formal worker health and safety training before starting work. These rules also apply to personnel, including volunteers and casual laborers employed during a response, that are subject to those standards pursuant to 40 CFR part 311. Personnel are required to receive refresher training at regular intervals. OSHA considers petroleum products and gases to be hazardous materials.

The response plan must describe equipment testing and the type, schedule, and procedure for drills. It must describe response actions under the plan that ensure the safety of facilities and mitigate or prevent the worst case discharge or the substantial threat of such a discharge. Appropriate types of drills and frequencies need to be selected by the operator. Equipment and procedures used in drills must be consistent with requirements of the ACP.

When the operator is deciding the equipment to test and the drill schedule, the operator should consider drills or

exercises of: (1) Manned pipeline facilities, emergency procedures, and qualified individual notification; (2) emergency actions by assigned operating or maintenance personnel and notification of the qualified individual on pipeline facilities which are normally unmanned; (3) spill management team tabletop exercises; (4) oil spill removal organization field equipment deployment; and (5) exercises of the entire response zone organization.

Operators need to evaluate drills and correct any problems identified. OPA 90 requires operators to participate in any unannounced drills conducted by the appropriate OSC, including the activation of the appropriate oil spill removal organization and spill management team identified in the response plan.

OPA 90 requires operators to describe response actions of assigned personnel in the response plan. In Appendix A, Guidelines for the Preparation of Response Plans, RSPA has provided information to assist operators. Operators are encouraged to consider the information in the guidelines. RSPA considers the following factors priorities in response planning: containment and cleanup activities; assessment of proximity to environmentally sensitive areas; assessment of potential impact of worst case discharge; precautions for worker health and safety; and assessment of the threat to public health and safety from the worst case discharge.

Submission of State Plans

RSPA is aware that many operators are developing response plans that comply with state law or regulation requiring preparation of an oil spill response plan which provides equivalent or greater response capabilities than required in this rule. RSPA believes that the response planning process an operator completes to comply with state requirements will serve to ensure that operators plan for responding to the maximum extent practicable to a worst case discharge. A response plan meeting state law requirements and submitted to RSPA must name the qualified individual and ensure, through contract or other approved means, the necessary private personnel and equipment to respond to a worse case discharge or a substantial threat of such a discharge.

If, to satisfy the requirements of this rule, an operator submits a plan developed to comply with state requirements, an operator must provide an information summary sheet identifying critical information as specified in this rule, as required in 49 CFR 194.113. After review of those plans, RSPA may determine that additional amendments are necessary to ensure adequate response resources for worst case discharge.

Multi-Agency Jurisdiction

Most oil storage facilities are composed of both transportation-related and non-transportation-related facilities as defined in the 1971 Memorandum of Understanding between the Environmental Protection Agency and Department of Transportation (36 FR 24080; December 18, 1971). This combination of transportation-related and non-transportation-related facilities will be subject to multi-agency jurisdiction. The USCG, EPA, and RSPA are discussing how a response plan from such a facility will be reviewed and approved.

Summary of Public Comments Requested

RSPA requests public comment on a variety of issues. As a convenience to the reader, those issues are summarized below:

(1) The definition of "response zone",

(2) The criteria for "distant" pipelines and procedures for determining the time it takes for oil to travel from a release site to navigable waters, public drinking water intakes or environmentally sensitive areas,

(3) The selection criteria used in determining which line sections in response zones could reasonably be expected to cause "significant and substantial harm" to the environment,

(4) The selection criteria and additional facility characteristics, including a facility's location in relation to navigable waters, public drinking water intakes and proximity to environmentally sensitive areas,

(5) The definition of worst case discharge for pipeline breakout tanks,

(6) Other criteria appropriate for the definition of worst case discharge,

(7) The tiered approach to the worst case discharge, with consideration given to a pipeline having in place a Supervisory and Data Acquisition (SCADA) system with a SCADA-based leak detection subsystem,

(8) Other criteria on the types and locations of valves, the operating parameters of leak detection systems, and, in the case of break out tanks, secondary containment, and

(9) The tiered approach to determine the necessary response resources.

Regulatory Analyses and Notices

A. Impact Assessment

This rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and is not, therefore, a major rule, but it is considered a significant rule under the section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because of significant public and congressional interest. This rule does not require a Regulatory Impact Analysis. A regulatory evaluation is under development. It will include an analysis of the economic consequences of the regulation and an analysis of its anticipated benefits and impacts.

RSPA has tentatively determined the incremental unit costs of the rule, above and beyond existing response planning costs. They are as follows:

RESPONSE PLAN INCREMENTAL UNIT COST ESTIMATES FOR PIPELINE COMPANIES

Response plan elements	Small	Medium	Large
General information	$70	$110	$190
Emergency response procedures	749	2,639	5,667
Spill detection and mitigation procedures	327	1,447	2,814
Training and drills	18,033	24,754	39,757
Response zone appendices (per zone)	4,291	12,948	19,794
Response capability	10,000	30,000	100,000
Total first-year cost	33,470	71,898	168,222
Plan review and update	399	1,074	1,449
Training and drills	18,033	24,754	39,757

RESPONSE PLAN INCREMENTAL UNIT COST ESTIMATES FOR PIPELINE COMPANIES—Continued

Response plan elements	Small	Medium	Large
Response capability	10,000	30,000	100,000
Subsequent-year cost	28,432	55,828	141,206

Note: Small company model: operates about 275 miles of pipeline and has 7 pipeline facilities; Medium company model: operates about 800 miles of pipeline and has 20 pipeline facilities; and Large company model: operates about 5,300 miles of pipeline and has 128 pipeline facilities.

Comments are requested on these costs so that RSPA may finalize the regulatory evaluation. RSPA specifically requests comments on the cost that operators will incur for retainers associated with response capability.

B. Regulatory Flexibility Act

A majority of the entities composing the regulated pipeline industry are large corporations with both sales and revenue in the million of dollars. For the majority of small businesses that are subject to this interim final rule, the regulatory evaluation under development indicates they should be able to absorb the estimated regulatory compliance costs without experiencing significant adverse economic effects.

Thus, based on information available concerning the size and nature of entities likely affected by this rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

However, RSPA specifically requests comments on the impact of this rule on small business concerns and this certification is subject to modification as a result of a review of comments received in response to this regulation. The rule will have no direct impact on small units of government.

C. Federalism Assessment

RSPA has analyzed this regulation in accordance with Executive Order 12612 and has determined that it does not have sufficient Federalism implications to warrant preparing a Federalism Assessment. The regulations have no substantial effects on the states, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. Nothing in this rule shall be construed as preempting any State or a political subdivision of a State from imposing any additional requirement or liability with respect to the discharge of oil into any waters within the State, or with respect to any removal activities related to such a discharge. (33 U.S.C. 2718 Supp. II 1990).

D. Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. OMB NO. New;

Administration: Research and Special Programs Administration. **Title:** Response Plans for Onshore Pipelines;

Need for Information: The Oil Pollution Act of 1990 requires an operator of a pipeline transporting oil to submit a plan for responding to a worst case discharge or the threat of such a discharge; *Proposed Use of Information:* RSPA will use this information to review and approve certain response plans; *Frequency:* one time submission with plan updates every three years;

Burden Estimate: 26,400 hours; *Respondents:* 300 oil pipeline operators; *Forms:* none; *Average Burden Hours per Respondent:* 11.5 hours.

For further information contact: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590 or Edward Clarke or Ron Minsk, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503.

E. National Environmental Policy Act

RSPA has reviewed these regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of RSPA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. RSPA has determined that the rules are not a major Federal action for which an Environmental Impact Statement must be prepared.

List of Subjects in 49 CFR Part 194

Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Administrator, RSPA, adds part 194 to chapter I of title 49 of the Code of Federal Regulations as follows:

Part 194—RESPONSE PLANS FOR ONSHORE OIL PIPELINES

Subpart A—General

Sec.
194.1 Purpose.
194.3 Applicability.
194.5 Definitions.
194.7 Operating restrictions and interim operating authorization.

Subpart B—Response Plans

194.101 Operators required to submit plans.
194.103 Significant and substantial harm; operator's statement.
194.105 Worst case discharge.
194.107 General response plan requirements.
194.109 Submission of state response plans.
194.111 Response plan retention.
194.113 Information summary.
194.115 Response resources.
194.117 Training.
194.119 Submission and approval procedures.
194.121 Response plan review and update procedures.

Appendix A to Part 194—Guidelines for the Preparation of Response Plans

Appendix B to Part 194—High Volume Areas

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5) and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

Subpart A—General

§ 194.1 Purpose.

This part contains requirements for oil spill response plans to reduce the environmental impact of oil discharged from onshore oil pipelines.

§ 194.3 Applicability.

This part applies to an operator of an onshore oil pipeline that, because of its location, could reasonably be expected to cause substantial harm, or significant and substantial harm to the environment by discharging oil into or on any navigable waters of the United States or adjoining shorelines.

§ 194.5 Definitions.

Adverse weather means the weather conditions considered by the operator in identifying the response systems and equipment to be deployed in accordance with a response plan, including wave height, ice, temperature, visibility, and currents within the inland or Coastal Response Zone (defined in the National

Contingency Plan (40 CFR part 300)) in which those systems or equipment are intended to function.

Barrel means 42 United States gallons at 60 degrees Fahrenheit.

Breakout tank means a tank used to:

(1) relieve surges in an oil pipeline system or

(2) receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline.

Coastal zone means all United States waters subject to the tide, United States waters of the Great Lakes and Lake Champlain, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters of the high seas subject to the National Contingency Plan, and the land surface or land substrate, ground waters, and ambient air proximal to those waters. (The term "coastal zone" delineates an area of federal responsibility for response action. Precise boundaries are determined by agreements between the Environmental Protection Agency (EPA) and the U.S. Coast Guard (USCG), and are identified in Federal Regional Contingency Plans and Area Contingency Plans.)

Contract or other approved means is:

(1) A written contract or other legally binding agreement between the operator and a response contractor or other spill response organization identifying and ensuring the availability of the specified personnel and equipment within stipulated response times for a specified geographic area;

(2) Certification that specified equipment is owned or operated by the pipeline operator, and operator personnel and equipment are available within stipulated response times for a specified geographic area; or

(3) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment to be available within stipulated response times for a specified geographic area.

Environmentally sensitive area means an area of environmental importance which is in or adjacent to navigable waters.

High volume area means an area which an oil pipeline having a nominal outside diameter of 20 inches or more crosses a major river or other navigable waters, which, because of the velocity of the river flow and vessel traffic on the river, would require a more rapid response in case of a worst case discharge or substantial threat of such a discharge. Appendix B to this part contains a list of some of the high volume areas in the United States.

Inland area means the area shoreward of the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) defined in 33 CFR 80.740–80.850. The inland area does not include the Great Lakes.

Inland zone means the environment inland of the coastal zone excluding the Great Lakes, Lake Champlain, and specified ports and harbors on inland rivers. (The term inland zone delineates an area of federal responsibilities for response actions. Precise boundaries are determined by agreements between the EPA and the USCG and are identified in Federal Regional Contingency Plans.)

Line section means a continuous run of pipe that is contained between adjacent pressure pump stations, between a pressure pump station and a terminal or breakout tank, between a pressure pump station and a block valve, or between adjacent block valves.

Major river means a river that, because of its velocity and vessel traffic, would require a more rapid response in case of a worst case discharge. For a list of rivers see "*Rolling Rivers, An Encyclopedia of America's Rivers,*" Richard A. Bartlett, Editor, McGraw-Hill Book Company, 1984.

Maximum extent practicable means the limits of available technology and the practical and technical limits on a pipeline operator in planning the response resources required to provide the on-water recovery capability and the shoreline protection and cleanup capability to conduct response activities for a worst case discharge from a pipeline in adverse weather.

Navigable waters means the waters of the United States, including the territorial sea and such waters as lakes, rivers, streams; waters which are used for recreation; and waters from which fish or shellfish are taken and sold in interstate or foreign commerce.

Oil means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, vegetable oil, animal oil, sludge, oil refuse, oil mixed with wastes other than dredged spoil.

Oil spill removal organization means an entity that provides response resources.

On-Scene Coordinator (OSC) means the federal official designated by the Administrator of the EPA or by the Commandant of the USCG to coordinate and direct federal response under subpart D of the National Contingency Plan (40 CFR part 300).

Onshore oil pipeline facilities means new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of oil located in, on, or under, any land within the United States other than submerged land.

Operator means a person who owns or operates onshore oil pipeline facilities.

Pipeline means all parts of an onshore pipeline facility through which oil moves including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

Qualified individual means an English-speaking representative of an operator, located in the United States, available on a 24-hour basis, with full authority to: activate and contract with required oil spill removal organization(s); activate personnel and equipment maintained by the operator; act as liaison with the OSC; and obligate any funds required to carry out all required or directed oil response activities.

Response activities means the containment and removal of oil from the water and shorelines, the temporary storage and disposal of recovered oil, or the taking of other actions as necessary to minimize or mitigate damage to the environment.

Response area means the inland zone or coastal zone, as defined in the National Contingency Plan (40 CFR part 300), in which the response activity is occurring.

Response plan means the operator's core plan and the response zone appendices for responding, to the maximum extent practicable, to a worse case discharge of oil, or the substantial threat of such a discharge.

Response resources means the personnel, equipment, supplies, and other resources necessary to conduct response activities.

Response zone means a geographic area either along a length of pipeline or including multiple pipelines, containing one or more adjacent line sections, for which the operator must plan for the deployment of, and provide, spill response capabilities. The size of the zone is determined by the operator after considering available capability, resources, and geographic characteristics.

Specified minimum yield strength means the minimum yield strength, expressed in pounds per square inch, prescribed by the specification under which the material is purchased from the manufacturer.

Stress level means the level of tangential or hoop stress, usually expressed as a percentage of specified minimum yield strength.

Worst case discharge means the largest foreseeable discharge of oil,

including a discharge from fire or explosion, in adverse weather conditions. This volume will be determined by each pipeline operator for each response zone and is calculated according to § 194.105.

§ 194.7 Operating restrictions and interim operating authorization.

(a) After February 18, 1993, an operator of a pipeline for which a response plan is required under § 194.101, may not handle, store, or transport oil in that pipeline unless the operator has submitted a response plan meeting the requirements of this part.

(b) After August 18, 1993, an operator must operate its onshore pipeline facilities in accordance with the applicable response plan.

(c) After August 18, 1993, the operator of a pipeline line section described in § 194.103(c), may continue to operate the pipeline for two years after the date of submission of a response plan, pending approval or disapproval of that plan, only if the operator has submitted the certification required by § 194.119(e).

Subpart B—Response Plans

§ 194.101 Operators required to submit plans.

(a) Except as provided in paragraph (b) of this section, or unless RSPA grants a request from the OSC to require an operator of the following pipelines to submit a response plan or the pipeline is covered by § 194.103, each operator of an onshore pipeline facility shall prepare a response plan and submit the response plan to RSPA, as provided in § 194.119.

(b) *Exception*. An operator need not submit a response plan for:

(1) A pipeline that is 6⅝ inches or less in outside nominal diameter, is 10 miles or less in length, and all of the following conditions apply to the pipeline:

(i) The pipeline has not experienced a release greater than 1,000 barrels within the previous five years,

(ii) The pipeline has not experienced at least two reportable releases, as defined in § 195.50, within the previous five years,

(iii) A pipeline containing any electric resistance welded pipe, manufactured prior to 1970, does not operate at a maximum operating pressure established under § 195.406 that corresponds to a stress level greater than 50 percent of the specified minimum yield strength of the pipe, and

(iv) The pipeline is not in proximity to navigable waters, public drinking water intakes, or environmentally sensitive areas.

(2)(i) A line section that is greater than 6⅝ inches in outside nominal diameter and is greater than 10 miles in length, where the operator determines that it is unlikely that the worst case discharge from any point on the line section would adversely affect, within 12 hours after the initiation of the discharge, any navigable waters, public drinking water intake, or environmentally sensitive areas.

(ii) A line section that is 6⅝ inches or less in outside nominal diameter and is 10 miles or less in length, where the operator determines that it is unlikely that the worst case discharge from any point on the line section would adversely affect, within 4 hours after the initiation of the discharge, any navigable waters, public drinking water intake, or environmentally sensitive areas.

§ 194.103 Significant and substantial harm; operator's statement.

(a) Each operator shall submit a statement with its response plan, as required by §§ 194.107 and 194.113, identifying which line sections in a response zone can be expected to cause significant and substantial harm to the environment in the event of a discharge of oil into or on the navigable waters or adjoining shorelines.

(b) If an operator expects a line section in a response zone to cause significant and substantial harm, then the entire response zone must, for the purpose of response plan review and approval, be treated as if it is expected to cause significant and substantial harm. However, an operator will not have to submit separate plans for each line section.

(c) A line section can be expected to cause significant and substantial harm to the environment in the event of a discharge of oil into or on the navigable waters or adjoining shorelines if; the pipeline is greater than 6⅝ inches in outside nominal diameter, greater than 10 miles in length, and the line section—

(1) Has experienced a release greater than 1,000 barrels within the previous five years,

(2) Has experienced two or more reportable releases, as defined in § 195.50, within the previous five years,

(3) Containing any electric resistance welded pipe, manufactured prior to 1970, operates at a maximum operating pressure established under § 195.406 that corresponds to a stress level greater than 50 percent of the specified minimum yield strength of the pipe,

(4) Is located within a five-mile radius of potentially affected public drinking water intakes and could reasonably be expected to reach public drinking water intakes, or

(5) Is located within a one-mile radius of potentially affected environmentally sensitive areas, and could reasonably be expected to reach these areas.

§ 194.105 Worst case discharge.

(a) Each operator shall determine the worst case discharge for each of its response zones and provide the methodology, including calculations, used to arrive at the volume.

(b) The worst case discharge is the largest volume, in barrels, of the following:

(1) The pipeline's maximum release time in hours, plus the maximum shutdown response time in hours (based on historic discharge data or in the absence of such historic data, the operator's best estimate), multiplied by the maximum flow rate expressed in barrels per hour (based on the maximum daily capacity of the pipeline), plus the largest line drainage volume after shutdown of the line section(s) in the response zone expressed in barrels; or

(2) The largest foreseeable discharge for the line section(s) within a response zone, expressed in barrels, based on the maximum historic discharge, if one exists, adjusted for any subsequent corrective or preventive action taken; or

(3) If the response zone contains one or more breakout tanks, the capacity of the single largest tank or battery of tanks within a single secondary containment system, adjusted for the capacity or size of the secondary containment system, expressed in barrels.

§ 194.107 General response plan requirements.

(a) Each response plan must plan for resources for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge.

(b) Each response plan must be written in English and also, if applicable, in a language that is understood by the personnel responsible for carrying out the plan.

(c) Each response plan must be consistent with the National Contingency Plan (NCP) (40 CFR part 300) and each applicable Area Contingency Plan (ACP). An operator must certify that it has reviewed the NCP and each applicable ACP and that its response plan is consistent with the existing NCP and each existing applicable ACP.

(d) Each response plan must include:

(1) A core plan consisting of—

(i) An information summary as required in § 194.113,

(ii) Immediate notification procedures,

(iii) Spill detection and mitigation procedures,

(iv) The name, address, and telephone number of the oil spill response organization, if appropriate,

(v) Response activities and response resources,

(vi) Names and telephone numbers of Federal, state and local agencies which the operator expects to have pollution control responsibilities or support,

(vii) Training procedures,

(viii) Equipment testing,

(ix) Drill types, schedules, and procedures, and

(x) Plan review and update procedures; and

(2) An appendix for each response zone. Each response zone appendix must include the information required in paragraph (d)(1) (i)–(ix) of this section that is specific to the response zone and the worst case discharge calculations.

§ 194.109 Submission of state response plans.

(a) In lieu of submitting a response plan required by § 194.103, an operator may submit a response plan that complies with a state law or regulation, if the state law or regulation requires a plan that provides equivalent or greater spill protection than a plan required under this part.

(b) A plan submitted under this section must

(1) Have an information summary required by § 194.113;

(2) Name the qualified individual; and

(3) Ensure through contract or other approved means the necessary private personnel and equipment to respond to a worst case discharge or a substantial threat of such a discharge.

§ 194.111 Response plan retention.

(a) Each operator shall maintain relevant portions of its response plan at the following locations:

(1) The response plan at the operator's headquarters;

(2) The core plan and relevant response zone appendices for each line section whose pressure may be affected by the operation of a particular pump station, at that pump station; and

(3) The core plan and relevant response zone appendices at any other locations where response activities may be conducted.

(b) Each operator shall provide a copy of its response plan to each qualified individual.

§ 194.113 Information summary.

(a) The information summary for the core plan, required by § 194.107, must include:

(1) The name and address of the operator; and

(2) For each response zone which contains one or more line sections that meet the criteria for determining significant and substantial harm as described in § 194.103, a listing and description of the response zones, including county(s) and state(s).

(b) The information summary for the response zone appendix, required in § 194.107, must include:

(1) The information summary for the core plan;

(2) The name and telephone number of the qualified individual available on a 24-hour basis;

(3) The description of the response zone, including county(s) and state(s), for those zones in which a worst case discharge could cause substantial harm to the environment;

(4) A list of line sections for each pipeline contained in the response zone, identified by milepost or survey station number, or other operator designation;

(5) The basis for the operator's determination of significant and substantial harm; and

(6) The type of oil and volume of the worst case discharge.

§ 194.115 Response resources.

(a) Each operator shall identify and ensure, by contract or other approved means, the resources necessary to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent a substantial threat of a worst case discharge.

(b) An operator shall identify in the response plan the response resources which are available to respond within the time specified, after discovery of a worst case discharge, or to mitigate the substantial threat of such a discharge, as follows:

	Tier 1	Tier 2	Tier 3
High volume area	6 hrs	30 hrs ...	54 hrs.
All other areas	12 hrs ...	36 hrs ...	60 hrs.

§ 194.117 Training.

(a) Each operator shall conduct training to ensure that:

(1) All personnel know—

(i) Their responsibilities under the response plan,

(ii) The name and address of, and the procedure for contacting, the operator on a 24-hour basis, and

(iii) The name of, and procedures for contacting, the qualified individual on a 24-hour basis;

(2) Reporting personnel know—

(i) The content of the information summary of the response plan,

(ii) The toll-free telephone number of the National Response Center, and

(iii) The notification process; and

(3) Personnel engaged in response activities know—

(i) The characteristics and hazards of the oil discharged,

(ii) The conditions that are likely to worsen emergencies, including the consequences of facility malfunctions or failures, and the appropriate corrective actions,

(iii) The steps necessary to control any accidental discharge of oil and to minimize the potential for fire, explosion, toxicity, or environmental damage, and

(iv) The proper firefighting procedures and use of equipment, fire suits, and breathing apparatus.

(b) Each operator shall maintain a training record for each individual that has been trained as required by this section. These records must be maintained in the following manner as long as the individual is assigned duties under the response plan:

(1) Records for operator personnel must be maintained at the operator's headquarters; and

(2) Records for personnel engaged in response, other than operator personnel, shall be maintained as determined by the operator.

(c) Nothing in this section relieves an operator from the responsibility to ensure that all response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120, including volunteers or casual laborers employed during a response who are subject to those standards pursuant to 40 CFR part 311.

§ 194.119 Submission and approval procedures.

(a) Each operator shall submit two copies of the response plan required by this part. Copies of the response plan shall be submitted to: Pipeline Response Plans Officer, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(b) If RSPA determines that a response plan requiring approval does not meet all the requirements of this part, RSPA will notify the operator of any alleged deficiencies, and to provide the operator an opportunity to respond, including the opportunity for an informal conference, on any proposed plan revisions and an opportunity to correct any deficiencies.

(c) An operator who disagrees with the RSPA determination that a plan contains alleged deficiencies may petition RSPA for reconsideration within 30 days from the date of receipt

of RSPA's notice. After considering all relevant material presented in writing or at an informal conference, RSPA will notify the operator of its final decision. The operator must comply with the final decision within 30 days of issuance unless RSPA allows additional time.

(d) For those response zones of pipelines, described in § 194.103(c), that could reasonably be expected to cause significant and substantial harm, RSPA will approve the response plan if RSPA determines that the response plan meets all requirements of this part, and the OSC raises no objection.

(e) If RSPA has not approved a response plan for a pipeline described in § 194.103(c), the operator may submit a certification to RSPA by July 18, 1993, that the operator has obtained, through contract or other approved means, the necessary private personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge. The certificate must be signed by the qualified individual or an appropriate corporate officer.

(f) If RSPA receives a request from an OSC to review a response plan, RSPA may require an operator to provide a copy of the response plan to the OSC. If an OSC recommends that an operator not previously required to submit a plan to RSPA, should submit one, RSPA will require the operator to prepare and submit a response plan and send a copy to the OSC.

§ 194.121 Response plan review and update procedures.

(a) Each operator shall review its response plan at least every three years from the date of submission and modify the plan to address new or different operating conditions or information included in the plan.

(b) If a new or different operating condition or information would substantially affect the implementation of a response plan, the operator must immediately modify its response plan to address such a change and, within 30 days of making such a change, submit the change to RSPA. Examples of changes in operating conditions that would cause a significant change to an operator's response plan are:

(1) An extension of the existing pipeline or construction of a new pipeline in a response zone not covered by the previously approved plan;

(2) Relocation or replacement of the pipeline in a way that substantially affects the information included in the response plan, such as a change to the worst case discharge volume;

(3) The type of oil transported, if the type affects the required response resources, such as a change from crude oil to gasoline;

(4) The name of the oil spill removal organization;

(5) Emergency response procedures;

(6) The qualified individual;

(7) A change in the NCP or an ACP that has significant impact on the equipment appropriate for response activities; and

(8) Any other information relating to circumstances that may affect full implementation of the plan.

(c) If RSPA determines that a change to a response plan does not meet the requirements of this part, RSPA will notify the operator of any alleged deficiencies, and provide the operator an opportunity to respond, including an opportunity for an informal conference, to any proposed plan revisions and an opportunity to correct any deficiencies.

(d) An operator who disagrees with a determination that proposed revisions to a plan are deficient may petition RSPA for reconsideration, within 30 days from the date of receipt of RSPA's notice. After considering all relevant material presented in writing or at the conference, RSPA will notify the operator of its final decision. The operator must comply with the final decision within 30 days of issuance unless RSPA allows additional time.

Appendix A to Part 194—Guidelines for the Preparation of Response Plans

This appendix provides a recommended form for the preparation and submission of response plans required by 49 CFR part 194. Operators may use other forms provided the form chosen provides the information required by 49 CFR part 194.

Response Plan: Section 1. Information Summary

Section 1 would include the following:

(a) For the core plan:

(1) The name and address of the operator; and

(2) For each response zone which contains one or more line sections that meet the criteria for determining significant and substantial harm as described in § 194.103, a listing and description of the response zones, including county(s) and state(s).

(b) For each response zone appendix:

(1) The information summary for the core plan;

(2) The name and telephone number of the qualified individual, available on a 24-hour basis;

(3) A description of the response zone, including county(s) and state(s) in which a worst case discharge could cause substantial harm to the environment;

(4) A list of line sections contained in the response zone, identified by milepost or survey station number or other operator designation.

(5) The basis for the operator's determination of significant and substantial harm; and

(6) The type of oil and volume of the worst case discharge.

(c) The certification that the operator has obtained, through contract or other approved means, the necessary private personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

Response Plan: Section 2. Notification Procedures

Section 2 would include the following:

(a) Notification requirements that apply in each area of operation of pipelines covered by the plan, including applicable State or local requirements;

(b) A checklist of notifications the operator or qualified individual is required to make under the response plan, listed in the order of priority;

(c) Names of persons (individuals or organizations) to be notified of a discharge, indicating whether notification is to be performed by operating personnel or other personnel;

(d) Procedures for notifying qualified individuals;

(e) The primary and secondary communication methods by which notifications can be made; and

(f) The information to be provided in the initial and each follow-up notification, including the following:

(1) Name of pipeline;

(2) Time of discharge;

(3) Location of discharge;

(4) Name of oil involved;

(5) Reason for discharge (e.g., material failure, excavation damage, corrosion);

(6) Estimated volume of oil discharged;

(7) Weather conditions on scene; and

(8) Actions taken or planned by persons on scene.

Response Plan: Section 3. Spill Detection and On-Scene Spill Mitigation Procedures

Section 3 would include the following:

(a) Methods of initial discharge detection;

(b) Procedures, listed in the order of priority, that personnel are required to follow in responding to a pipeline emergency to mitigate or prevent any discharge from the pipeline;

(c) A list of equipment that may be needed in response activities on land and navigable waters, including—

(1) Transfer hoses and connection equipment;

(2) Portable pumps and ancillary equipment; and

(3) Facilities available to transport and receive oil from a leaking pipeline;

(d) Identification of the availability, location, and contact telephone numbers to obtain equipment for response activities on a 24-hour basis; and

(e) Identification of personnel and their location, telephone numbers, and responsibilities for use of equipment in response activities on a 24-hour basis.

Response Plan: Section 4. Response Activities

Section 4 would include the following:

(a) Responsibilities of, and actions to be taken by, operating personnel to initiate and supervise response actions pending the arrival of the qualified individual or other

response resources identified in the response plan;

(b) The qualified individual's responsibilities and authority, including notification of the response resources identified in the plan;

(c) Procedures for coordinating the actions of the operator or qualified individual with the action of the OSC responsible for monitoring or directing those actions;

(d) Oil spill response organizations available, through contract or other approved means, to respond to a worst case discharge to the maximum extent practicable; and

(e) For each organization identified under paragraph (d) of this section, a listing of:

(1) Equipment and supplies available; and

(2) Trained personnel necessary to continue operation of the equipment and staff the oil spill removal organization for the first 7 days of the response.

Response Plan: Section 5. List of Contacts

Section 5 would include the names and addresses of the following individuals or organizations, with telephone numbers at which they can be contacted on a 24-hour basis:

(a) A list of persons the plan requires the operator to contact;

(b) Qualified individuals for the operator's areas of operation;

(c) Applicable insurance representatives or surveyors for the operator's areas of operation; and

(d) Persons or organizations to notify for activation of response resources.

Response plan: Section 6. Training Procedures

Section 6 would include a description of the training procedures and programs of the operator.

Response plan: Section 7. Drill Procedures

Section 7 would include a description of the drill procedures and programs the operator uses to assess whether its response plan will function as planned. It would include:

(a) Announced and unannounced drills;

(b) The types of drills and their frequencies. For example, drills could be described as follows:

(1) Manned pipeline emergency procedures and qualified individual notification drills conducted quarterly.

(2) Drills involving emergency actions by assigned operating or maintenance personnel and notification of the qualified individual on pipeline facilities which are normally unmanned, conducted quarterly.

(3) Shore-based spill management team tabletop drills conducted yearly.

(4) Oil spill removal organization field equipment deployment drills conducted yearly.

(5) A drill that exercises the entire response plan for each response zone, would be conducted at least once every 3 years.

Response plan: Section 8. Response Plan Review and Update Procedures

Section 8 would include the following:

(a) Procedures to meet § 194.121; and

(b) Procedures to review the plan after a worst case discharge and to evaluate and record the plan's effectiveness.

Response plan: Section 9. Response Zone Appendices.

Each response zone appendix would provide the following information:

(a) The name and telephone number of the qualified individual;

(b) Notification procedures;

(c) Spill detection and mitigation procedures;

(d) Name, address, and telephone number of oil spill response organization;

(e) Response activities and response resources including—

(1) Equipment and supplies necessary to meet § 194.115, and

(2) The trained personnel necessary to sustain operation of the equipment and to staff the oil spill removal organization and spill management team for the first 7 days of the response;

(f) Names and telephone numbers of Federal, state and local agencies which the operator expects to assume pollution response responsibilities;

(g) The worst case discharge volume;

(h) The method used to determine the worst case discharge volume, with calculations;

(i) A map that clearly shows—

(1) The location of the worst case discharge, and

(2) The distance between each line section in the response zone and—

(i) Each potentially affected public drinking water intake, lake, river, and stream within a radius of five miles of the line section, and

(ii) Each potentially affected environmentally sensitive area within a radius of one mile of the line section;

(j) A piping diagram and plan-profile drawing of each line section, which may be kept separate from the response plan if the location is identified; and

(k) For every oil transported by each pipeline in the response zone, emergency response data that—

(1) Include the name, description, physical and chemical characteristics, health and safety hazards, and initial spill-handling and firefighting methods; and

(2) Meet 29 CFR 1910.1200 or 49 CFR 172.602.

Appendix B to Part 194—High Volume Areas

As of January 5, 1993 the following areas are high volume areas:

Major rivers	Nearest town and state
Arkansas River	N. Little Rock, AR.
Arkansas River	Jenks, OK.
Arkansas River	Little Rock, AR.
Black Warrior River	Moundville, AL.
Black Warrior River	Akron, AL.
Brazos River	Glen Rose, TX.
Brazos River	Sealy, TX.
Catawba River	Mount Holly, NC.
Chattahoochee River	Sandy Springs, GA.
Colorado River	Yuma, AZ.
Colorado River	LaPaz, AZ.
Connecticut River	Lancaster, NH.
Coosa River	Vincent, AL.
Cumberland River	Clarksville, TN.
Delaware River	Frenchtown, NJ.
Delaware River	Lower Chichester, NJ.
Gila River	Gila Bend, AZ.
Grand River	Bosworth, MO.
Illinois River	Chillicothe, IL.
Illinois River	Havanna, IL.
James River	Arvonia, VA.
Kankakee River	Kankakee, IL.
Kankakee River	South Bend, IN.
Kankakee River	Wilmington, IL.
Kentucky River	Salvisa, KY.
Kentucky River	Worthville, KY
Maumee River	Defiance, OH.
Maumee River	Toledo, OH.
Mississippi River	Myrtle Grove, LA.
Mississippi River	Woodriver, IL.
Mississippi River	Chester, IL.
Mississippi River	Cape Girardeau, MO.
Mississippi River	Woodriver, IL.
Mississippi River	St. James, LA.
Mississippi River	New Roads, LA.
Mississippi River	Ball Club, MN.
Mississippi River	Mayersville, MS.
Mississippi River	New Roads, LA.
Mississippi River	Quincy, IL.
Mississippi River	Ft. Madison, IA.
Missouri River	Waverly, MO.
Missouri River	St. Joseph, MO.
Missouri River	Weldon Springs, MO.
Missouri River	New Frankfort, MO.
Naches River	Beaumont, TX.
Ohio River	Joppa, IL.
Ohio River	Cincinnati, OH.
Ohio River	Owensboro, KY.
Pascagoula River	Lucedale, MS.
Pascagoula River	Wiggins, MS.
Pearl River	Columbia, MS.
Pearl River	Oria, TX.
Platte River	Ogaliala, NE.
Potomac River	Reston, VA.
Rappahannock River	Midland, VA.
Raritan River	South Bound Brook, NJ.
Raritan River	Highland Park, NJ.
Red River (of the South)	Hanna, LA.
Red River (of the South)	Bonham, TX.
Red River (of the South)	Dekalb, TX.
Red River (of the South)	Sentell Plantation, LA.
Red River (of the North)	Wahpeton, ND.
Rio Grande	Anthony, NM.
Sabine River	Edgewood, TX.
Sabine River	Leesville, LA.
Sabine River	Orange, TX.
Sabine River	Echo, TX.
Savannah River	Hartwell, GA.
Smokey Hill River	Abilene, KS.
Susquehanna River	Darlington, MD.
Tenessee River	New Johnsonville, TN.
Wabash River	Harmony, IN.
Wabash River	Terre Haute, IN.
Wabash River	Mt. Carmel, IL.
White River	Batesville, AR.
White River	Grand Glaise, AR.
Wisconsin River	Wisconsin Rapids, WI.
Yukon River	Fairbanks, AK.

Other Navigable Waters

Arthur Kill Channel, NY
Cook Inlet, AK
Freeport, TX
Los Angeles/Long Beach Harbor, CA
Port Lavaca, TX
San Fransico/San Pablo Bay, CA

Issued in Washington, DC, on December 28, 1992.

Alan I. Roberts,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92-31866 Filed 12-30-92; 9:34 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 58, No. 2
Tuesday, January 5, 1993

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 92-157-1]

User Fees—Calculation of Fees Charged by States for Issuance of Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning user fees for export certification of plants and plant products, by providing an alternative method of calculating the fees States may charge when States issue Federal phytosanitary certificates. The regulations currently provide guidelines for States to calculate a "cost per certificate" fee. Some States have brought it to our attention that they would prefer to calculate fees on a "cost per hour" basis. We believe that a "cost per hour" fee is also an appropriate way of charging for the issuance of phytosanitary certificates. We are therefore proposing to add guidelines for States to calculate a "cost per hour" fee for the issuance of Federal phytosanitary certificates.

DATES: Consideration will be given only to comments received on or before March 8, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-157-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Don R. Thompson, Operations Officer, Port Operations, PPQ, APHIS, USDA, room 638, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8646.

SUPPLEMENTARY INFORMATION:

Background

In a final rule published in the **Federal Register** on January 9, 1992, and effective on February 9, 1992 (57 FR 755-773, Docket No. 91-135), we amended the regulations in 7 CFR part 354 (referred to below as the regulations) to, among other things, impose user fees for the issuance of phytosanitary certificates for the export of plants and plant products. Phytosanitary certificates are issued in accordance with 7 U.S.C. 147a and regulations in 7 CFR part 353, and they certify agricultural products as being free from plant pests, according to the phytosanitary requirements of the foreign countries to which the plants or plant products may be exported or to the freedom from exposure to plant pests while in transit through the United States. These certificates must be issued in accordance with 7 CFR part 353 to be accepted in international commerce.

The proposed rule on which that final rule was based was published on August 7, 1991 (56 FR 37481-37499, Docket No. 91-021). In that proposal, we explained that in some States certain State employees are designated to issue Federal phytosanitary certificates. Designated State employees issue approximately 47 percent of all phytosanitary certificates issued in the United States for the export of plants and plant products. These State inspectors are vital to the success of our certification program. There are more State inspectors than Animal and Plant Health Inspection Service (APHIS) inspectors, and in many instances, including in remote portions of the country, they are able to provide services more efficiently.

As provided in the regulations, when an APHIS employee conducts the inspection and signs the phytosanitary certificate, the user is required to pay the applicable APHIS user fee. However, if a designated State employee conducts the inspection and signs the phytosanitary certificate, we do not charge the APHIS user fee because APHIS is not providing any service to the user. The State, if it wishes, may charge a State fee to cover the cost of providing its services. The regulations include guidelines which the State must follow in order to establish such fees. These guidelines require States to calculate a "cost per certificate" fee for the issuance of phytosanitary certificates, and are the same guidelines used in the calculation of APHIS fees. To calculate a "cost per certificate" fee, the States must:

(1) Estimate the annual number of certificates to be issued;

(2) Determine the total cost of issuing certificates; and

(3) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a "raw" fee.

The State may round the "raw" fee up to the nearest quarter, if necessary, for ease of calculation, collection, or billing.

When determining the total cost of issuing certificates, States may include delivery, support, and administrative costs. Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchases of specialized equipment, and user fee costs associated with maintaining field offices. Support costs are similar costs at supervisory levels, and user fee costs such as training, automated data processing, public affairs, enforcement, legal services, communications, postage, budget and accounting services, and payroll purchasing, billing, and collection services. Administration costs are any additional costs the States incur as a direct result of collecting and monitoring Federal certificates.

At the time that we proposed guidelines for calculating the "cost per certificate" fee, we did not receive any comments alerting us that another method of calculation is preferred by some States. However, since the regulations have been in effect, it has come to our attention that certain States prefer to use a different method of calculating fees than the "cost per certificate" method provided in the regulations. This method is not the same as that used by APHIS in the calculation of APHIS fees. However, in some cases, States were charging a "cost per hour" fee prior to the implementation of the regulations, and it would be helpful for them to be able to do so. APHIS believes that the "cost per hour" calculation is also appropriate for the establishment of

user fees. We are therefore proposing to add, as an alternative, guidelines for the calculation of a "cost per hour" fee, according to the fee-setting method preferred by some States that issue Federal phytosanitary certificates.

To establish the "cost per hour" fee, the States would have to:

(1) Estimate the annual number of hours taken to issue phytosanitary certificates;

(2) Determine the total cost of issuing phytosanitary certificates; and

(3) Divide the cost of issuing phytosanitary certificates by the estimated number of hours taken to issue phytosanitary certificates, to obtain a "cost per hour" fee.

The State could round the "cost per hour" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

When determining the total cost of issuing certificates, States could include delivery, support, and administrative costs. Delivery, support, and administrative costs would be the same as those used in the calculation of a "cost per certificate" fee. Likewise, when calculating the total number of hours taken to issue phytosanitary certificates, States could include delivery, support, and administrative hours. Delivery hours are hours taken by the inspector to issue the certificate, including travel time, inspection time, and time taken to complete paperwork. Support hours are similar hours taken at supervisory levels, as well as hours taken in training, automated data processing, enforcement, legal services, communications, budgeting and accounting, payroll purchasing, billing, and collecting. Administrative hours are any additional hours taken as a direct result of collecting and monitoring Federal certificates.

As explained above, the States' participation in this program is vital to its success. To ensure that United States plants and plant products move in international commerce, it is in the public's interest that APHIS cooperate with States to ensure that phytosanitary certificates are issued. For this reason, we believe that offering States an additional option for the calculation of user fees for the issuance of phytosanitary certificates is warranted, as the addition would encourage States to continue participating in the program. Therefore, we are proposing to amend § 354.3(g)(4) to provide, as a alternative, guidelines for the calculation of a "cost per hour" fee that States may charge when States issue Federal phytosanitary certificates.

In addition, we are proposing to make a nonsubstantive editorial change in § 354.4, paragraph (a)(3), by redesignating footnote 2 and the reference to it as footnote 1.

Executive Order 12291 and Regulatory Flexibility Act

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

This proposed rule, if adopted, would provide guidelines for the establishment of fees on a "cost per hour" basis for States which wish to charge a fee for issuance of Federal phytosanitary certificates. As explained above, the regulations already allow States to charge user fees for the issuance of Federal phytosanitary certificates on a "cost per certificate" basis.

APHIS estimates that only approximately five States would opt to use the "cost per hour" fee. In these States, the fees collected from each exporter may differ from the present fee collected, depending on the scenario. For example, the time taken by an inspector to issue a block of phytosanitary certificates is not significantly longer than the time taken by an inspector to issue a single phytosanitary certificate. Therefore, the cost per hour fee for the exporter receiving a block of phytosanitary certificates would be less than the fee on a cost per certificate basis. As another example, it might happen that an inspector would have to travel a considerable distance to inspect a shipment and issue a single phytosanitary certificate. The cost per hour fee for this service would be greater than the cost per hour fee for a shipment located closer to the inspector's workplace. According to these scenarios, the fee charged may be lower in some instances and may be higher in other instances.

However, APHIS does not believe that calculation on a "cost per hour" basis would significantly change the total fees collected by each State, because the same delivery, support, and administrative factors would be used to calculate the fee. In the end, we estimate that the total fees collected annually would be approximately the same.

Most small entities that currently pay user fees to States for the issuance of Federal phytosanitary certificates are exporters of non-commercial and low value shipments, and would not likely be affected by this proposed rule. Issuing a phytosanitary certificate for a commercial shipment generally requires inspectors to travel to the inspection site. It also generally requires them to inspect larger shipments, which takes more time. Because exporters of non-commercial and low value shipments usually bring their items to the office to be inspected, they would not be charged for any travel time. Also, their shipments usually take less time to inspect than a commercial shipment. Therefore, their fees would remain lower than the fees charged for inspection of commercial shipments, to reflect the amount of services they would receive.

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

Executive Order 12372

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted: (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion

permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this notice.

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we propose to amend 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 would continue to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 354.3, paragraph (g)(4) would be revised to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(g) * * *

(4) Any State which wishes to charge a fee for services it provides to issue certificates must establish fees in accordance with one of the following guidelines:

(i) *Calculation of a "cost per certificate" fee.* The State must:

(A) Estimate the annual number of certificates to be issued;

(B) Determine the total cost of issuing certificates by adding together delivery,[2] support,[3] and administrative[4] costs; and

(C) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a "raw" fee. The State may round the "raw" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing; or

(ii) *Calculation of a "cost per hour" fee.* The State must:

(A) Estimate the annual number of hours taken to issue certificates by adding together delivery, support, and administrative hours;

(B) Determine the total cost of issuing certificates by adding together delivery, support, and administrative costs; and

(C) Divide the cost of issuing certificates by the estimated number of hours taken to issue certificates to obtain a "cost per hour" fee. The State may round the "cost per hour" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

* * * * *

§ 354.4 [Amended]

3. In § 354.4, paragraph (a)(3), footnote 2 and the reference to it would be redesignated as footnote 1.

Done in Washington, DC, this 30th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-67 Filed 1-4-93; 8:45 am]

BILLING CODE 3410-34-M

[2] Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchase of specialized equipment, and user fee costs associated with maintaining field offices. Delivery hours are similar hours taken by inspectors, including travel time, inspection time, and time taken to complete paperwork.

[3] Support costs are costs at supervisory levels which are similar to delivery costs, and user fee costs such as training, automated data processing, public affairs, enforcement, legal services, communications, postage, budget and accounting services, and payroll, purchasing, billing, and collecting services. Support hours are similar hours taken at supervisory levels, as well as hours taken in training, automated data processing, enforcement, legal services, communication, budgeting and accounting, payroll purchasing, billing, and collecting.

[4] Administrative costs are costs incurred as a direct result of collecting and monitoring Federal phytosanitary certificates. Administrative hours are hours taken as a direct result of collecting and monitoring Federal phytosanitary certificates.

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9 CFR Part 91

[Docket No. 92-120-1]

Ports Designated for the Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the "Inspection and Handling of Livestock for Exportation" regulations by designating Tacoma, WA, as a port of embarkation and Pacific Rim Livestock Quarantine as an export inspection facility for that port. Tacoma, WA, and Pacific Rim Livestock Quarantine appear to meet the requirements of the regulations for designation as a port of embarkation and an animal export inspection facility, respectively. We are also proposing to remove the listings for three export inspection facilities that are no longer operating and to revise the listings for two others that have changed operators or locations. These actions would add a port of embarkation and an inspection facility through which animals may be processed for export and would update the regulations.

DATES: Consideration will be given only to comments received on or before February 4, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-120-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Faizi, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations state, among other things, that all animals, except animals being exported to Mexico or Canada, shall be exported through designated ports of embarkation.

To receive designation as a port of embarkation, a port must have export inspection facilities available for the inspection, holding, feeding, and watering of animals prior to exportation to ensure that the animals meet certain requirements specified in the regulations. To receive approval as an export inspection facility, the regulations provide that a facility must

meet specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

It appears that Pacific Rim Livestock Quarantine, 17835 Highway 507 SE., Yelm, WA, (206) 458–1762, meets the requirements of § 91.14(c). Yelm is located approximately 20 miles south of Tacoma, so the facility is available to exporters using Tacoma's airport and harbor. Therefore, we propose to add Tacoma, WA, to the regulations as a port of embarkation and Pacific Rim Livestock Quarantine as an export inspection facility for that port.

We are further proposing to delete Stewart Airport in Newburgh, NY, Northwest Quarantine Station in Portland, OR, and S&W Export Ltd. in Seattle, WA, from the list of animal export inspection facilities. These three facilities are no longer operating as animal export inspection facilities, so their deletion is necessary to keep the list current. In the cases of Stewart Airport and Northwest Quarantine Station, the facilities were the sole animal export inspection facilities available for the ports of Newburgh, NY, and Portland, OR, respectively. As discussed above, a port must have export inspection facilities available in order to qualify for designation as a port of embarkation. Because neither Newburgh nor Portland has an export inspection facility available, we would delete both ports from the list of ports of embarkation for animals.

Miscellaneous

The export inspection facility for the port of embarkation at the John F. Kennedy International Airport in Jamaica, NY, is no longer operated by the American Society for the Prevention of Cruelty to Animals (ASPCA). The facility is now operated by Vetport, Inc. We propose to revise the facility's entry on the list of export inspection facilities to reflect this change.

The street address and telephone number for the export inspection facility operated by Stevedoring Service of America in Seattle, WA, have changed. We propose to change the facility's entry on the list of export inspection facilities to reflect these changes.

Executive Order 12291 and Regulatory Flexibility Act

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

Currently, the State of Washington is served by designated ports of embarkation in Seattle, Olympia, and Moses Lake. Our proposal to add Tacoma as a fourth port of embarkation for the State of Washington would facilitate the export of animals from this part of the United States. We believe that adding this fourth port of embarkation would have little or no economic impact on animal exporters, the majority of which are small businesses, because it would not significantly change the cost of doing business. Although animal exporters based in the Tacoma area would realize some savings from reduced transportation costs, the primary impact on these animal exporters would be the increased convenience of having an additional port of embarkation from which to choose.

The three export inspection facilities that we are proposing to delete from the list have already ceased operating as animal export inspection facilities. Therefore, we do not believe that their deletion from the regulations will have any economic impact. The port of embarkation at John F. Kennedy International Airport, located approximately 60 miles south of Newburgh, NY, is available to animal exporters who had used the Stewart Airport animal export inspection facility. Similarly, animal exporters who used the Northwest Quarantine Station in Portland, OR, can use the animal export inspection facility located at the port of Olympia, WA, approximately 150 miles to the north. Animal exporters in Seattle, WA, still have a local animal export inspection facility available, despite the closing of S&W Export Ltd.

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

Executive Order 12372

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suits in court challenging any provision of this rule.

Paperwork Reduction Act

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

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this notice.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 would continue to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. Section 91.14 would be amended as follows:

a. Paragraph (a)(10)(i) would be removed and paragraph (a)(10)(ii) would be redesignated as paragraph (a)(10)(i).

b. In newly designated paragraph (a)(10)(i)(A), the word "ASPCA" would be removed and "Vetport, Inc." would be added in its place.

c. Paragraph (a)(13) would be removed and paragraphs (a)(14) through (a)(17) would be redesignated as paragraphs (a)(13) through (a)(16).

d. Newly designated paragraph (a)(16)(ii)(A) would be removed and paragraph (a)(16)(ii)(B) would be redesignated as paragraph (a)(16)(ii)(A) and revised as set forth below.

e. A new paragraph (a)(16)(iv) would be added to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(16) * * *

(ii * * *

(A) Stevedoring Service of America, 3415 11th Avenue SW., Seattle, WA 98134, (800) 422–3505.

* * * * *

(iv) Tacoma—airport and ocean port.

(A) Pacific Rim Livestock Quarantine, 17835 Highway 507 SE., Yelm, WA 98507, (206) 458–1762.

* * * * *

Done in Washington, DC, this 30th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–68 Filed 1–4–93; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 94

[Docket No. 92–154–1]

Change in Disease Status of the Netherlands Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare The Netherlands free of rinderpest and foot-and-mouth disease. There have been no outbreaks of foot-and-mouth disease in The Netherlands since 1984, and we have determined that rinderpest has not existed there since 1870. We are also proposing to add The Netherlands to a list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of their meat and other animal products into the United States. This proposed revision would relieve certain prohibitions and restrictions on the importation into the United States, from The Netherlands, of ruminants and fresh, chilled, and frozen meat from ruminants.

The Netherlands is not declared to be free of hog cholera and swine vesicular disease. Therefore, even if this proposal is adopted, the importation from The Netherlands of swine and fresh, chilled, and frozen meat from swine would continue to be restricted because of these diseases. We are also proposing to add The Netherlands and Poland to the list of countries whose importation into the United States of llamas and alpacas is restricted.

DATES: Consideration will be given only to comments received on or before March 8, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–154–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Chief Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or foot-and-mouth disease exists in all countries of the world except those listed in § 94.1(a)(2), which are declared to be free of these diseases. We are proposing to add The Netherlands to this list.

We will consider declaring a country to be free of rinderpest and foot-and-mouth disease if there have been no cases of these diseases reported there for at least the previous 1-year period. Rinderpest has not existed in The Netherlands since 1870, and there have been no outbreaks of foot-and-mouth disease in The Netherlands since 1984. The Netherlands has applied to the U.S. Department of Agriculture to be recognized as free of rinderpest and foot-and-mouth disease. The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the government of The Netherlands in support of its request. In addition, a team of APHIS officials recently conducted an on-site evaluation of the animal health program in The Netherlands in regard to the foot-and-mouth disease situation in that country. The evaluation consisted of a review of the capability of The Netherlands' veterinary services, laboratory and diagnostic procedures, vaccination practices, and the administration of laws and regulations to ensure against the introduction into The Netherlands of foot-and-mouth disease through the importation of animals, meats, and animal products. The team of APHIS officials conducting the on-site evaluation concluded that The Netherlands is free of foot-and-mouth disease. Details concerning the on-site evaluation are available upon written request to the person listed under FOR FURTHER INFORMATION CONTACT.

Based on the information discussed above, we believe that The Netherlands qualifies for listing in § 94.1(a)(2) of the regulations as a country declared free of rinderpest and foot-and-mouth disease. This action would remove the

prohibition on the importation of live ruminants and fresh, chilled, and frozen meat from ruminants. Importations of live swine and fresh, chilled, or frozen meat from swine would continue to be restricted under 9 CFR part 94, since The Netherlands has not been declared free of hog cholera and swine vesicular disease.

Special Restrictions

We also propose to add The Netherlands to the list in § 94.11(a) of countries free of rinderpest and foot-and-mouth disease that are subject to special restrictions on the importation of their meat and other animal products into the United States. The countries listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries that are designated in § 94.1(a) as infected with rinderpest or foot-and-mouth disease; (2) have a common land border with countries designated as infected with rinderpest or foot-and-mouth disease; or (3) import ruminants or swine from countries designated as infected with rinderpest or foot-and-mouth disease under conditions less restrictive than would be acceptable for importation into the United States.

The special restrictions placed on meat and meat products of ruminants and swine in § 94.11 generally require that the meat be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certificate, issued by an animal health official of the national government of the country declared free of the disease, assuring that the meat and meat products have not been commingled with or exposed to meat or other meat products originating in, imported from, or transported through a country infected with rinderpest or foot-and-mouth disease, and are otherwise handled in accordance with the requirements of § 94.11.

The Netherlands has common land borders with Germany and Belgium, which are designated in § 94.1(a)(1) as countries in which rinderpest or foot-and-mouth disease exists. In addition, The Netherlands imports live ruminants and swine from countries not recognized as free of foot-and-mouth disease under conditions less restrictive than would be acceptable for importation into the United States. Further, The Netherlands supplements its national meat supply by the importation of fresh, chilled, and frozen meat of ruminants and swine from countries designated in § 94.1(a)(1) as countries in which rinderpest or foot-and-mouth disease exists. As a result, even though we propose to designate The Netherlands as free of rinderpest and foot-and-mouth disease, the meat and other animal products produced in The Netherlands may be commingled with the fresh, chilled, or frozen meat of animals from a country in which rinderpest and foot-and-mouth disease exists, resulting in an undue risk of introducing rinderpest or foot-and-mouth disease into the United States.

Therefore, we are proposing that meat and other animal products of ruminants and swine, and the ship stores, airplane meals, and baggage containing these meat or animal products imported into the United States from The Netherlands be subject to the restrictions specified in § 94.11 of the regulations, in addition to other applicable requirements of title 9, chapter III.

We also propose to add The Netherlands to the list in § 94.1(d)(1) of countries in which rinderpest or foot-and-mouth disease has been known to exist and that are declared free of rinderpest and foot-and-mouth disease on or after September 28, 1990. All countries declared free of rinderpest and foot-and-mouth disease on or after September 28, 1990, must be added to this list. Adding The Netherlands to this list would restrict the importation of llamas and alpacas from The Netherlands into the United States, unless in accordance with 9 CFR 92.435.

Miscellaneous

We also propose to add Poland to the list in § 94.1(d)(1). We declared Poland free of rinderpest and foot-and-mouth disease in a final rule published in the **Federal Register** on April 24, 1992 (57 FR 15002–15004, Docket No. 91–200). However, in that document, we neglected to add Poland to the list in § 94.1(d)(1). We are now proposing to add Poland to the list in order to correct our oversight. Adding Poland to the list would likewise restrict the importation of llamas and alpacas from Poland into the United States.

Executive Order 12291 and Regulatory Flexibility Act

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

This proposed rule, if adopted, would add The Netherlands to the list in part 94 of countries declared to be free of rinderpest and foot-and-mouth disease. This action would relieve restrictions imposed on the importation of live ruminants and fresh, chilled, and frozen meat of ruminants from The Netherlands into the United States. This action would not relieve restrictions on the importation of live swine and fresh, chilled, and frozen meat of swine because The Netherlands is still considered to be affected with hog cholera and swine vesicular disease.

Based on available information, the Department does not anticipate a major increase in exports of fresh, chilled, or frozen meat of ruminants from The Netherlands into the United States as a result of this proposed rule. In 1990, total meat production in the United States (excluding pork) was just over 10.6 million metric tons. In comparison, in 1990, total meat production (excluding pork) in The Netherlands was only 554,000 metric tons, which amounts to about 5 percent of U.S. production. Since The Netherlands' cattle industry is relatively small, it is unlikely that The Netherlands would export a significant portion of its meat production exclusively to the United States. Therefore, any effect on domestic prices or supplies would be insignificant. Increases in imports of live ruminants from The Netherlands are also unlikely because of high transportation costs.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted and approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this notice.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding "The Netherlands," immediately after "Mexico,".

3. In § 94.1, paragraph (d)(1) would be amended by adding ", The Netherlands, and Poland" immediately after "Chile".

§ 94.11 [Amended]

4. In § 94.11, the first sentence in paragraph (a) would be amended by adding "The Netherlands," immediately after "Japan,".

Done in Washington, DC, this 30th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–69 Filed 1–4–93 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 98

[Docket No. 92–128–1]

Importation of Certain Animal Semen

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of certain animal semen by: Adding a provision requiring that all imported animal semen be accompanied by a health certificate; restoring the exemption from the requirement for an import permit for animal semen being imported into the United States from Canada through a land border port; and restoring the list of ports of entry so that it includes all of the ports designated for the importation of animal semen into the United States. These actions would help to prevent disease from entering the United States and correct omissions that resulted from the reorganization of the regulations.

DATES: Consideration will be given only to comments received on or before February 4, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–128–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in "Subpart C—Certain Animal Semen" of 9 CFR part 98 (referred to below as "the regulations") concern the importation of certain animal semen into the United States. We are proposing to amend or revise several sections of subpart C to help prevent disease from entering the United States and correct omissions that resulted from the reorganization of the regulations.

We are proposing to add a requirement that all animal semen imported into the United States be accompanied by a health certificate. A health certificate would help the Animal and Plant Health Inspection Service (APHIS) to determine if animal semen being offered for importation into the United States meets the collection, identification, and testing requirements of § 98.34. A health certificate would not only help to ensure the disease-free status of animal semen entering the United States, but it would also provide a means of tracing the animal semen back to its source if necessary.

We would require that the health certificate state where the animal semen was collected, who collected the animal semen, the date of collection, the identification and breed of the donor animal, the number of ampules or straws and the identification number or code used on each, the dates and results of all examinations and tests required by the regulations, and the names and addresses of the cosignor and the consignee. The health certificate would also have to state that the animal semen was being imported in accordance with the regulations in subpart C of 9 CFR part 98.

We would further require that the health certificate be issued by a full-time salaried veterinary officer of the national government of the exporting country, or issued by a veterinarian authorized by the national government of the exporting country and endorsed by a full-time salaried veterinary officer of the national government of that country. We believe that a full-time salaried veterinary officer of the national government of the exporting country would be best qualified to certify to the accuracy of the information provided on the health certificate. However, we would accept a certificate issued by a veterinarian who is not a salaried veterinary officer of the national government of the exporting country if the certificate were endorsed by a salaried veterinary officer of the national government of the exporting country. The endorsement would ensure that the veterinarian issuing the certificate was authorized to do so.

The remainder of our proposed changes are needed to rectify errors that occurred when 9 CFR part 92 was reorganized by a final rule published in the **Federal Register** on August 2, 1990 (55 FR 31484–31562, Docket No. 90–023). Originally, part 92 was a mixture of general provisions that applied to all types of animals and specific rules that applied only to some types of animals. To eliminate the need to search through all of part 92 to find all the regulations for one type of animal, part 92 was divided into seven subparts, with each subpart containing all the regulations for a given type of animal. If a section in the original part 92 applies to more than one type of animal, that section was repeated in each subpart to which it applied. The reorganization of part 92 was undertaken to make the regulations easier to use rather than to make any substantive changes to the requirements, so care was taken to avoid omitting provisions that might apply to a given subpart.

During the reorganization of 9 CFR part 92, the animal semen importation regulations were assembled into their own subpart and moved to 9 CFR part 98. When the animal semen importation regulations were moved, some provisions that should have been copied from part 92 were unintentionally omitted, and some provisions that did not apply to the subpart were copied from part 92. These errors are the subject of our remaining proposed changes.

Section 98.33 of the regulations contains a list of limited ports that are designated for the importation of animal semen. Although the ports listed are correct, the list is incomplete. The limited ports paragraph was the only paragraph in the original part 92 that specifically mentioned animal semen, so when the animal semen importation subpart was assembled, the paragraphs listing air and ocean ports, Canadian border ports, and Mexican border ports were not included. The ports that were omitted do have adequate inspection facilities for the entry of animal semen and should have been included in the list of designated ports in § 98.33. Therefore, we propose to change the section heading of § 98.33 to the more specific title of "Ports designated for the importation of certain animal semen" and restore the paragraphs listing air and ocean ports, Canadian border ports, and Mexican border ports.

Section 98.36 of the regulations contains requirements for import permits and declarations for animal semen imported from Canada. In the original part 92, that section contained a provision that exempted animal semen collected from certain donor animals in Canada from the requirement for an import permit when the animal semen is imported into the United States through a land border port on the United States-Canada border. When the animal semen importation subpart was assembled, the exemption was inadvertently omitted. Applications for import permits help APHIS to project its future workload and schedule qualified personnel to be at ports of entry to inspect shipments upon their arrival. Because APHIS veterinarians are already assigned on a full-time basis to each of the land border ports on the United States-Canada border, the advance notice provided by the import permit process is not necessary to ensure that qualified personnel are present at the port of entry at the time of importation. Moreover, the previous regulations required the animal semen to be from donor animals born in Canada or the United States, or to have been legally imported into Canada and unconditionally released into Canada; such semen presents an insignificant risk of carrying communicable diseases into the United States. Therefore, we propose to restore the provision that exempts animal semen collected from certain donor animals in Canada from the requirement for an import permit when the animal semen is imported into the United States through a land border port on the United States-Canada border.

In the original part 92, §§ 92.19 to 92.42 were divided into three categories: Canada, Countries of Central America and West Indies, and Mexico. Each category contained regulations specific to the importation of animals from each country or group of countries. When the animal semen importation subpart was assembled, the three categories were retained; they now appear in part 98 as §§ 98.36 to 98.39. However, § 98.37, which concerns the countries of Central America and the West Indies, and §§ 98.38 and 98.39, which concern Mexico, contain nothing that differs from the general provisions contained elsewhere in the subpart. To eliminate any confusion that this duplication might cause, we propose to remove the category headings before §§ 98.37 and 98.38, their footnotes, and §§ 98.37 through 98.39.

Finally, we are proposing to amend §§ 98.31 and 98.35(a) by removing references to "this part," a term that had been used before the animal semen importation regulations were placed in their own subpart, and replacing them with references to "this subpart." We are also proposing to amend § 98.34(a) by removing an outdated, inaccurate reference to §§ 98.26, 98.27, and 98.28 and replacing it with a reference to § 98.36.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, States, or local government agencies, or geographic regions; and would not cause a significant adverse affect 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.

We anticipate that the provisions of this proposed rule, if adopted, would have little or no economic effect. We believe that the proposed requirement for a health certificate to accompany each shipment of animal semen being imported into the United States would not have any significant impact on importers. The health certificate would not require any additional tests or examinations to be conducted on the donor animal; rather, the health certificate would merely document the identification, collection, and examination activities that are already required by the regulations.

The remainder of our proposed changes are either non-substantive in

nature or would simply restore language that was mistakenly omitted from the regulations. We believe, therefore, that this rule would have little or no economic impact on importers of animal semen because it would not significantly increase or decrease the cost of doing business.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:.

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and.

(3) Administrative proceedings will not be required before parties may file suite in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to (1) Chief, Regulatory Analysis and Development, PPD, APHIS, SUDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Regulatory Reform: Less Burdensome or More Efficient Alternatives.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this notice.

List of Subjects in 9 CFR Part 98

Animal diseases, Imports.

Accordingly, we propose to amend 9 CFR part 98 as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

1. The authority citation for part 98 would continue to read as follows:

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In §§ 98.31 and 98.35(a), the words "this part" would be removed and the words "this subpart" would be added in their place each time the words appear.

3. Section 98.33 would be amended by revising the section heading, revising paragraph (a) and redesignating it as paragraph (d), redesignating paragraph (b) as paragraph (e), and adding new paragraphs (a), (b), and (c) to read as follows:

§ 98.33 Ports designated for the importation of certain animal semen.

(a) *Air and ocean ports.* The following air and ocean ports are designated as having inspection facilities for the entry of animal semen: Los Angeles, California; Miami, Florida; Honolulu, Hawaii; and Newburgh, New York.

(b) *Canadian border ports.* The following land border ports are designated as having inspection facilities for the entry of animal semen from Canada: Eastport, Idaho; Houlton and Jackman, Maine; Detroit, Port Huron, and Sault Ste. Marie, Michigan; Opheim, Raymond, and Sweetgrass, Montana; Alexandria Bay, Buffalo, and Champlain, New York; Dunseith, Pembina, and Portal, North Dakota; Derby Line and Highgate Springs, Vermont; Blaine, Lynden, Oroville, and Sumas, Washington.

(c) *Mexican border ports.* The following land border ports are designated as having inspection facilities for the entry of animal semen from Mexico: Douglas, Naco, Nogales, San Luis, and Sasabe, Arizona; Calexico and San Ysidro, California; Antelope Wells, Columbus, and Santa Teresa, New Mexico; Brownsville, Del Rio, Eagle Pass, El Paso, Hidalgo, Laredo, and Presidio, Texas.

(d) *Limited ports.* The following limited ports are designated as having inspection facilities for the entry of animal semen: Anchorage and Fairbanks, Alaska; San Diego, California; Denver, Colorado; Jacksonville, St. Petersburg-Clearwater, and Tampa, Florida; Atlanta, Georgia; Chicago, Illinois; New Orleans, Louisiana; Portland, Maine; Baltimore, Maryland; Boston, Massachusetts; International Falls and Minneapolis, Minnesota; Great Falls, Montana; Portland, Oregon; San Juan, Puerto Rico; Galveston and Houston, Texas; Seattle, Spokane, and Tacoma, Washington.

* * * * *

§ 98.34 [Amended]

4. In § 98.34, paragraph (a)(1), the designations "§§ 98.26, 98.27, and 98.28," would be removed and the designation "§ 98.36," would be added in their place.

5. In § 98.35, paragraph (a), the words "this part" would be removed and the words "this subpart" would be added in their place.

5. In § 98.35, the section heading would be revised and two new paragraphs, (c) and (d), would be added to read as follows:

§ 98.35 Declaration, health certificate, and other documents for animal semen.

* * * * *

(c) All animal semen offered for importation into the United States shall be accompanied by a health certificate issued by:

(1) A full-time salaried veterinarian of the national government of the country of origin; or

(2) Any veterinarian authorized by the national government of the country of origin, provided that the health certificate is endorsed by a full-time salaried veterinarian of the national government of the country of origin.

(d) The health certificate must state:

(1) The name and address of the place where the semen was collected;

(2) The name and address of the veterinarian who collected the semen;

(3) The date of semen collection;

(4) The identification and breed of the donor animal;

(5) The number of ampules or straws covered by the health certificate and the

identification number or code on each ampule or straw;

(6) The dates, types, and results of all examinations and tests performed on the donor animal as a condition for importing the semen;

(7) The names and addresses of the consignor and consignee; and

(8) That the semen is being imported into the United States in accordance with subpart C of 9 CFR part 98.

6. Section 98.36, including the undesignated center-heading, "CANADA[3]", would be revised (and footnote 3 removed) to read as follows:

CANADA

§ 98.36 Import permit, declaration, and health certificate for animal semen.

(a) For animal semen intended for importation from Canada, the importer shall first apply for and obtain from APHIS an import permit as provided in § 98.34: *Provided*, that an import permit is not required for animal semen offered for entry at a land border port designated in § 98.33(b) if the donor animal:

(1) Was born in Canada or the United States, and has been in no country other than Canada or the United States; or

(2) Has been legally imported into Canada from some other country and unconditionally released in Canada so as to be eligible to move freely within that country without restriction of any kind and has been in Canada after such release for 60 days or longer.

(b) For all animal semen offered for importation from Canada, the importer or his or her agent shall present two copies of a declaration and a copy of a health certificate as provided in § 98.35.

§§ 98.37 through 98.39 [Removed]

7. The undesignated center-headings "Countries of Central America and West Indies[4]" and "Mexico[5]" and §§ 98.37 through 98.39 and (footnotes 4 and 5) would be removed.

Done in Washington, DC, this 30th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-70 Filed 1-4-93; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 89-033P]

RIN 0583-AB20

Use of Citric Acid as a Color Preserver on Cured Pork 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 citric acid as a color preserver on cured pork products during storage. It is proposed that a solution consisting of citric acid, at levels not to exceed 30 percent in water, be allowed as a spray applied to the surfaces of cured pork cuts, prior to packaging. Use of the citric acid in water solution would be limited to a one-time application. This proposed rule is in response to a petition submitted by the Better Marketing Company, East Rutherford, New Jersey.

DATES: Comments must be received on or before February 4, 1993.

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 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 domestic or export markets.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under section 408 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 678) 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 FMIA. States and local jurisdictions 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 the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule is not intended to have retroactive effect. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA. The administrative procedures specified in 9 CFR part 335 must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

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 citric acid, applied as a spray prior to packaging, as a color preserver on cured pork cuts during storage. Manufacturers, both large and small, opting to use such substance in the proposed manner would be required to revise the ingredient statements on product labels to show the presence of citric acid. However, the use of citric acid would be voluntary and any costs associated with new label applications would be covered under existing approved paperwork requirements of FSIS's prior label approval system. Decisions by individual manufacturers on whether to use citric acid on cured pork cuts would be based on their conclusions that the benefits would outweigh the costs.

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 89–033P. 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

Better Marketing Company Petition

FSIS has been petitioned by Better Marketing Company, East Rutherford, New Jersey, to approve the use of a solution consisting of citric acid, at a level of 30 percent in water, to be applied to cut surfaces of cured meat products, prior to packaging, to preserve the product's cured color for up to 3 days.[1] According to the petitioner, a color retention of 3 days is considered essential for retail merchandising of cured meat cuts such as slices and end pieces of smoked hams and picnics. After cured meat is cut, the cut surface begins to fade from pink to a light gray, resulting in economic loss to meat merchandisers, who either trim and rewrap the product or reduce the price.

The petitioner contends that a one-time spraying of a solution containing 30 percent citric acid and water, to the surfaces of cured pork cuts will not preserve the product's cure color beyond 3 days nor reverse gray-colored meat to a pink color. Supporting data submitted by the petitioner was based on a series of tests using citric acid alone and in combination with ascorbic acid in solution levels ranging from 10 percent to 30 percent on surfaces of cured pork cuts. The data show that only the solution consisting of 30 percent citric acid in water provides a cure color retention of up to but no more than 3 days. The data also show that a 30 percent citric acid level is the lowest level sufficient for up to 3-day color preservation without a concern for masking any indicators of spoilage.

Current Regulations

Section 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7(c)(4)) currently allows the use of citric acid as a curing accelerator to accelerate color fixing or preserve color during storage of cured pork and beef cuts, and cured comminuted meat food products. Citric acid may be used in cured products or in a 10 percent solution to spray surfaces of cured cuts prior to packaging to replace up to 50 percent of the ascorbic acid, erythorbic acid, sodium ascorbate or sodium erythorbate that is used (9 CFR 318.7(c)(4)). Citric acid may also be used as an acidifier, an anticoagulant, a flavoring agent, and a synergist at various levels in various meat food products (9 CFR 318.7(c)(4)). The Food and Drug Administration lists citric acid as generally recognized as safe (GRAS) for use in foods in 21 CFR 182.1033, when used in accordance with good manufacturing practices.

The Proposal

After reviewing the petitioner's data and information, FSIS has determined that a one-time spray application of a solution containing citric acid, at levels up to 30 percent in water, to surfaces of cured pork cuts would not affect the wholesomeness of the products and would be in accordance with the requirements of the Federal Meat Inspection Act. Therefore, FSIS is proposing to amend the chart of approved substances in 9 CFR 318.7(c)(4) to allow the use of citric acid to preserve the color on surfaces of cured pork cuts. This proposal would permit the one-time spray application of a solution consisting of citric acid, at levels not to exceed 30 percent in water, to the surfaces of cured pork cuts. Although the petitioner requested use of the citric acid and water solution on cut surfaces of "cured meat products," the petitioner's supporting data was based on tests done on cured pork products only. Therefore, this proposal is limited to the use of a citric acid in water solution on the surfaces of cured pork cuts. Further, although the data submitted by the petitioner shows that the 30 percent citric acid level is the lowest level sufficient for up to a 3-day color preservation, FSIS will allow use levels up to 30 percent because some manufacturers may want to use lower levels to preserve the cured color for less than 3 days.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

Proposed Rule

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR part 318 of the Federal meat inspection regulations to read as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; 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. 601–695; 7 CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4), the Class of substance "Miscellaneous" would be amended by adding at the end thereof the following:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Miscellaneous	* * *			
	Citric acid	To preserve cured color during storage	Cured pork cuts	Not to exceed 30 percent, in water solution used to spray surfaces of cured cuts, prior to packaging, in accordance with 21 CFR 182.1033. (The use of such solution shall not result in the addition of a significant amount of moisture to the product and shall be applied only once to the product.)

[1] A copy of this petition is available for public review in the FSIS Hearing Clerk's Office.

* * * * *

Done at Washington, DC, on December 16, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 93-57 Filed 1-4-93; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52 and 100

RIN 3150-AD93

Reactor Site Criteria; Including Seismic and Earthquake Engineering Criteria for Nuclear Power Plants and Proposed Denial of Petition From Free Environment, Inc. et al.

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On October 20, 1992 (57 FR 47802), the NRC published for public comment a proposed rule to update the criteria used in decisions regarding power reactor siting, including geologic, seismic, and earthquake engineering considerations for future nuclear power plants. The comment period for this proposed rule was to have expired on February 17, 1993. The availability of the five draft regulatory guides and the standard review plan section that were developed to provide guidance on meeting the proposed regulations was published on November 25, 1992 (57 FR 55601). Because the proposed rule would move the detailed guidance from the regulation and place it into a regulatory guide, a critical evaluation of the proposed rule could not be performed until the draft regulatory guides and standard review plan section were available. The NRC has stated that comments on the draft regulatory guides and standard review plan section would be most helpful if received by March 24, 1993. In view of the importance of the proposed rule and the differences in the comment period, the NRC has decided to extend the comment period on the proposed rule for an additional thirty six days. The extended comment period now expires March 24, 1993.

DATES: The comment period has been extended and now expires March 24, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville, Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., Federal workdays.

Copies of the regulatory analysis, the environmental assessment and finding of no significant impact, and comments received may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3860, concerning the seismic and earthquake engineering aspects and Mr. Leonard Soffer, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3916, concerning other siting aspects.

Dated at Rockville, Maryland, this 29th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-48 Filed 1-4-93; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R-0791]

Truth in Savings; Proposed Regulatory Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation DD (Truth in Savings) to implement recent changes made to the Truth in Savings Act by the Housing and Community Development Act of 1992. The law extends the mandatory date for compliance with the requirements of the Truth in Savings Act by three months, so that institutions must comply by June 21, 1993, rather than March 21, 1993. The law also modifies the advertising rules relating to signs in an institution's lobby, and makes a technical change to the provision dealing with notices required to be given to existing account holders. In addition, the Board is proposing to make a minor change to the regulation and clarify and provide additional guidance on a few issues that have been raised by institutions since publication of the final regulation on September 21, 1992.

DATES: Comments must be received on or before February 1, 1993.

ADDRESSES: Comments should refer to Docket No. R-0791, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) any time. Comments may be inspected in Room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Kyung Cho, Kurt Schumacher, or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 736-5500; for the hearing impaired only contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Truth in Savings Act (act) (contained in the Federal Deposit Insurance Corporation Improvement Act of 1991) was enacted in December 1991. The Board published proposed rules to implement the act on April 13, 1992 (57 FR 12735), and published a final regulation, Regulation DD, on September 21, 1992 (57 FR 43337) (correction notice at 57 FR 46480, October 9, 1992).

The Housing and Community Development Act (HCDA) was enacted in October 1992 (Pub. L. 102-550, 106 Stat. 3672). The law contains three provisions that amend the Truth in Savings Act. The provisions extend the effective date for compliance with the act by three months, reduce the requirements that apply to some advertisements on the premises of a depository institution, and modify the provision that requires a notice to be given to existing account holders alerting them to the availability of account disclosures.

To implement the changes, the Board is proposing regulations for comment, and expects to adopt final amendments before March 21, 1993—the compliance date currently set forth in Regulation DD. In light of the minor nature of the

amendments and in order to ensure that amendments are adopted by March 21, the Board is providing only a 30-day comment period. In addition to proposing rules to implement the statutory changes, the Board is proposing to make one minor change to the regulation and to provide guidance on a few other issues that have been raised by institutions since adoption of the final rules. Due to a significant number of questions raised about these issues, the Board proposes to provide guidance at this time, rather than delaying until the Official Staff Commentary is proposed for comment in the fall of 1993.

(2) Proposed Regulatory Provisions

Mandatory Compliance Date

The final regulation referred to March 21, 1993, as the mandatory date for complying with the requirements of the regulation. The definition of "account" under § 230.2(a) states that existing accounts held by an unincorporated nonbusiness association of natural persons prior to March 21, 1993 are not included in the term.

As discussed above, the mandatory date for compliance with the requirements of the Truth in Savings Act was extended by the HCDA for three months. (Section 957(b) of the HCDA amended section 269(a)(2) of the Truth in Savings Act.) The Board proposes to replace the reference to "March 21" with "June 21" in § 230.2(a).

In several places, the supplementary information accompanying the final regulation referred to an effective date of March 21, 1993. The proposed change to the regulation supersedes all such references.

In conjunction with the final regulation, the Board had deleted the existing advertisement and disclosure rules in Regulation Q (12 CFR part 217) as of March 21, 1993, when the requirements in Regulation DD would become mandatory. Consistent with the change to Regulation DD, the Board will make a technical amendment to Regulation Q so that the requirements in Regulation Q will remain in effect until June 21, 1993. As stated in the supplementary information accompanying the final regulation, however, institutions may begin complying solely with the advertising provisions in Regulation DD prior to the date for mandatory compliance, instead of the advertising and disclosures provisions in Regulation Q.

Section 230.4—Account Disclosures

(c) *Notice to existing account holders*—(1) *Notice of availability of disclosures.* As enacted in December 1991, section 266(e) of the act would have required institutions to include a notice of disclosure availability on or with any regularly scheduled periodic statement sent to existing consumer account holders within 180 days of adoption of the Board's final rule. In implementing this provision, the Board's regulation specified that this notice to existing account holders did not have to be sent prior to the mandatory compliance date of March 21, 1993. Instead, the notice was to be included on or with the first periodic statement sent on or after March 21, 1993 (or the first periodic statement for a statement cycle beginning on or after that date).

As stated above, section 957(b) of the HCDA extended the mandatory compliance date from 6 months to 9 months after the Board's issuance of a final rule. In addition, section 1604(e) of the HCDA amended section 266(e) of the Truth in Savings Act to require that the notice to existing account holders be sent "on or with the first regularly scheduled mailing sent after the end of the *6 month period* beginning on the date of publication" of the Board's implementing regulations (emphasis added).

If the revisions to statutory sections 957(b) and 1604(e) were taken literally, the amended act could be read to require institutions to provide the notice to existing consumer account holders on or with the first periodic statement sent after March 21, 1993. The Board believes that the Congress did not intend for institutions to have to comply with this disclosure duty prior to the new compliance data, but rather intended to grant institutions an additional three-month period to comply. Therefore, the Board is proposing to amend § 230.4(c) of Regulation DD to require the notice of account disclosure availability to be included on or with the first periodic statement sent on or after the mandatory compliance date of June 21, 1993 (or the first periodic statement for a statement cycle beginning on or after that date). The Board solicits comments on this proposal.

Section 230.5—Subsequent Disclosures

(a) *Change in terms*—(2) *No notice required*—(ii) *Check printing fees.* The act and regulation require institutions to provide a 30-day advance notice to consumers of any change in a previously disclosed term that may adversely affect the consumer. In the final rule the Board used its exception authority, pursuant to section 269(a)(3) of the act, to create a limited exception to the notice requirements for changes in check printing fees "assessed by third parties."

Since release of the final rule, the Board has received numerous inquiries about the scope of this exception. For example, institutions have asked whether they can take advantage of the exception if the check-printing vendor directly bills the institution which adds a "mark-up" and passes the fee on to the consumer. Institutions have asked whether the exception applies if the third party originates a debit to the account, but the institution is involved in determining the fee.

In order to simplify the requirement and avoid further confusion, the Board proposes to clarify the exception so that an institution does not have to provide a change in terms notice for check printing fees—regardless of whether the fee is assessed by a third party or by the depository institution itself. The Board solicits comment on whether it is necessary to broaden the current exception in this manner.

The imposition of check printing fees by a third party was referred to in the supplementary information to section 230.8(a) that accompanied the final regulation. That section prohibits institutions from advertising an account as "free" or "no cost" if a "maintenance or activity" fee might be imposed on the account. The supplementary information specified that fees imposed by a third party to print checks are not considered maintenance or activity fees imposed on the account. Consistent with the proposed amendment to the regulation and in light of the concerns discussed above, the Board proposes to clarify that check printing fees are not maintenance or activity fees, regardless of who imposes them. Thus, an institution that imposes check printing fees could state that an account is free, if no maintenance or activity fees are imposed.

Section 230.8—Advertising

(e) *Exemption for certain advertisements.* Section 263(a) of the act provides that a reference to a specific interest rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the annual percentage yield. The HCDA amendment to section 263(c) of the advertising rules provides that if a rate is displayed on a sign (including a rate board) designed to be viewed only from the interior of an institution, the disclosure requirements of section 263 do not apply. Instead, only the annual percentage yield and a statement advising consumers to ask employees about fees and terms applicable to the

advertised account are required to be stated.

The regulation currently exempts lobby signs from some advertising disclosure requirements. The Board's proposal would amend the regulation by reorganizing § 230.8(e). A new subparagraph (2) would be added to address disclosure requirements for lobby signs.

The proposal does not define the term "lobby sign." The Board believes that lobby signs would include signs such as preprinted posters and chalk or peg boards, whether affixed to a wall or displayed on an easel or a counter. The Board also proposes that a lobby sign include any advertisement "facing inside" an institution, including computer screens and electronic media. The Board believes, however, that a lobby sign does *not* include a document that can be retained by a consumer (such as a print-out from a computer or a brochure). Thus, such a document would be subject to all of the advertising rules. The Board requests comment on whether "lobby signs" should be defined, and if so, how the term should be defined.

Under the act, the exception applies to lobby signs designed to be viewed only from the interior of a depository institution (or the premises of a deposit broker). The Board proposes to use the term "facing inside" the lobby rather than using an "intent" standard. The Board believes this will provide a simpler test for determining if a sign is exempt under section 230.8(e) or not. Since the act creates an exemption only for lobby signs designed to be viewed from inside an institution, lobby signs that do not face inside a depository institution (or the premises of a deposit broker) would remain subject to the normal disclosure requirements of this section.

Technically, the statute could be read to exempt from the disclosure rules only those lobby signs that state a rate. The Board believes the Congress intended to except these media from the disclosure provisions in section 263(a) and 263(c) regardless of whether a rate of return is stated. Lobby signs would be exempt from the disclosure requirements under paragraphs (b), (c) and (d) of § 230.8 if the signs face inside a depository institution or the premises of a deposit broker. This would exempt such lobby signs from the disclosure rules dealing with bonuses in § 230.8(d); thus, a lobby sign could state a "bonus" without stating any additional disclosures.

Section 263(c) of the act excepts lobby signs from the "disclosure provisions" of section 263. A second amendment to the act exempts lobby signs from paragraph (a) of section 263, which deals specifically with "disclosures" required when rates of earnings are mentioned in advertisements. The proposal would exempt lobby signs from the disclosure provisions of section 263, but they would remain subject to the prohibition on misleading or inaccurate advertisements. The Board believes that if a broader exemption were intended, the Congress would have exempted the lobby signs described in section 263(c) of the act from section 263 entirely. Thus, the Board believes that lobby signs facing inside an institution (or the premises of a deposit broker) are subject to the act's prohibitions against the use of misleading or inaccurate statements in advertisements, and against the description of accounts as "free" if a regular service fee is imposed. As a result, lobby signs facing inside a depository institution would be covered by paragraph (a) of § 230.8. The Board solicits comment on this proposal.

The amendment to section 263(c) of the act requires that if any rate is displayed, the annual percentage yield must also be stated (but does not expressly require that the figure be described as the "annual percentage yield"). The regulation currently provides that in all cases, if any rate of return is advertised, it must be stated as the annual percentage yield, using that term or the abbreviation "APY." The Board solicits comment on this issue.

(3) Proposed Additional Guidance

Section 230.2(q)—Periodic Statement

The regulation defines a periodic statement as one sent to a consumer "on a regular basis four or more times a year." The supplementary information accompanying the final regulation stated that if an institution provides a statement to meet other legal requirements (for example, if an electronic fund transfer takes place and the transaction is covered by the Board's Regulation E), such a statement is a periodic statement for purposes of Regulation DD.

Many institutions have asked whether every statement sent to meet requirements of Regulation E is considered a periodic statement for purposes of Regulation DD. For example, Regulation E requires a statement to be sent for each monthly or shorter cycle in which an electronic fund transfer has occurred, but at least quarterly if no transfer has occurred (12 CFR 205.9(b)). Institutions that provide regular quarterly statements, and only provide monthly statements if a transfer has occurred, have asked whether the monthly statement is a periodic statement for Regulation DD purposes.

The Board does not believe this monthly statement is a periodic statement for Regulation DD. The statement may or may not be sent on a monthly basis, depending on whether an electronic fund transfer actually occurs that month. Unlike a statement sent every quarter—or a policy of an institution in which it sends a statement on a monthly or other regular basis—the statement is not sent on a "regular" basis since an institution may send the statement one month but not every month. Thus, the Board believes that such a statement need not include any of the disclosures in § 230.6, since it does not meet the definition of "periodic statement."

In such a circumstance discussed above, however, the quarterly statement is a periodic statement, and the disclosures in § 230.6 would have to be provided for that statement period. The Board solicits comments on whether institutions should be exempt from disclosing fees for a quarterly statement if they have reflected those fees in the prior monthly statement, in accordance with Regulation E.

Appendix A to Part 230—Annual Percentage Yield Calculation

Proposed Alternative Formula for Certain Accounts

Part II of appendix A provides institutions with a single formula to calculate the annual percentage yield earned for periodic statements. The Board has received several inquiries from institutions about whether this formula should be used in all situations. Institutions that use the daily balance method to accrue interest have noted that if a periodic statement is sent more frequently than the period for which interest is compounded, the annual percentage yield earned may be higher than the annual percentage yield. Institutions have stated that consumers could be confused or mislead by the annual percentage yield earned figure. By way of illustration, an institution that pays a 5% interest rate and compounds annually would state an annual percentage yield of 5%. The same institution would show $4.11 of interest accrued on $1,000 of principal on a monthly periodic statement (reflecting 30 days). In such a case, the annual percentage yield earned shown on that statement would be 5.12%. Institutions have urged the Board not to require use of a formula that produces such a result.

The Board solicits comment on whether an additional formula should

be added to Appendix A, Part II, to calculate the annual percentage yield earned for those accounts in which institutions provide periodic statements more often than they compound interest. The Board also requests comment on whether use of any additional formula should be optional or required. The definitions that apply to the existing formula in Appendix A, Part II would apply to the new formula, although a definition of "compounding" would be added, where "compounding" is the frequency with which interest is compounded, expressed as a number of days. (For example, quarterly compounding would be expressed as 91.25; semi-annual compounding would be expressed as 182.5; and annual compounding would be expressed as 365.) The Board requests comment on whether the following formula should be added:

APY Earned=

$$100\left[1+\frac{\text{(Interest earned/Balance)}}{\text{Days in period}}\right.$$

$$\left.\text{(Compounding)}\right]^{(365/\text{Compounding})}-1$$

To illustrate, in the example discussed above, if a consumer earned $4.11 in interest for a 30-day period on a $1,000 deposit, the annual percentage yield earned under the proposed formula would be 5%.

$$\text{APY Earned}=100\left[1+\left(\frac{4.11/1{,}000}{30}\right)\right.$$

$$\left.(365)\right]^{(365/365)}-1$$

APY Earned=5%

The Board believes that this second annual percentage yield earned formula would be used under fairly narrow circumstances. First, the additional formula could be used only by those institutions that calculate interest by using a daily balance method. (Section 230.6(b) of the regulation provides a special rule for calculating the annual percentage yield earned if institutions use the average daily balance method to calculate interest.) Second, only accounts that provide periodic statements more often than the frequency for which interest is compounded would be affected. Evidence indicates that the vast majority of NOW and money market accounts—typically accounts that provide periodic statements on a monthly or quarterly basis—compound on a daily or monthly basis. Third, given the proposed position regarding the definition of a periodic statement discussed earlier in this notice, there may be few cases in which an institution provides a periodic statement more frequently than it compounds interest. (See the discussion under § 230.2(q) above, in which the Board proposes that a statement sent on a nonregular basis, to meet Regulation E requirements, is not a periodic statement for purposes of Regulation DD.) Finally, several factors may cause the annual percentage yield earned that is disclosed on the periodic statement to be lower than the annual percentage yield, such as the failure to meet a daily minimum balance requirement, a decrease in the interest rate, and use of a collected balance method of accruing interest.

Use of "Ledger" and "Collected" Balance To Calculate the Annual Percentage Yield Earned

The Board proposes to address a second issue in Part II of Appendix A. The supplementary information accompanying the final regulation state that the annual percentage yield earned reflects the relation between the amount of interest and the "*account balance for the period reflected on the statement.*" (Emphasis added.) The Board has received numerous questions regarding how the balance figure is determined when an institution uses a "collected" balance method of accruing interest. (As was stated in the supplementary information accompanying the final regulation, institutions may accrue interest using either the collected or ledger balance method.) Regardless of which method is used to accrue interest, the Board intends for institutions to use the ledger balance in the account, for the period reflected on the statement, for calculating the annual percentage yield earned.

The Board believes using the ledger balance for the periodic statement cycle provides a more accurate yield figure since it demonstrates the difference between institutions that accrue interest using a collected balance compared to those that use a ledger balance. (Assuming that the interest rate and other conditions remain the same, an institution using the ledger balance method of accruing interest would disclose a higher annual percentage yield earned on the periodic statement than an institution using a collected balance method.) The Board believes it is essential that the annual percentage yield earned be calculated in a standardized way to ensure that consumers are able to compare returns on deposit accounts. In addition, the Board believes requiring use of a ledger balance to calculate the annual percentage yield earned will minimize compliance costs and burdens on institutions.

(4) Form of Comment Letters

As discussed above, comment letters should refer to Docket No. R–0791. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format, if accompanied by an original document in paper form.

(5) Economic Impact Statement

The proposed change to the regulation is not likely to have a significant impact on institutions' costs, including those of small institutions.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Deposit accounts, Interest, Interest rates, Federal Reserve System, Truth in savings.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, 12 CFR part 230 is proposed to be amended as follows:

PART 230—TRUTH IN SAVINGS

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Section 230.2 would be amended by revising the last sentence of paragraph (a) to read as follows:

§ 230.2 Definitions.

* * * * *

(a) *Account* * * * The term does not include an existing account held by an unincorporated nonbusiness association of natural persons prior to [March 21] ➧June 21➧, 1993, unless the association notifies the institution that it meets the definition of "consumer."

* * * * *

3. Section 230.4 would be amended by revising the first and second sentences of paragraph (c)(1) to read as follows:

§ 230.4 Account disclosures.

* * * * *

(c) *Notice to existing account holders*—(1) *Notice of availability of*

disclosures. Depository institutions shall provide a notice to consumers who receive periodic statements and who hold existing accounts of the type offered by the institution on [March 21] ♦June 21♦, 1993. The notice shall be included on or with the first periodic statement sent on or after [March 21] ♦June 21♦, 1993 (or on or with the first periodic statement for a statement cycle beginning on or after that date). * * *

* * * * *

4. Section 230.5 would be amended by revising paragraph (a)(2)(ii) to read as follows:

§ 230.5 Subsequent disclosures.

* * * * *

(a) * * *

(2) * * *

(ii) *Check printing fees*. Changes in fees assessed [by third parties] for check printing.

* * * * *

5. Section 230.8 would be amended by revising paragraph (e) and by adding a new paragraph (e)(2) to read as follows:

§ 230.8 Advertising.

* * * * *

(e) *Exemption for certain advertisements*. ♦(1) *Certain media*.♦ If an advertisement is made through one of the following media, it need not contain the information in paragraphs (c)(1), (c)(2), (c)(4), (c)(5), (c)(6)(ii), (d)(4), and (d)(5) of this section:

♦(i)♦ [(1)] Broadcast or electronic media, such as television or radio;

♦(ii)♦ [(2)] Outdoor media, such as billboards; ♦or♦

♦(iii)♦ [(3)] Telephone response machines♦.♦ [; or

(4) Lobby boards inside a depository institution or deposit broker (provided they contain a notice advising consumers to contact an employee for further information).]

♦(2) *Lobby signs*. Lobby signs facing inside a depository institution (or facing inside the premises of a deposit broker) are not subject to paragraphs (b), (c), or (d) of this section. If a lobby sign states a rate of return, it shall:

(i) State the rate as an "annual percentage yield," using that term or the term "APY." The advertisement shall not state any other rate, except that the interest rate may be stated in conjunction with the annual percentage yield to which it relates.

(ii) Contain a statement advising consumers to contact an employee for further information about applicable fees and terms.♦

By order of the Board of Governors of the Federal Reserve System, December 29, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–54 Filed 1–4–93; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–ANE–51]

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney JT9D series turbofan engines. This proposal would require a one-time modification and overhaul of engine control system accessories. This proposal is prompted by multiple engine surge and power loss events caused by deterioration of internal components of engine control system accessories. The actions specified by the proposed AD are intended to prevent the loss of engine compressor surge margin caused by the deterioration of engine control system accessories, resulting in an engine surge, and subsequent power loss or inflight engine shutdown.

DATES: Comments must be received by February 4, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–51, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publications Department, 400 Main Street, East Hartford, Connecticut 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Engine Certification Branch, ANE–141, FAA, New England Region, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 270–2410; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ANE–51." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–51, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Discussion

The FAA has conducted an extensive fleet-wide study of Pratt & Whitney (PW) JT9D series turbofan engines for incidents of engine surge and subsequent power loss or inflight engine shutdown. The FAA received operators' responses to a request from the engine manufacturer for data on incorporation of recommended modifications and frequency of overhauls. The FAA has concluded from the above data that engine control system accessory reliability is a predominant contributing factor to insufficient engine compressor

surge margin. Further analysis shows that PW JT9D series turbofan engines have a heightened susceptibility to engine surges, and subsequent power loss or inflight engine shutdown when engine control system accessories have not incorporated certain recommended modifications and have not undergone periodic overhaul. This situation allows these components to deteriorate beyond acceptable levels, thus greatly increasing the likelihood of engine surge, and subsequent power loss or inflight engine shutdown.

Some of the incidents of engine surge the FAA studied involved more than one engine during the same flight. There have been 12 incidents over the past two years where more than one engine on the same aircraft simultaneously surged, resulting in loss of power or inflight shutdown of multiple engines. During certain phases of flight, such as takeoff or climb-out, a loss of power on more than one engine adversely affects aircraft control. The FAA has concluded that there is a greatly increased risk of more than one engine surging on the same flight when engine control system accessories have not been modified and have not undergone periodic overhaul. This condition, if not corrected, could result in the loss of engine compressor surge margin caused by the deterioration of engine control system accessories, resulting in an engine surge, and subsequent power loss or inflight engine shutdown.

The FAA has reviewed and approved the technical contents of the following TRW, Argo-Tech (AT), Hamilton Standard (HS), and Pratt & Whitney (PW) service bulletins (SB):

SB No.	Revision	Date
Main Fuel Gear Pump:		
TRW SB No. 73-28	2	4-15-77
TRW SB No. 73-29	1	9-1-80
TRW SB No. 73-31	Original	9-1-79
TRW SB No. 73-32	3	4-1-85
AT SB No. 73-36	1	10-1-88
AT SB No. 73-43	Original	12-15-89
TRW SB No. 73-8	Original	9-1-82
PW SB No. 5889	3	10-4-91
TRW SB No. 73-5	Original	4-30-81
Engine Vane Bleed Control GTA 9:		
HS SB No. 75-26	1	8-21-91
HS SB No. 75-19	1	8-21-91
HS SB No. 75-17	Original	3-31-88
HS SB No. 75-16	Original	3-20-88
HS SB No. 75-9	2	8-21-91
Engine Vane Control 3-5:		
HS SB No. 75-9	2	8-21-91
HS SB No. 75-6	1	8-20-91
HS SB No. 75-5	Original	3-31-88
HS SB No. 75-4	2	8-20-91
HS SB No. 75-2	1	11-8-79
Engine Vane Control 3-4:		
HS SB No. 75-28	Original	5-13-91
HS SB No. 75-27	1	8-19-91
HS SB No. 75-24	1	8-19-91
HS SB No. 75-23	Original	3-31-88
HS SB No. 75-22	1	8-19-91
HS SB No. 75-19	3	8-19-91
HS SB No. 75-20	Original	9-1-78
HS SB No. 75-14	Original	5-23-75
HS SB No. 75-11	Original	1-3-75
HS SB No. 75-10	Original	9-10-74
Engine Vane Control 3-2:		
HS SB No. 75-49	Original	5-13-91
HS SB No. 75-48	1	8-16-91
HS SB No. 75-45	1	8-16-91
HS SB No. 75-43	2	4-25-91
HS SB No. 75-42	1	8-16-91
HS SB No. 75-41	3	8-16-91
HS SB No. 75-37	3	8-16-91
HS SB No. 75-36	Original	1-31-78
HS SB No. 75-31	Original	5-23-75
HS SB No. 75-28	Original	1-3-75
HS SB No. 75-27	Original	9-10-74
Fuel Control 68-6:		
HS SB No. 73-19	1	9-20-86
HS SB No. 73-27	1	9-27-82
HS SB No. 73-23	1	8-15-91
HS SB No. 73-3	Original	1-7-77
Fuel Control 68-4:		
HS SB 73-19	1	9-20-86
HS SB No. 73-50	1	8-15-79
HS SB No. 73-42	Original	2-27-76
HS SB No. 73-36	3	7-1-77
HS SB No. 73-35	1	8-29-75
HS SB No. 73-33	2	10-31-78
HS SB No. 73-29	1	9-27-77
HS SB No. 73-28	Original	5-29-74
HS SB No. 73-24	2	10-15-74
HS SB No. 73-21	1	10-27-76
Fuel Control 68-3:		
HS SB No. 73-19	1	9-20-86
HS SB No. 73-150	Original	4-30-81
HS SB No. 73-139	Original	2-27-76
HS SB No. 73-129	3	7-1-77
HS SB No. 73-128	1	8-29-75
HS SB No. 73-127	1	3-5-76
HS SB No. 73-122	1	9-27-77
HS SB No. 73-121	Original	5-29-75
HS SB No. 73-117	3	10-15-74
HS SB No. 73-111	1	10-27-76

These SB's describe the procedures for modifying certain critical engine control system accessories.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time modification and overhaul of engine control system accessories to prevent loss of engine compressor surge margin caused by the deterioration of engine control system accessories, resulting in an engine surge, and subsequent power loss or inflight engine shutdown. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 300 engines of the affected design installed on aircraft of U.S. registry would be affected by this AD, that it would take approximately 30 work hours per engine to accomplish the required actions, and that the average labor rate would be $55 per work hour. The cost of required parts is estimated to be $13,100 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,425,000.

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—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:

Pratt & Whitney: Docket No. 91-ANE-51

Applicability: Pratt & Whitney (PW) Model JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, -20, -20J, -59A, -70A, and -7Q turbofan engines installed on but not limited to Boeing 747 series, McDonnell Douglas DC10 series, and Airbus A300 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of engine compressor surge margin caused by the deterioration of engine control system accessories, resulting in an engine surge, and subsequent power

loss or inflight engine shutdown, accomplish the following:

(a) Overhaul and modify the main fuel controls as follows:

(1) For main fuel controls with either 12,000 hours or more time since overhaul (TSO) on the effective date of this AD or with an undocumented TSO, or for those main fuel controls that have never been overhauled and have either 12,000 hours or more time since new (TSN) on the effective date of this AD or an undocumented TSN, overhaul in accordance with the applicable Hamilton Standard (HS) Maintenance Manual (MM) listed in Table 1 of this AD, and modify in accordance with the applicable HS Service Bulletins (SB) listed in Table 2 of this AD, at the earliest of: the next shop visit; 3,000 hours time in service (TIS) after the effective date of this AD; or January 31, 1995.

(2) For main fuel controls with more than 10,000 hours but less than 12,000 hours TSO, or TSN if never overhauled, on the effective date of this AD, overhaul in accordance with the HS MM listed in Table 1 of this AD, and modify in accordance with the applicable HS SB's listed in Table 2 of this AD, not later than 3,000 hours TIS after the effective date of this AD, or by January 31, 1995, whichever occurs first.

(3) For main fuel controls with 10,000 hours or less TSO, or TSN if never overhauled, on the effective date of this AD, overhaul in accordance with the HS MM listed in Table 1 of this AD, not later than 12,000 hours TSO or TSN, or by January 31, 1995, whichever occurs later.

(4) For main fuel controls with 10,000 hours or less TSO, or TSN if never overhauled, on the effective date of this AD, modify in accordance with the applicable HS SB's listed in Table 2 of this AD, not later than 12,000 hours TSO or TSN, or by January 31, 1995, whichever occurs first.

TABLE 1.—ENGINE ACCESSORY OVERHAUL REFERENCE LIST

Accessory description	Hamilton standard maintenance manual No.	Temporary revision No.
Main fuel controls:		
JFC68-3	73-21-01, Revision 19, dated June 15, 1991	73-54, dated June 15, 1992.
JFC68-4	73-21-02, Revision 10, dated Jan. 15, 1992	73-31, dated June 15, 1992.
JFC68-6	73-21-03, Revision 9, dated Jan. 15, 1992	73-25, dated June 15, 1992.
Engine vane controls:		
EVC3-2 and EVC3-4	75-31-01, Revision 20, dated July 1, 1992	N/A.
EVC3-5	75-32-01, Revision 9, dated June 15, 1986	75-5, dated July 1, 1992.
Engine vane and bleed controls:		
GTA9-1 and GTA9-2	75-34-01, Revision 10, dated Jan.1, 1992	75-11, dated June 15, 1992.

TABLE 2.—HAMILTON STANDARD MAIN FUEL CONTROL UNIT (FCU) SERVICE BULLETIN INCORPORATION LIST

Series engines		
FCU model, JFC68-3, JT9D-3A, -7	FCU model, JFC68-4, JT9D-20, -20J	FCU model, JFC68-6, JT9D-59A, -70A, -7Q
73-150 (L160), Original, dated 4-30-81	73-50 (L94), Revision 1, dated 8-15-79	73-23 (L30), Revision 1, dated 8-15-91.
73-139 (L152), Original, dated 2-27-76	73-42 (L87), Original, dated 2-27-76	N/A.
73-129 (L143), Revision 3, dated 7-1-77	73-36 (L81), Revision 3, dated 7-1-77	73-3 (L14), Original, dated 7-1-77.
73-128 (L142), Revision 1, dated 8-29-75	73-35 (L80), Revision 1, dated 8-29-75	N/A.
73-127 (L141), Revision 1, dated 3-5-76	73-33 (L79), Revision 2, dated 10-31-78	N/A.
73-122 (L137), Revision 1, dated 9-27-77	73-29 (L75), Revision 1, dated 9-27-77	N/A.
73-121 (L136), Original, dated 5-29-75	73-28 (L74), Original, dated 5-29-74	N/A.
73-117 (L133)	73-24 (L71)	N/A.
73-111 (L128)	73-21 (L69)	N/A.
N/A	N/A	73-27 (L33), Revision 1, dated 9-27-82.
73-19, Revision 1, dated 9-20-86	73-19, Revision 1, dated 9-20-86	73-19, Revision 1, dated 9-20-86.

(b) Overhaul and modify engine vane controls as follows:

(1) For engine vane controls with either 12,000 hours or more TSO on the effective date of this AD or with an undocumented TSO, or for those engine vane controls that have never been overhauled and have either 12,000 hours or more TSN on the effective date of this AD or an undocumented TSN, overhaul in accordance with the applicable HS MM listed in Table 1 of this AD, and modify in accordance with the applicable HS SB's listed in Table 3 of this AD, at the earliest of: the next shop visit; 3,000 hours time in service (TIS) after the effective date of this AD; or January 31, 1995.

(2) For engine vane controls with more than 10,000 hours but less than 12,000 hours TSO, or TSN if never overhauled, on the effective date of this AD, overhaul in accordance with the applicable HS MM listed in Table 1 of this AD, and modify in accordance with the applicable HS SB's listed in Table 3 of this AD, not later than 3,000 hours TIS after the effective date of this AD, or by January 31, 1995, whichever occurs first.

(3) For engine vane controls with 10,000 hours or less TSO, or TSN if never overhauled, on the effective date of this AD, overhaul in accordance with the applicable HS MM listed in Table 1 of this AD, not later than 12,000 hours TSO or TSN, or by January 31, 1995, whichever occurs later.

(4) For engine vane controls with 10,000 hours or less TSO, or TSN if never overhauled, on the effective date of this AD, modify in accordance with the applicable HS SB's listed in Table 3 of this AD not later than 12,000 hours TSO or TSN, or by January 31, 1995, whichever occurs first.

TABLE 3.—HAMILTON STANDARD ENGINE VANE CONTROL (EVC) RECOMMENDED SERVICE BULLETIN INCORPORATION LIST

Series engines		
EVC3-2 model, JT9D-3A, -7	EVC3-4 model, JT9D-20, -20J	EVC3-5 model, JT9D-59A, 70A, -7Q
75-48 (L46), Revision 1, dated 8-6-91	75-27 (L33), Revision 1, dated 8-19-91	75-9 (L10), Revision 2, dated 8-21-91.
75-45 (L43), Revision 1, dated 8-16-91	75-24 (L30), Revision 1, dated 8-19-91	75-6 (L7), Revision 1, dated 8-20-91.
75-43 (L42), Revision 2, dated 4-25-91	75-23 (L29), Original, dated 3-31-88	75-5, Original, dated 3-31-88.
75-41 (L41), Revision 3, dated 8-16-91	75-22 (L28), Revision 1, dated 8-19-91	75-4 (L5), Revision 2, dated 8-20-91.
75-42, Revision 1 dated 8-16-91	N/A	N/A.
75-37 (L40), Revision 3, dated 8-16-91	75-19 (L27), Revision 3, dated 8-19-91	75-2 (L4), Revision 1, dated 11-8-79.

TABLE 3.—HAMILTON STANDARD ENGINE VANE CONTROL (EVC) RECOMMENDED SERVICE BULLETIN INCORPORATION LIST—Continued

Series engines		
EVC3–2 model, JT9D–3A, –7	EVC3–4 model, JT9D–20, –20J	EVC3–5 model, JT9D–59A, 70A, –7Q
75–36, Original, dated 1–31–78	75–20, Original, dated 9–1–78	N/A.
75–31 (L35), Original, dated 5–23–75	75–14 (L22), Original, dated 5–23–75	N/A.
75–28 (L33), Original, dated 5–13–91	75–11 (L20), Original, dated 1–3–75	N/A.
75–27 (L32), Revision 1, dated 8–19–91	75–10 (L19), Original, dated 9–10–74	N/A.
75–49 (L30), Original, dated 5–13–91	75–28 (L34) Original, dated 5–13–91	N/A.

(c) Overhaul and modify engine vane and bleed controls as follows:

(1) For engine vane and bleed controls with either 10,000 hours or more TSO on the effective date of this AD or with an undocumented TSO, or for those engine vane and bleed controls that have never been overhauled and have either 10,000 hours or more TSN on the effective date of this AD or an undocumented TSN, overhaul in accordance with the applicable HS MM listed in Table 1 of this AD, and modify in accordance with the applicable HS SB's listed in Table 4 of this AD, at the earliest of: the next shop visit; 3,000 hours TIS after the effective date of this AD; or January 31, 1995.

(2) For engine vane and bleed controls with more than 8,000 hours but less than 10,000 hours TSO, or TSN if never overhauled, on the effective date of this AD, overhaul in accordance with the applicable HS MM listed in Table 1 of this AD, and modify in accordance with the applicable HS SB's listed in Table 4 of this AD, not later than 3,000 hours TIS after the effective date of this AD, or by January 31, 1995, whichever occurs first.

(3) For engine vane and bleed controls with 8,000 hours or less TSO, or TSN if never overhauled, on the effective date of this AD, overhaul in accordance with the applicable HS MM listed in Table 1 of this AD, not later than 10,000 hours TSO or TSN, or by January 31, 1995, whichever occurs later.

(4) For engine vane and bleed controls with 8,000 hours or less TSO, or TSN if never overhauled, on the effective date of this AD, modify in accordance with the applicable HS SB's listed in Table 4 of this AD, not later than 10,000 hours TSO or TSN, or by January 31, 1995, whichever occurs first.

TABLE 4.—HAMILTON STANDARD ENGINE VAN BLEED CONTROL (EVBC) (GTA9) REQUIRED SERVICE BULLETIN INCORPORATION LIST

JT9D–59A, –70A, –7Q, Series Engines		
Service bulletin	Revision	Date
75–26 (L21)	1	8–21–91
75–19 (L14)	1	8–21–91
75–17 (L13)	Original	3–31–88
75–16 (L12)	Original	3–20–88
75–9 (L8)	2	8–21–91

(d) Overhaul and modify main fuel gear pumps as follows:

(1) For main fuel gear pumps with either 8,000 hours or more TSO on the effective date of this AD or with an undocumented TSO, or for those main fuel gear pumps that have never been overhauled and have either 8,000 hours or more TSN on the effective date of this AD or an undocumented TSN, overhaul in accordance with either Argo-Tech (AT) Overhaul Manual (OM) No. 73–11–01 or No. 73–11–02, as applicable, and modify in accordance with the applicable TRW, AT, and Pratt & Whitney (PW) SB's listed in Table 5 of this AD, at the earliest of: the next shop visit; 3,000 hours TIS after the effective date of this AD; or January 31, 1995.

(2) For main fuel gear pumps with more than 6,000 hours but less than 8,000 hours TSO, or TSN if never overhauled, on the effective date of this AD, overhaul in accordance with either AT OM No. 73–11–01 or No. 73–11–02, as applicable, and modify in accordance with the applicable TRW, AT, and PW SB's listed in Table 5 of this AD, not later than 3,000 hours TIS after the effective date of this AD, or by January 31, 1995, whichever occurs first.

(3) For main fuel gear pumps with 6,000 hours or less TSO, or TSN if never overhauled, on the effective date of this AD, overhaul in accordance with either AT OM No. 73–11–01 or No. 73–11–02, as applicable, not later than 8,000 hours TSO or TSN, or by January 31, 1995, whichever occurs later.

(4) For main fuel gear pumps with 6,000 hours or less TSO, or TSN if never overhauled, on the effective date of this AD, modify in accordance with the applicable TRW, AT and PW SB's listed in Table 5 of this AD, not later than 8,000 hours TSO or TSN, or by January 31, 1995, whichever occurs first.

TABLE 5.—TRW, AT, AND PW MAIN FUEL GEAR PUMP REQUIRED SERVICE BULLETIN INCORPORATION LIST

Series engines	
JT9D–3A, –7, –20, –20J	JT9D–59A, –70A, –7Q
TRW 73–28 (–26), Revision 2, dated 4–15–77.	N/A.
TRW 73–29 (–27), Revision 1, dated 9–1–80.	TRW 73–5 (–9), Original, dated 4–30–81.
TRW 73–31 (–29), Original, dated 9–1–79.	N/A.
TRW 73–32 (–30), Revision 3, dated 4–1–85.	N/A.
AT 73–36 (–32), Revision 1, dated 10–1–88.	N/A.
AT 73–43, Original, dated 12–15–89.	N/A.
N/A	TRW 73–8 (–12), Original, dated 9–1–82.
PW 5889, Revision 3, dated 10–4–91.	N/A.

(e) For the purpose of this AD, a shop visit is defined as an engine removal where engine maintenance entails separation of pairs of mating engine flanges or the removal of a disk, hub, or spool.

(f) 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, Engine Certification Office. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(g) 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.

Issued in Burlington, Massachusetts, on December 14, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–42 Filed 1–4–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–ANE–21]

Airworthiness Directives; Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW" PZL–3S Second Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW" PZL–3S Second Series engines, that currently requires removal from service certain modified pistons, inspection of the propeller to engine propeller-flange attachment bolts, inspection of the engine propeller-flange retaining nut, and inspection of the rear crankshaft counterweight system. This action would remove the repetitive

inspection requirements of the existing AD, but retains the requirement to remove from service certain modified pistons. This proposal is prompted by test results that have indicated that PZL–3S Second Series engines not configured with modified pistons are not susceptible to excessive vibration. The actions specified by the proposed AD are intended to prevent separation of the propeller and loss of the aircraft.

DATES: Comments must be received by March 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–21, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW", ul. Hetmanska 120, 35–078 Rzeszow, Poland. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 272–5047; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–21." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–21, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Discussion

On December 16, 1991, the Federal Aviation Administration (FAA) issued AD 91–18–12, Amendment 39–8120 (57 FR 5378, February 14, 1992), applicable to Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW" PZL–3S Second Series engines, to require removal from service of certain modified pistons, inspection of the propeller to engine propeller-flange attachment bolts, inspection of the engine propeller-flange retaining nut, and inspection of the rear crankshaft counterweight system. That action was prompted by two reported occurrences of propeller to engine propeller-flange attachment bolts found to have cracked or failed. That condition, if not corrected, could result in separation of the propeller and loss of the aircraft.

Since the issuance of that AD, additional engine testing with modified and standard pistons has been completed. The results indicate that excessive engine vibration that could result in cracking or failure of the propeller to engine propeller-flange attachment bolts occurs in those engines which incorporate pistons modified and assembled with certain compression ring, scraper ring, and oil ring components. Engines that have not incorporated pistons modified and assembled with these components have acceptable engine vibratory characteristics, and no longer must be inspected as required by AD 91–18–12.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–18–12 to require removal from service certain PZL–3S Second Series engine pistons which have been modified and assembled with certain compression ring, scraper ring, and oil control ring components.

There are approximately 11 PZL–3S Second Series engines of the affected design in the worldwide fleet. The FAA estimates that 3 engines of the affected design are installed on aircraft of U.S. registry, that it would take approximately 5 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $825.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—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 removing amendment 39–8120 (57 FR

5378, February 14, 1992), and by adding the following new airworthiness directive, Amendment 39–XXXX to read as follows:

Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW": Docket No. 92–ANE–21. Supersedes AD 91–18–12, Amendment 39–8120.

Applicability: Wytwornia Sprzetu Komunikacyjnego "PZL–RZESZOW" PZL–3S Second Series piston engines installed on but not limited to Grumman AG CAT aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the propeller and loss of the aircraft, accomplish the following:

(a) For pistons that have been modified and assembled with compression ring, part number (P/N) JRS 123421, scraper ring, P/N JRS 123423, and oil control ring, P/N JRS 123424, prior to further flight:

(1) Remove these pistons from service and replace with serviceable parts.

(2) Remove, clean, and visually inspect using 10x magnification the propeller to engine propeller-flange attachment bolts for evidence of cracking or failure, and perform the following:

(i) For engines with bolts found to be cracked or broken, replace with new bolts and disassemble and visually inspect for distress of the rear crankshaft, rear counterweight, and rear counterweight pins.

(A) If any distress is found in the rear crankshaft, rear counterweight, or rear counterweight pins, replace distressed parts with new parts.

(B) Distress is defined as any evidence of wear, galling, pitting, or scoring, and includes discoloration (blue color) of the counterweight pins.

(ii) For engines with bolts found not to be cracked, inspect the engine propeller-flange retaining nut for looseness and perform the following:

(A) Retorque the propeller-flange retaining nut if found loose in accordance with Section 3.3.4 of the PZL–3S Engine Servicing Instructions, revised March 1984.

(B) Replace all propeller to engine propeller-flange attachment bolts with new bolts.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Engine Certification Office. The request should be forwarded through an FAA Maintenance Inspector, who may concur or comment and then send it to the Manager, Engine Certification Office.

(c) 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.

Issued in Burlington, Massachusetts, on December 9, 1992.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–43 Filed 1–4–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 93

[Docket No. 27106 Notice No. 92–20]

RIN 2120–AE78

Operation of Jet Aircraft in Commuter Slots at O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would amend the regulations pertaining to the definition and allocation of commuter operator slots (*i.e.*, allocated instrument flight rules (IFR) takeoff and landing reservations) at O'Hare International Airport (O'Hare). The FAA proposes to eliminate the provision that limits the use of larger aircraft in commuter slots at O'Hare to a temporary 2-year trial period. It further proposes to permit an air carrier to use larger aircraft in up to 50 percent of its commuter slot holdings at O'Hare, expand the category of aircraft that may be used in those slots, and remove the restriction on the maximum number of larger aircraft operations in commuter slots per half hour or consecutive half hour periods. This proposed rule would neither increase the number of operations at O'Hare, nor necessarily bring about additional jet service to some smaller communities. The proposed rule would preserve the class of commuter slots as distinct from air carrier slots. This NPRM is in response to a petition for rulemaking by American Airlines and the comments on that petition.

DATES: Comments must be received on or before March 8, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, Docket No. 27106, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the rules docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposal 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 decisions on the proposals. Comments are specifically invited on the overall economic, energy, environmental, reporting, and recordkeeping aspects of the proposals. Communications should identify the docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27106." Communications received on or before the specified closing date for comments will be considered before taking any further action on the proposal. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular NO. 11–2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedures.

Background

The High Density Traffic Airport Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in 1969 to reduce delays at five congested airports: JFK International, LaGuardia, O'Hare International, Washington National, and Newark International (33 FR 17896, December 3, 1968). The regulation limits the number of IFR operations at each airport, by hour or half hour (by half hour at O'Hare), during certain hours of the day. It provides for the allocation to carriers of operational authority, or a "slot," for each IFR landing or takeoff during a specific 30- or 60-minute period. The

restrictions were lifted at Newark in the early 1970's.

On August 19, 1991, the Department published Amendment No. 93–62 which, among other changes, revised the definition of "commuter" aircraft in the High Density Rule to include turboprop or reciprocating aircraft having less than 75 passenger seats or turbojet aircraft having less than 56 seats (56 FR 41200). In that same amendment, the FAA changed the slot rules, effective for a 2 year period beginning September 20, 1991, to allow carriers at O'Hare to use up to 25 percent of their commuter slots for operations with aircraft having a maximum certificated seating capacity of no more than 110 passengers.

The American Airlines Petition

Summary of the Petition

On February 18, 1992, American Airlines (AAL) filed a petition for rulemaking to (1) Suspend the 30- and 60-minute slot restrictions at O'Hare; (2) eliminate the category of commuter slots at O'Hare or increase from 25 percent to 45 percent the number of commuter slots for which larger aircraft may be used under Amendment No. 93–62; (3) impose slot restrictions at Midway Airport or establish a Chicago area slot system incorporating O'Hare and Midway; (4) permit AAL to revise its selection of commuter slot times for operations with larger aircraft under Amendment No. 92–62; and (5) make Amendment No. 93–62 permanent. The FAA published a summary of the petition on March 31, 1992, with a 60-day comment period (57 FR 10836).

Comments on the Petition

More than 200 comments were received, most of which supported AAL's petition. Supporting commenters include government officials, community leaders, business owners or managers, and other residents of regions that have received Fokker 100 (F–100) jet service by AAL since the promulgation of Amendment No. 93–62, or that anticipate such service. Comments in support came predominantly from the communities of Fargo, ND; Sioux Falls, SD; and Peoria and Springfield, IL. Although pilots of Simmons Airlines, an AAL subsidiary, commented that Decatur, IL, and Madison, WI, may lose service if more commuter slot conversions are allowed, some commenters from those two areas support the petition, ostensibly expecting an upgrade rather than cessation of air service.

Supporting comments are not limited to communities within Chicago's commuter circumference. Raleigh-Durhan, NC, and Nashville, TN, now have F–100 service non-stop into O'Hare. Several North Carolina and Tennessee commenters support making Amendment No. 93–62 permanent to continue that service. Commenters from Louisville, KY, also support the petition.

Commenters from Vail, Colorado, anticipate benefiting from a rule change. Three officers of Vail Associates wrote in support of AAL's petition, saying that adoption of the proposal would allow AAL to add service to Vail, improving the competitive position of Vail and Beaver Creek resorts in the European marketplace. Aspen Skiing Company submitted a similar comment.

Commenters opposing the petition include government officials, community leaders, business owners or managers, and other residents of regions that have suffered or fear a reduction or elimination of air service by AAL's subsidiary commuter airlines, AMR Eagle and Simmons. These communities include Mattoon, IL; Bloomington, Lafayette, and Terre Haute, IN: Dubuque, Ames, and Waterloo, IA; Lansing, MI; and Madison, WI. Pointing to the loss of a daily flight since Amendment No. 93–62 went into effect, the Madison writers opposing the petition do not share the optimism of the Madison commenters supporting the position and would rather see the 1991 amendment terminated. AAL has since announced plans to add a flight to Madison, causing one commenter to submit a second comment reversing his position.

Also opposing AAL's petition are the Simmons pilots and AAL's competitors. One commenter stated that Simmons has announced a 20 percent cutback in pilot staffing as a result of the transfer of slots from Simmons to AAL. Numerous commenters said that AAL will train new hires rather than Simmons pilots as it substitutes jets for turboprops in the commuter slots.

The supporting and opposing comments exhibit little common ground. Supporters of the petition generally urged eliminating the commuter restrictions or increasing the slots eligible for use with larger aircraft to 45 percent of a carrier's commuter slot base, making the recent amendment permanent, imposing slots at Midway, and giving carriers greater scheduling flexibility at O'Hare. A common theme is that allowing airlines to match equipment with market demand will improve service to small communities and bring about economic growth and opportunities. Many commented on the enhanced competition AAL has brought; one commenter observed that Sioux Falls, SD, is now served by seven commercial airlines. Another commenter observed that upgraded jet service has enhanced connections to other cities in the region. Other commenters spoke about the perception of extra safety, comfort, and convenience that jet service provides. The Fort Wayne Chamber of Commerce and the Assistant General Counsel for Caterpillar Inc., Peoria, mentioned reduced noise.

Those opposing AAL's petition said that Amendment No. 93–62 should be allowed to expire in September 1993. Any further relaxation of the commuter restrictions, they argued, will lead to air service only in major markets, small communities will lose access to O'Hare and its connections to the rest of the nation and the world, and much of the rural Midwest will be placed at a severe competitive disadvantage. Some commenters saw the recent amendment as a measure to enhance the competitive position of one carrier, American Airlines.

United Air Lines, USAir, Delta Air Lines, Air Wisconsin, Continental Airlines, and Pan Am Express also opposed the petition on grounds of diminishing air service to small communities, the exclusive benefit and windfall to AAL, and the resulting increase in air and ground congestion at O'Hare. The City of Chicago foresees, however, a reduction in parking ramp congestion as jet aircraft replace commuter turboprops.

The City of Chicago also suggested, as did Great Lakes Aviation, that the slot category for general aviation and non-scheduled operators is underutilized and should in part be made available for carrier use. Among the other comments were that certain slots should be attached to secondary hubs through which connections would be provided to outlying communities, that AAL has used most of its subsidiaries' commuter slots designated for use with larger aircraft to serve major long-haul markets, and that increased use of commuter slots with larger jets will require additional Essential Air Service awards to replace discontinued service to small communities.

Discussion of Comments

A. Suspend 30- and 60-Minute Slot Restrictions

AAL proposed to expand the air carrier slot restriction periods to 2-hour blocks. It claimed that the 30- and 60-minute restrictions concentrate arrival and departure banks. The City of Chicago agreed and suggested

conducting a demonstration program suspending the limits during one 2-hour period. The Mayor of Chicago stated that airlines at other hub airports have been able to adjust their schedules to avoid congestion and delays. United Air Lines suggested extending each slot period to include the 15 minutes before and after the designated period and permitting slides of slot times to less congested periods. Delta Air Lines disagreed that any expansion will reduce the bunching of operations, citing AAL's practice of concentrating banks at its Dallas, Raleigh-Durham, and Nashville hubs. The Michigan Department of Transportation (MDOT) asserted that expanding the slot restriction periods might reduce the opportunities for smaller communities to gain access to O'Hare.

The FAA is not persuaded that expanding the slot restriction periods will ameliorate the concentration of flight operations since airlines appear to schedule their operations based primarily on marketing strategy. At O'Hare, voluntary schedule agreements have been used several times since 1984 to reduce concentrations of operations. These agreements authorized the participating airlines to operate outside their allocated slot times on the condition that the major hub operators diffused the concentrations of their arrival and departure banks. These agreements served to reduce congestion and delays in the short term, but carriers quickly made schedule adjustments and peaked operations, leapfrogging their schedules to precede immediately a competitor's banks.

The purpose of the slot restriction periods is to force carriers to spread their operations throughout the day and avoid concentrated operations within discrete, peak periods. AAL argues that the 30-minute restriction on scheduling within a slot period causes peaking because carriers tend to bunch flights at the beginning and end of the 30-minute slot period. Scheduled flights at O'Hare show periods of compressed scheduling throughout the day, however, and not just at the beginning and end of a slot period. Adoption of AAL's proposal to substitute 2-hour limits for the current 30- and 60-minute totals would merely raise the ceiling on the number of operations that carriers might bunch within the same peak times. The practice of peaking schedules would likely be exacerbated at O'Hare if the slot periods were expanded.

The timing of current operations at O'Hare is largely determined by the number of slots held by the major hub carriers during half-hour periods. The 30-minute slot restrictions and the distribution of a slot holdings prevent large overlapping of banks during most periods of the day. This notice does not propose, therefore, to adopt the suspension that AAL seeks.

B. Eliminate the Commuter Slot Category

AAL proposed to eliminate the seating capacity restrictions applicable to commuter slots or to raise to 45 percent the percentage of commuter slots in which aircraft with up to 110 seats may be operated under Amendment No. 93–62. The City of Chicago would support this proposal if the larger jets operate below 24,000 feet mean sea level (MSL) and added that the substitute aircraft should meet Stage 3 noise standards. MDOT would concur with the proposed change if small and medium communities were guaranteed access to O'Hare, a view shared by the Wisconsin Department of Transportation (WDOT) and the Director of the Monroe County Airport, Bloomington, IN.

The FAA is proposing to retain the category of commuter slots to preserve slots for use by commuter aircraft serving smaller communities. Where feasible, however, the FAA endeavors to reduce or remove burdens on slot use. Increasing the percentage of commuter slots that could be used with larger aircraft is consistent with that objective and could be accommodated without exacerbating air traffic congestion. The FAA proposes, therefore, to retain the commuter slot restrictions but to increase the number of slots that may be used for operations with non-commuter aircraft to 50 percent of a carrier's commuter slot holdings. In proposing 50 percent, the FAA is seeking to achieve a fair balance among competing interests and operational practicalities at O'Hare and would appreciate comments on whether 50 percent is the appropriate level considering the potential impact on service to small communities.

Amendment No. 93–62 limits the aircraft size to 110 maximum passenger seats according to the aircraft series' type certificate, regardless of the actual seating configuration. To reduce the restrictive burden of this limit, the FAA proposes to modify the 110-seat restriction and allow the use of any aircraft having an actual seating configuration of 110 or fewer passengers as reflected in the type certificate or any supplemental type certificate for the aircraft in up to 50 percent of a carrier's commuter slot holdings at O'Hare.

The use of the actual seating configuration of an aircraft as based on the limitations set forth in the type certificate or supplemental type certificate would be a change to the existing rule. Under current procedures, the maximum number of passengers seats as reflected in the original type certificate for the aircraft series is controlling for the purpose of determining the size of aircraft permitted to be operated in commuter slots pursuant to the definitions found in 14 CFR part 93, subpart K. The FAA incorporated the use of the original type certificate as a way of limiting the overall size of the aircraft. The original type certificates show maximum seating in excess of 110 passengers, however, for several models of aircraft that are comparable in size, i.e., fuselage length and wing span, to the aircraft envisioned by the FAA for use in commuter slots, but their actual seating is configured for less than 110 passengers.

The number of type certificated passenger seats does not necessarily relate directly to the overall size of the aircraft. Therefore, the FAA is proposing to change the current procedures and use the seating configuration approved for the operator's airplane, rather than the original type certificate for the aircraft series. The FAA is proposing to use the most recent certification (original, amended, or supplemental) for the operator's airplane as the basis for determining whether an aircraft complies with the 110-seat maximum limit. Comments are welcome on whether using the most recent certificate might compel an operator to seek to amend or supplement a type certificate just to enable it to use the aircraft in commuter slots at O'Hare under this proposed rule.

The FAA recognizes that even wide-body aircraft might be configured to hold less than 110 seats. To ensure that the larger aircraft used in the commuter slots would be comparable in size, the FAA proposes, in conjunction with the seat limit, a maximum takeoff weight limit of 126,000 pounds. This limitation would also make the aircraft being used in commuter slots more likely to fit into the short- and medium-haul categories. Several comments received while Amendment No. 93–62 was under consideration suggested using weight, wake turbulence, or performance criteria to determine the appropriate class of aircraft. In Amendment No. 93–62, the FAA acknowledged that, from an air traffic standpoint, no significant differences separated aircraft in the 100 to 110 seat range, such as the F–100, from the slightly larger jets such as certain Boeing 737 and DC–9 series. The FAA went on to say that expanding the rule to include slightly larger aircraft

would be considered in future rule changes. (56 FR 41201.)

Upon reviewing the performance data of aircraft currently in service in the United States, the FAA concludes that, as a complement to the 110-seat restriction, a maximum certificated takeoff weight limit of 126,000 pounds would further inhibit the use of long-range aircraft in commuter slots. The FAA recognizes that some aircraft meeting this weight limit may have long-range capability, but they are unlikely to have as few as 110 passenger seats. Thus, the combination of 110 seats and 126,000 pounds maximum takeoff weight should effectively limit the aircraft being used in commuter slots to short- and medium-haul capability. Moreover, the weight limit would preclude heavy jets that would require greater in-flight separation, which could lead to air traffic congestion and delays.

In response to the City of Chicago's comments concerning the possible environmental effects of the use of the larger aircraft, the FAA is seriously considering limiting in a subsequent final rule the types of larger aircraft that may operate in commuter slots to those that meet Stage 3 noise levels. Without a Stage 3 restriction on the larger aircraft, the Day Night Average Sound Level 65 dB contour could increase up to 5 percent. The Stage 3 restriction would reduce this potential increase to less than 1 percent. While the use of the larger aircraft may improve service to smaller communities, that improvement should not be compromised by any environmental degradation at O'Hare or the surrounding communities if it can be avoided. A Stage 3 restriction should not prove burdensome to the carriers wishing to use larger jets in commuter slots, because those carriers are already using, are planning to use, or have available to use Stage 3 aircraft in their fleets.

Under this proposal, therefore, a carrier would be allowed to use, in half of its commuter slot holdings at O'Hare, any aircraft with a certificated seating configuration of 110 or fewer passengers, so long as the aircraft has a maximum certificated takeoff weight less than 126,000 pounds. Even though a Stage 3 requirement is not specifically stated in this Notice, the FAA may consider in any subsequent final rule requiring that any larger aircraft using the commuter slots meets the Stage 3 noise levels as defined in 14 CFR part 36. For that reason, the FAA is specifically requesting comments on the Stage 3 limitation.

As mentioned previously, the City of Chicago supported AAL's petition if the larger jet aircraft operating in commuter slots were restricted to an operational ceiling of 24,000 feet MSL. The proposed ceiling restriction ostensibly seeks to address concerns about delays in traffic at higher altitudes, where jets normally operate, as jets are substituted for turboprops, which normally operate at lower altitudes.

A similar 24,000 foot MSL restriction was proposed by AAL and supported by the City of Chicago as part of the rulemaking proceedings for the last amendment of the High Density Rule. As the agency observed in promulgating Amendment No. 93–62, a significant amount of enroute traffic uses altitudes below 24,000 feet MSL, and the Chicago Center controls aircraft beginning at 12,000 feet MSL on handoff from Chicago Radar Approach Control in the O'Hare area and at lower altitudes elsewhere. Operations below, as well as above, 24,000 feet MSL affect the efficiency of enroute, arrival, and departure operations at and in the vicinity of O'Hare.

By September 1, 1992, AAL had increased its F–100 jet operations in commuter slots to 47. Many of these flights have been operating above 24,000 feet MSL in the Chicago Center airspace. No air traffic control operational problems have resulted due to the addition of these turbojet operations. Air traffic data (collected under the "OPSNET" system) indicate that delays have been decreasing at O'Hare, notwithstanding jet substitutions under Amendment No. 93–62. While favorable weather conditions account partly for the lack of negative impact, also contributing are the FAA's efforts to enhance traffic management resources to improve efficiency in the air traffic control system.

A ceiling restriction thus offers no meaningful benefit to the air traffic control system; instead, it would create unwarranted complications. AAL and other carriers use jet equipment at O'Hare that meet the current and proposed criteria for use with commuter slots. These operations are conducted using air carrier slots that would not be subject to the proposed 24,000 foot ceiling. If the ceiling restriction were adopted, some aircraft would then be subject to flight restrictions that identical aircraft of the same company would not be, complicating the operating environment for airline pilots, dispatchers, and air traffic controllers. The controller would be burdened with the responsibility of knowing which aircraft are subject to the restriction and, constrained by the ceiling for those operations, lose flexibility in assigning altitudes for aircraft.

No operating restrictions would be needed if two requirements are retained that have helped avoid exacerbating congestion at O'Hare in the implementation of Amendment No. 93–62. The first requirement is that carriers wishing to use larger aircraft in commuter slots submit their proposed schedules to Air Traffic Control (ATC) for its approval. ATC's review of these requests has included an analysis of all scheduled operations during the specific 5-minute period within which each operation is proposed. ATC has denied requests for an operation during a period when scheduled operations were so compressed that they exceeded airport capacity. So long as ATC retains this authority and exercises it as necessary, permitting up to 50 percent of the commuter slots to be used with larger aircraft and eliminating the 30- and 60-minute restrictions on the number of commuter slots that could be used for larger aircraft currently contained in 14 CFR part 93, Appendix B, should not result in additional delays at O'Hare. Therefore, the FAA proposes to retain the approval authority of ATC and eliminate the hourly and half-hourly restrictions found in 14 CFR part 93, Appendix B.

The second requirement is that an arrival gate be available without any planned waiting time. If an aircraft arrives without having a gate available, the ground controller typically must direct the aircraft to a holding area located away from the gate area and then clear the aircraft back into the gate area when a gate becomes available. Depending on the area used, this process may involve directing the aircraft across active runways and taxiways, further increasing controller workload and impeding other operations. Additionally, holding areas at O'Hare are limited and will be further limited when certain holding areas are designated for use as secondary deicing facilities, as currently planned.

The advance notice and certification of gate availability requirements contained in Amendment No. 93–62 have helped prevent the bunching of additional operations at peak periods. These requirements are integral elements of the proposal to increase to 50 percent the number of commuter slots for which larger aircraft could be used. Therefore, the FAA proposes to retain the requirement that gates be available to service these operations.

Finally, one commenter suggested dedicating certain slots for service to secondary hubs with connections to outlying small communities in their region. Most of the service to small communities out of O'Hare is short-

haul, raising a question as to how useful access to O'Hare via a connecting point would be in these short-haul markets. Except for slots that are expressly designated for Essential Air Service at the direction of the Department of Transportation, the FAA does not require or restrict the use of a slot for service to a specific market. Therefore, the FAA is not proposing to establish a secondary hub slot requirement.

C. Make Amendment 93–62 "Permanent"

All of the comments in support of AAL's proposal to eliminate unconditionally the commuter slot restrictions also support its proposal to "make Amendment No. 93–62 a permanent rule." MDOT comments that the decision to revoke the temporary trail provision contained in the amendment should wait until an evaluation can be performed toward the end of the trial period. United and Delta similarly assert that AAL's proposal is premature and lacks supporting data.

AAL has incrementally added F–100 service at O'Hare in place of turboprop operations in commuter slots. These jets were being operated in 47 commuter slots as of September 1, 1992; no other carrier had substituted larger jet equipment for turboprops in commuter slots. AAL's additional F–100 operations have caused no additional delays or congestion. In fact, air traffic data indicate that the incidence of delays at O'Hare has been decreasing slightly, despite the substitution of jets for some turborprop operations.

Experience in implementing and working with Amendment No. 93–62 indicates that the agency can remove the trial basis provision the amendment contained. The use of commuter slots as proposed herein should not exacerbate delays because ATC would retain its authority under the notice provisions of existing 14 CFR 93.223 (e)(5); that authority permits ATC to ensure that the scheduling of additional arrivals and departures with larger aircraft will be distributed to avoid bunching of operations with resulting congestion and delays. If further experience indicates a need for adjustment, however, the rule can be amended to resolve any unforeseen circumstance that may arise.

Removing the expiration date of 14 CFR 93.221 (e)(8) would subject any future changes to notice and comment procedures. This would provide some stability upon which the airlines can rely in developing their long-term schedules to maximize the use of O'Hare's capacity.

D. Establish Slots at Midway

AAL's proposal to bring Midway Airport under the High Density Rule gathered no support beyond those commenters supporting all aspects of the petition. Of the commenters—other than AAL—addressing this point specifically, only the Mayor of Chicago declines to oppose it, saving that it deserves further study. The Airplane Owners and Pilots Association (AOPA), the National Business Aircraft Association (NBAA), the City of Kansas City, Southwest Airlines, and Trans World Airlines submitted comments that opposed this proposal and spoke to little or nothing else. MDOT and WDOT also oppose imposing slots at Midway.

The FAA sees no public benefit from this proposal. Although O'Hare and Midway do share some of the same enroute structure, the arrival and departure routes are distinct and O'Hare's ground congestion is totally unaffected by Midway's operations. The FAA proposes to deny this part of AAL's petition.

E. Revise AAL's Selection of Commuter Slot Times

In its petition, AAL asks that it be allowed to shift its "conversion slot authorities" to different time periods. AAL's request to shift its slot times seeks relief specific to AAL and is inappropriate for general rulemaking. The requested action is also inconsistent with the general purpose of the existing rule to control distribution of additional operations with larger aircraft throughout the day. This proposal would, however, relax the hourly restrictions on the use of the larger aircraft but retain the approval by ATC and gate availability requirements. The FAA does not propose rulemaking, therefore, to implement this aspect of AAL's petition.

The Proposal

For the reasons mentioned above, the FAA proposes to amend part 93 of the Federal Aviation Regulations (14 CFR), subpart S, to permit, in up to 50 percent of each carrier's commuter slot holdings at O'Hare International Airport, the operation of aircraft satisfying the following three criteria: (1) Having an actual seating configuration of 110 or fewer passengers; and (2) having a maximum certificated takeoff weight of less than 126,000 pounds. The cap would limit potential effects on airport operations and preserve at least 50 percent of existing commuter slots for operation with smaller aircraft that might include service to small communities. No matter which carriers held or operated commuter slots, no more than 50 percent of any carrier's commuter slot base or of the total number of commuter slots at O'Hare could be used for larger aircraft. The FAA also proposes to remove the limits on the number of operations per half hour and consecutive half hour periods set forth in 14 CFR 93.221(e)(3) and (e)(5) and 14 CFR part 93, appendix B, and allow the continued use of larger aircraft in commuter slots by removing the trial period provision of 14 CFR 93.221(e)(8).

The FAA anticipates a substantial increase in requests to use larger aircraft in commuter slots if this proposed rule is adopted. This increase would add to the workload of ATC in analyzing each requested operation's impact on air traffic movement and would require more time to process the requests. Since the carriers have informed the FAA that they need as much notice as possible to schedule aircraft and crews, the FAA proposes to amend the notice provision of 14 CFR 93.221(e)(4) to require that a carrier notify ATC 75 days in advance of the planned operation of a larger aircraft in a commuter slot, enlarging by 15 days the current advance notice requirement. ATC would have the authority to disapprove a request based on actual conditions at the time of the request or anticipated at the planned start date. As under the current rule, ATC's approval, conditional approval, or disapproval would be issued more than 45 calendar days before the planned start date stated in the notice to allow requesting carriers time to make operational and marketing preparations. ATC approval for a specific operation would be valid for 30 days after the planned start date, and then would expire if the operation had not commenced.

The proposed amendment would also add to the notice provision the requirement to provide the series, type, and actual seating configuration of the aircraft to be used in the commuter slots. This information would be needed to ensure that the seat and weight limits are being met.

In making this proposal, the FAA emphasizes two areas of concern. The first concern is gate availability. The proposed amendment would not change the current requirement that any carrier intending to operate commuter slots with larger aircraft have sufficient gates available for those operations, to prevent ramp and taxiway congestion which could result from additional jet operations. This requirement appears to have helped avoid any adverse impact on ground congestion that might have resulted from Amendment No. 93–62.

The second concern is the potential effect of the proposed rule on service to small communities. The majority of support for the petition came from representatives or residents of small and mid-size cities for which AAL has promised to continue or add jet service. Contrary to the belief of many of those commenters, no current government regulation prevents AAL or any other carrier from providing jet service to their communities, and this proposed rule would not require any carrier to fly to their cities, much less dictate the type of equipment to be used.

From the time Amendment No. 93–62 was adopted in August 1991 until September 1, 1992, only AAL had substituted larger jet equipment for turboprops in commuter slots. As of September 1, 1992, AAL was using larger jet equipment (F–100's) in place of turboprops in 47 commuter slots. Although AAL has filed two notices to discontinue Essential Air Services (one notice has since been withdrawn) during the period the amendment has been in effect, the FAA's analysis of AAL's pre-and post-Amendment No. 93–62 service pattern to small communities revealed no trend suggesting a general change in service to small communities since the amendment.

The Department of Transportation seeks to promote access by all communities to the air transportation system. The Department ensures that Essential Air Service is provided to eligible points and supports the availability of air service to other small communities. At the same time, the Department recognizes that the greatest utility of the finite capacity of high density airports such as O'Hare may favor the use of larger aircraft in higher density markets. To balance the interests of maximum economic use of a limited resource, on the one hand, and the Department's interest in preserving feeder service to smaller markets in the Chicago region, on the other, the FAA proposes to increase the number of commuter slots that can be operated with larger aircraft to 50 percent of the commuter lots held by each carrier at O'Hare, rather than eliminate the commuter slot restrictions entirely. Limiting seating to 110 passengers and maximum takeoff weight to 126,000 pounds would prevent the use of commuter slots with long-haul aircraft designated for higher demand markets. These limitations would preserve the category of commuter slots and mitigate the impact on commuter markets generally.

The Department will continue to monitor the use of commuter slots at O'Hare. Further comments on the use of commuter slots with larger aircraft since the promulgation of Amendment No. 93–62 would be welcome. Should the use of commuter slots under Amendment No. 93–62 and this proposed rule, if promulgated, lead to unacceptable reductions in service to smaller communities in the region, the Department will reevaluate the use of larger aircraft in commuter slots.

This proposal raises a potential issue relating to slot withdrawals for international operations under 14 CFR 93.217. To date, no commuter slots have been withdrawn at O'Hare for international operations. The proposed expansion of the types of aircraft that may be used in certain commuter slots would include airplanes capable of being flown in international/transborder operations, and the number of slots in which they could be used would be substantially increased. Although these aircraft could be use in commuter slots under this proposed rule, under current practice only air carrier slots would be withdrawn for their use in international operations. The FAA is soliciting comments on whether and how commuter slots that a carrier designates for use with larger aircraft should be treated for withdrawal purposes or be merged with the air carrier slot withdrawal priorities.

This proposed action represents a partial grant of the petition for rulemaking filed by American Airlines on February 18, 1992.

Environmental Review

In conjunction with Amendment No. 93–62, the FAA analyzed the environmental impact of allowing 25 percent of the 435 commuter slots at O'Hare to be used for operations with jet aircraft certificated to hold a maximum of 110 passengers. The FAA calculated that if all 108 commuter slots were used with turbojets, turbojet activity at O'Hare would increase by 6 percent during slot restricted hours. Using the Area Equivalent Method (AEM) computer model, the agency determined that the use of 25 percent of the commuter slots for turbojet operations would result in a 0.2 percent increase in the size of the Day Night Average Sound Level 65 dB contour at O'Hare. The agency concluded that permitting turbojet operations in 25 percent of the commuter slots at O'Hare was consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act (NEPA) and that it would not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA.

The FAA has conducted preliminary analyses of the potential environmental impact of this proposal using the AEM computer model. The first analysis factored in the use of larger aircraft in 50 percent of the commuter slots without any Stage 3 restriction. As a worst possible case scenario, it assumed that all of the affected slots would be used with B737–200's or DC–9–30's; these are Stage 2 aircraft that generate the most noise among the aircraft that the proposed rule, absent a Stage 3 restriction, would allow to operate in commuter slots. The analysis indicated a worst scenario increase of 5 percent in the Day Night Average Sound Level 65 dB contour.

The second analysis added the Stage 3 restriction. The added restriction brought the Day Night Average Sound Level 65 dB contour increase down to less than 1 percent. The FAA has therefore determined that this proposal, even without the Stage 3 requirement, is consistent with existing national environmental policies and objectives as set forth in section 101(a) of NEPA and would not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA.

Comments on the potential environmental effects, if any, of the proposed rule are invited.

Initial Regulatory Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this proposed rule is not "major" as defined in the Executive Order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost reducing alternatives to this proposed rule, has not been prepared. Instead, the agency has prepared a more concise document termed an initial regulatory evaluation that analyzes only this proposal without identifying alternatives.

Costs

This proposal is voluntary and would not impose any additional costs on Part 121 or Part 135 air carriers. This rule would allow them to use some of their commuter slots (up to 50 percent) at O'Hare Airport for operations with larger aircraft. The decision whether to use the larger aircraft rests, however, strictly with the operators, not the FAA. An increase from 108 to a maximum of 217 operations per day using larger aircraft would be permitted in commuter slots under this proposal.

The proposal would not significantly alter the operating environment at O'Hare for scheduled Part 121 or Part 135 air carriers. It is not expected that ground operations and departure and arrival procedures would be significantly affected if the rule's existing conditions are met.

This proposed regulation would have no effect on the safety of either air or ground operations. ATC would retain the ability to disapprove proposed arrival or departure schedules of additional larger airplane operations at O'Hare. ATC procedures will continue to maintain a high level of safety and efficiency.

Because AAL speaks in its petition about improving, not reducing, air service to small communities, the FAA assumes that promulgation of the rule as proposed would not diminish such service below current levels. This proposal would allow air carrier operators to substitute larger turbojet airplanes for turboprops and, thereby, improve service. However, the FAA recognizes that the ability to use jets in commuter slots may serve as an incentive to remove those slots from use in markets that cannot support jet service, and the FAA solicits public comment regarding this assumption. Especially helpful would be comments reflecting an analysis of the net national economic impact if service to small communities should decrease as a result of the use of the limited resource of slots for higher demand, and perhaps more profitable, routes.

Benefits

This proposal would reduce some of the current restrictions on the use of commuter slots at O'Hare and would permit air carriers holding commuter slots additional flexibility in the use of those slots. To the extent jet aircraft are substituted for commuter turboprops, the rule would benefit passengers flying in those aircraft to and from Chicago.

The proposed rule could save time for the traveling public. For most commuter flights, which are short-range, turbojets would not provide any significant time savings. Passengers on long commuter flights, however, would save time. The FAA estimates that about 20 minutes could be saved on a long commuter flight by using turbojet airplanes instead of turboprop airplanes. The FAA estimates that approximately 50 passengers would be on each turbojet commuter flight. The estimated passenger time saved is, therefore, 16.7 passenger-hours per commuter flight. The FAA estimates that the value of passenger time is $42 per hour for 1992. Allowing turbojet airplanes to be used on long commuter flights would save $701 in passenger time for each long commuter trip. This proposed regulation would allow an additional 109 commuter slots to be used in this way. Assuming half of the slots would be used for long commuter flights with turbojet equipment, this proposal would save about $38,200 per day in passenger time. The FAA solicits public comment regarding the assumptions used in estimating the benefits of this proposal.

One commenter mentions that AAL's introduction of jet service of Fargo, ND, has increased competition resulting in lower fares. This benefit is not readily quantifiable, but similar results might be expected in other markets as a result of the promulgation of this proposed rule.

Some indirect benefits and costs have been suggested that cannot be considered because (1) The results are uncertain and (2) their realization is not dependent on any rule change. AAL supported its petition by saying that granting the petition would create 1650 jobs having an annual payroll over $95 million and a positive economic impact of more than $280 million in the Chicago area alone. It said that Amendment No. 93–62 has enabled it to create 550 jobs, and further relaxation of the commuter slot restrictions would bring about 1100 more jobs. AAL also said that more Fokker 100 service at O'Hare would translate to more opportunities for students at its Maintenance Academy at Midway Airport. As similar, indirect, and somewhat offsetting results, various Simmons pilots claimed they will lose their jobs if AAL's petition is granted. The FAA declines to consider these benefits and costs because they are not direct results of the proposed rule that are appropriate for consideration in this analysis.

The FAA invites comments, however, on the costs and benefits of any job loss or job creation that a commenter perceives as resulting directly from a rule change.

Comparison of Benefits and Costs

The FAA finds that there would be no significant costs to this proposed regulation. However, there are measurable benefits. As a result, the FAA has determined that the proposed regulation would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities.' The FAA has adopted criteria and guidelines for determining if a proposed or existing rule has any significant economic impact on a substantial number of small entities.

The FAA defines a small entity as an operator who owns, but does not necessarily operate, nine or fewer airplanes. A substantial number of small entities is one-third of the small entities provided 11 or more small entities are substantially impacted. The FAA defines a significant economic impact as $4,000 per year for unscheduled operators, $57,000 per year for scheduled operators, and $101,000 per year for scheduled operators with aircraft containing no less than 60 passenger seats.

No small entity owning or operating nine or fewer airplanes holds commuter slots at O'Hare. Thus, the FAA determines that this proposed rule would have no significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed regulation would only affect domestic operations at Chicago O'Hare Airport. Thus, it would not provide either an advantage or disadvantage to foreign air carriers providing service to and from the United States, nor would it provide either a trade advantage or disadvantage to United States air carriers providing foreign service.

Paperwork Reduction Act

This proposal, if adopted, provides for no changes to the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget has approved the information collection provision of subpart S through August 31, 1995. OMB Approval Number 2120–0524 has been assigned to subpart S.

Federalism Implications

The proposal set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation, if adopted, would not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this proposal (1) Would not be a "major rule" under Executive Order 12291; and (2) would be a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, I certify that under the criteria of the Regulatory Flexibility Act, this proposal would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air), Reporting and recordkeeping.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, I propose to amend part 93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. App. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 *et seq.*; 49 U.S.C. 106(g).

§ 93.221 [Amended]

2. Section 93.221(e)(1) and (e)(2) are revised to read as follows:

§ 93.221 Transfer of slots.

* * * * *

(e) * * *

(1) Air carrier aircraft that may be operated under this paragraph are limited to aircraft:

(i) Having an actual seating configuration of 110 or fewer passengers; and

(ii) Having a maximum certificated takeoff weight of less than 126,000 pounds.

(2) No more than 50 percent of the total number of commuter slots held by a slot holder at O'Hare International Airport may be used with aircraft described in paragraph (e)(1) of this section.

3. Section 93.221(e)(3), (e)(5), and (e)(8) are removed.

4. Section 93.221(e)(4) is designated as (e)(3) and amended by removing, in the fifth line, the number "60" and inserting in its place the number "75", and in the ninth line, after the words "aircraft type" inserting ", aircraft series, actual aircraft seating configuration".

5. Section 93.221(e)(6) and (e)(7) are redesignated as (e)(4) and (e)(5), respectively.

Appendix B—[Removed]

6. Appendix B to part 93 is removed.

Issued in Washington, DC, on December 29, 1992.

Thomas C. Richards,

Administrator.

[FR Doc. 92-31941 Filed 12-30-92; 4:01 pm]

BILLING CODE 4910-13-M

Research and Special Programs Administration

14 CFR Parts 221 and 389

[Docket No. 48379; 48385; Notice 92-35]

RIN 2137-AC18

Electronic Filing of Property and Passenger Tariffs; Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Reopening of comment period; notice of public meeting; request for comments on petition for rulemaking.

SUMMARY: On October 15, 1992, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** inviting comment on electronic filing of property and passenger tariffs. Improvements were proposed to the procedures for electronic filing of passenger fares that were implemented on December 18, 1989, that, among other changes, would allow electronic text submissions in addition to electronic price submissions. The electronic text would include price conditions or limitations. RSPA has received several requests asking for an extension of the comment period from the current 30 days to 90 days. RSPA concurs, in part, and has concluded that additional time for public comment and a public meeting should contribute to the public understanding of the proposals. RSPA is reopening the comment period, will hold a public meeting, and will accept comments until March 5, 1993. RSPA also requests comments on a related petition for rulemaking.

DATES: *Comments.* The comment period is reopened, and comments will be accepted until March 5, 1993. *Public Meeting.* A public meeting will be held on February 3, 1993, at 10 a.m.

ADDRESSES: *Comments.* Five copies of any comments to this docket should be sent to the Documentary Services Division, C-55, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should refer to this Docket. Receipt of comments will be acknowledged if the commenter includes a stamped, self-addressed postcard, which the Docket Clerk will time- and date-stamp and return. *Public meeting.* A public meeting on the proposed electronic cargo and passenger tariff filing procedures will be held at the Department of Transportation NASSIF Building, 400 Seventh Street, SW., Washington, DC 20590, on February 3, 1993, at a room number to be provided later. The meeting will be transcribed. Those planning to attend should notify RSPA, by telephone or in writing, no later than January 22, 1993. To confirm plans to attend, and obtain the meeting room number, contact Mr. Dean L. Johnson or Mrs. Rita B. Clowes at (202) 366-2414.

FOR FURTHER INFORMATION CONTACT: Mr. Donald W. Bright or Mr. Dean L. Johnson, Office of Automated Tariffs, Research and Special Programs Administration (RSPA), Department of Transportation, at the address above. Telephone: (202) 366-4080.

SUPPLEMENTARY INFORMATION: On October 15, 1992, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** inviting comment on electronic filing of property and passenger tariffs (Docket 48385, Notice 92-19, 57 FR 47303). Improvements were proposed to the procedures for electronic filing of passenger fares that were implemented on December 18, 1989. The NPRM proposed to allow an air carrier to submit an all-electronic tariff filing that includes not only an electronic price, but also the conditions of service and limitations on the application of the price for travel and other purposes.

RSPA also proposed to eliminate excess filing of tariff information; prescribe the form and content of electronic fare rules; require a finished electronic tariff arrangement or format in addition to the existing subscription service for electronic raw tariff data; allow the filer to charge a fee to reproduce electronic tariffs in a finished

construction; clarify the tariff regulations affecting the filer's proposed effective date of an electronic tariff filing; and revise the user fee regulations to reflect current costs and to clarify the initial exclusion from electronic user fees for electronic filers.

RSPA received several requests asking for an extension of the comment period from the current 30 days to 90 days. RSPA concurs, in part, with these requests in that additional time for public comment and a public meeting should contribute to the public understanding of the proposals. RSPA is reopening the comment period, will hold a public meeting, and will accept comments until March 5, 1993.

On October 28, 1992, the Airline Tariff Publishing Company (ATPCO) requested a delay in response date, a public meeting, and disclosure of cost studies. Comments in support of ATPCO's request were received from Japan Airlines Company, Swissair, Varig, S.A., American Airlines, Delta Air Lines, Northwest Airlines, United Air Lines, and USAir.

ATPCO is concerned about the potential costs of the proposal and its impact on electronic rules, which are the electronic text provisions that contain the relevant conditions for application of the tariff, and conditions or limitations on specific prices in the tariff. ATPCO stated that fare files are maintained separately from rules files and footnote files, and the proposal would require each of the fares to be integrated with its conditions. ATPCO believes this proposal to be potentially very costly, because "marriage of the footnote and rule to the fare" would require "republication of the fares each time the footnote or rule is changed."

ATPCO questioned the need for a hierarchy of electronic rules information as proposed in the NPRM. Finally, ATPCO stated that the proposed RSPA fee increases for fare filings are double current levels, and the fee for rules filings may be three times more than current levels, and it asked that relevant cost studies be placed in the docket.

On October 1, 1992, ATPCO submitted a petition for rulemaking to allow air carriers to initiate fare action at any time and the Department to accept those filings as of the time they are filed. RSPA invites public comment on the petition during the comment period, and will consider the merits of the petition as part of this rulemaking.

RSPA agrees that additional time should be provided for public comment and public discussion of the proposals in the NPRM. Therefore, RSPA is reopening the comment period and will accept additional public comments. RSPA also will hold a public meeting to discuss the NPRM. A regulatory evaluation is available for review in the docket.

Issued in Washington, DC on December 29, 1992.

Elaine E. Joost,

Acting Associate Administrator for Research, Technology and Analysis, Research and Special Programs Administration.

[FR Doc. 93–8 Filed 1–4–93; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 89–1, Notice No. 6]

RIN 2125–AC83

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Work Zone Traffic Control Standards Revision

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR 655, subpart F, and recognized as the national standard for traffic control devices on all public roads open to public travel. The FHWA has been considering options for rewriting part VI of the MUTCD with the objective of improving safety through more uniform application of effective traffic control and traffic control devices in work zones. Initial recommendations from this effort were made available for review and comment on December 23, 1988, at 53 FR 51826 through a Public Information Package followed by recommendations in a second Public Information Package on June 5, 1989, at 54 FR 23990. The comment period for the second Public Information Package was reopened on April 26, 1990, at 55 FR 17634, and again reopened from August 15, 1990, to March 31, 1991, at 55 FR 33325. The FHWA invited review and comments on reformatting the MUTCD on January 10, 1992, at 57 FR 1134 (Docket No. 89–1, Notice No. 5). The FHWA has decided not to reformat part VI at this time. The FHWA has evaluated the information received concerning the technical aspects of part VI and combined many of the suggestions into this notice of proposed amendments to part VI of the MUTCD. Interested persons are invited to review and comment on this rewrite of part VI. Persons who furnished comments concerning the technical aspects of part VI as a part of their comments to Docket No. 89–1, Notice No. 5, need not resubmit the comments.

This proposal is specifically intended to improve the safety of workers, pedestrians, and motorists in work zones. This proposal is also intended to expedite implementations of the Intermodal Surface Transportation Efficiency Act of 1991, and improve traffic operations by providing more uniform application of traffic control devices in work zones.

DATES: Comments concerning these proposed amendments must be received on or before March 8, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 89–1, Notice No. 6, Federal Highway Administration, room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Rudolph M. Umbs, Office of Highway Safety, (202) 366–0411, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366–0780, Department of Transportation, 400 Seventh Street, NW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The MUTCD is approved by the FHWA as the National Standard for all streets and highways open to public travel. The MUTCD is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. It may be purchased for $22.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, stock No. 050–001–00308–2. Each amendment is assigned an identification number which indicates, by Roman numeral, the primary organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received (e.g., Request VIII–9).

The FHWA enlisted the services of an engineering consultant to solicit comments from Federal, State, local, and other highway agencies regarding the design, administration, and operation of highway work zones in anticipation of rewriting part VI of the MUTCD. The consultant's initial findings were made available for review and comment on December 23, 1988, at 53 FR 51826, through a Public Information Package followed by revised findings in a second Public

Information Package on June 5, 1989, at 54 FR 23990. The comment period for the second Public Information Package was reopened on April 26, 1990, at 55 FR 17634, and again reopened from August 15, 1990, to March 31, 1991, at 55 FR 33325. The FHWA's advance notice of proposed rulemaking (ANPRM) on January 10, 1992, at 57 FR 1134, was issued to: (1) Provide an opportunity to the public to comment on the desirability of the proposed amendments to part VI of the MUTCD, and (2) address alternative formats for the MUTCD. The ANPRM is identified as FHWA Docket No. 89–1, Notice No. 5. The public docket on Notice No. 5 closed on July 30, 1992.

The FHWA received 100 comments in response to the public docket 89–1, Notice Nos. 1 through 4. The large majority of comments supported the following conclusions:

(1) There is a need to retain most of the traffic control device design and application standards that are presently contained in the current MUTCD;

(2) There is a need for a few new traffic control devices; and

(3) There is a need to provide users with the new guidance information presented in the public information packages.

Many comments to Notice No. 5 echoed the above conclusions, and have encouraged the FHWA to publish part VI:

(1) As a stand alone document;

(2) In the same format as the 1988 Edition of the MUTCD; and

(3) As soon as possible.

In response to these early comments, and in order to expedite the part VI rulemaking process, the FHWA has developed this NPRM.

The proposed amendments in this rulemaking, *Request VI–72(C) Total Revision of Part VI*, concern part VI of the MUTCD "Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Emergency Operations" in its entirety. Part VI sets forth basic principles and prescribes standards for traffic control during work zone operations on streets and highways in the United States. With the current emphasis on repairing the Nation's highways and improving safety in work zone areas, an update of part VI would better serve the highway community.

The document containing the text changes for this proposed amendment to the MUTCD has been titled: 1988 MUTCD Proposed Revision 3, dated August 1, 1992. It is available from the Federal Highway Administration, Office of Highway Safety, HHS–31, 400 Seventh Street SW., Washington, DC 20590. Everyone currently appearing on the FHWA **Federal Register** mailing list will automatically be sent a copy.

Discussion of Amendments

The following items are the more important part VI revisions.

Pedestrian and Worker Safety

To focus attention on pedestrian and worker safety, new sections 6D–1 and 6D–2 have been developed. These sections would consolidated the standards, guidance, and information on these subjects that were previously scattered throughout part VI.

New Symbol Signs

The study, "Motorists' Comprehension of Regulatory, Warning, and Symbol Signs,"[1] raised serious doubts about the continuing process of converting word legend signs to symbol signs. The FHWA has adopted very few new symbols since this report was completed. There are no new symbol designs proposed for inclusion in the rewrite of Part VI. There are, however, several new combinations of existing symbols to form new symbol messages. As an example, in Figure VI–8a, Sign W1–4c shows a three-lane shift. This sign uses three lane shift symbols from the current standard W1–4 sign (Figure 6–13a of the 1988 MUTCD).

New Word Message Signs

The rewrite of part VI includes some new word message warning signs. These signs, like any word legend warning sign, are currently allowed by section 6C–41. The warning signs that are proposed for inclusion in the rewrite of Part VI are commonly used by many State and local highway agencies.

Portable Changeable Message Signs

Standards, guides, and information regarding changeable message signs would be added to section 6F–2, Portable Changeable Message Signs. This change would be made to improve application uniformity and make the standards, guides, and information regarding these signs, found elsewhere in the MUTCD (part II), more readily available to those who administer, design, and operate work zones.

Channelizing Devices

The minimum diameter of drums and the materials used to make drums have been somewhat controversial over the past several years. As in the current standards, drums would be required to have a minimum diameter of 18 inches. Other shapes of drums would also be required to have at least 18 inches minimum width regardless of orientation.

There are other channelizing devices, such as the rectangular drum, light-weight plastic barrier, and the "Road Hog," which may have specialized applications. Contracting procedures are in place in all highway agencies to specify the use of these devices for such specialized applications without their being recognized as standard channelizing devices in part VI of the MUTCD. This notice recognizes the existence of specialized applications to encourage the continued development of and experimentation with such devices.

Research studies have repeatedly shown that a steel drum poses severe hazards to pedestrians, workers, and motorists when the drum is struck. Therefore, the use of steel drums as a channelizing or other traffic control device would be specifically prohibited.

Interim (Short-term) Traffic Control Marking Standards

The MUTCD interim pavement marking standards and guides, that are found in section 6F–6, have been somewhat controversial over the past several years. The text that is currently in the 1988 edition of the MUTCD has not been changed in this proposal. The results of the recent FHWA contract research[2] confirm the continuation of these standards. Under section 1A–6 of the MUTCD, the FHWA has also authorized two States to conduct experimentation with abbreviated no-passing zone markings. The results of the experimentation will be incorporated into the decisionmaking process regarding interim no-passing zone pavement marking standards.

Additional Guidance for the use of Various Traffic Control Devices

Additional guidance concerning the use of tubular markers would be added at 6F–5c, drums at 6F–5e, temporary raised islands at 6F–5h, impact attenuators at 6F–8a, rumble strips at 6F–8d, and glare screens at 6F–8e.

Description of Distinct Work Zone Time Durations

To assist users of the MUTCD part VI in the selection of traffic control devices and typical application of these devices, section 6G-2, Selection of Typical Application, would be added to

[1] Motorists' Comprehension of Regulatory, Warning, and Symbol Signs, November 1985, Report Nos. FHWA–RD–86–111, 112, and 113. It is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

[2] Non-Permanent Pavement Markings in Work Zones, February 1992, Report No. FHWA–RD–92–007. It is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

describe five distinct work zone time durations. These time durations are: Long-Term Stationary, Intermediate-Term Stationary, Short-Term Stationary, Short Duration, and Mobile.

New Typical Application Diagrams

Many engineering practitioners have requested that the part VI standards and guidelines be supplemented with typical application diagrams. The existing part VI includes a small number of such diagrams. In the rewrite of part VI, it is proposed to incorporate a substantially larger number of new or improved typical application figures.

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

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 96–345; 5 U.S.C. 601–612, the FHWA has evaluated the effects of this rule on small entities. Based upon this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The MUTCD is incorporated by reference in 23 CFR Part 655, subpart F, which requires that changes to the National Standards issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. This proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d) and 315 to promulgate uniform guidelines to promote the safe and efficient utilization of the highways. Therefore, nothing in the proposed rule preempts any State laws, regulations or requirements.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 30, 1992.

T. D. Larson,

Administrator.

[FR Doc. 93–88 Filed 1–4–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0848–89]

RIN 1545–A022

Taxable Year of Certain Foreign Corporations Beginning After July 10, 1989

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations setting forth the required taxable year for specified foreign corporations for taxable years of those foreign corporations beginning after July 10, 1989. This action is necessary because of changes to the applicable tax law made by the Omnibus Budget Reconciliation Act of 1989, which added section 898 to the Internal Revenue Code. The regulations will give guidance on which foreign corporations must change their taxable year and how to effect the change in taxable year.

DATES: Written comments and requests for a public hearing must be received by March 8, 1993.

ADDRESSES: Send written comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0848–89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bill Lundeen of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R (202–622–3870 (INTL–0848–89), not a toll-free call).

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

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

The collection of information in these proposed regulations is in §§ 1.563–3, 1.898–3 and 1.898–4. The Internal Revenue Service requires this information to verify compliance with section 898 of the Internal Revenue Code. The respondents will be certain United States shareholders of specified foreign corporations.

The estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances.

Estimated total annual reporting burden: 600 hours.

Estimated burden per respondent varies from 5 hours to 1.5 hour, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents: 600.

Estimated frequency of responses: Once every three years.

B. Background

This document contains proposed regulations under sections 441, 442, 563 and 898 of the Internal Revenue Code (Code). Sections 1.898–1 through 1.898–4 are proposed to be effective for taxable years of specified foreign corporations beginning after July 10, 1989. However, §§ 1.898–3(a)(4) (regarding situations in which inconsistent majority U.S. shareholder years exist) and 1.898–3(a)(5)(iii) (regarding situations in which additional testing days are required) are proposed to be effective for taxable years beginning after [Insert Date 120 Days After Date of Publication of Final Regulations in the **Federal Register**], and section 1.898–4(b) is proposed to be effective for changes in the required year of a specified foreign corporation subsequent to its first taxable year beginning after July 10, 1989.

C. Explanation of Provisions

Introduction

Section 7401(a) of the Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101–239, 103 Stat. 2106 ("the Act"), added section 898 to the Code. The purpose of section 898 is to eliminate the deferral of income and, therefore, the understatement in income, by United States shareholders of certain controlled foreign corporations and foreign personal holding companies, referred to in the statute as specified foreign corporations. Deferral results when certain income earned by these corporations is subject to United States income tax in a taxable year of the United States shareholder subsequent to the taxable year during which it was earned. The elimination of deferral is accomplished by requiring a specified foreign corporation to conform its taxable year to the required year, which is generally the majority U.S. shareholder year, for taxable years of specified foreign corporations beginning after July 10, 1989.

Section 1.898–1

Section 1.898–1 provides the general rule that, for purposes of the Internal Revenue Code, the taxable year of any specified foreign corporation shall be the required year determined under section 898 (c) and § 1.898–3. In addition, § 1.898–1(b) sets forth the effective dates of the regulations under section 898.

The regulations at paragraph (c) exempt certain specified foreign corporations from section 898 in three circumstances. First, a specified foreign corporation is exempt from section 898 so long as its United States shareholders do not have any amount includible in gross income pursuant to section 951(a) and do not receive any actual or deemed distributions attributable to amounts described in section 553 with respect to that corporation. Once any United States shareholder has such amounts, however, section 898 applies to the specified foreign corporation. Second, a specified foreign corporation that is a foreign insurance company and elects to be treated as a domestic corporation pursuant to section 953(d) is exempt from section 898. Likewise, a specified foreign corporation described in section 1504(d) for which an election has been made to treat it as a domestic corporation is exempt from section 898.

Section 1.898–2

Section 1.898–2(a) defines specified foreign corporation. Generally, a specified foreign corporation is defined to include controlled foreign corporations and foreign personal holding companies. However, specified foreign corporations include only those controlled foreign corporations and foreign personal holding companies that meet certain ownership requirements. Paragraphs (b)(1) and (b)(2) set forth the ownership requirements of a specified foreign corporation and paragraph (b)(3) defines United States shareholder for purposes of these rules. Paragraph (c) provides a special rule for foreign personal holding companies that are specified foreign corporations.

There is an inconsistency in the legislative history of section 898 between the Senate Print and the Conference Report. The conference agreement generally follows the Senate amendment, but misstates the Senate amendment in reporting that section 898 applies only to a controlled foreign corporation or foreign personal holding company, more than 50 percent of the total voting power or value of the U.S.-owned stock of which is treated as owned by a United States shareholder, and that section 898 takes into account only the taxable years of those United States shareholders (and certain related persons) in determining the majority U.S. shareholder year. The words "U.S.-owned" did not appear in the Senate amendment, which is the version of the bill that Congress enacted and which became public law. Accordingly, specified foreign corporations include controlled foreign corporations and foreign personal holding companies in which a United States shareholder owns (or is considered to own) more than 50 percent of the voting power of all classes of stock of the corporation entitled to vote, or more than 50 percent of the total value of all classes of stock of the corporation.

Section 1.898–3

Section 1.898–3(a)(1) provides the general rule that the required year of a specified foreign corporation means the majority U.S. shareholder year. Paragraph (a)(2) provides that a specified foreign corporation that is a controlled foreign corporation may elect, in lieu of the required year, a taxable year beginning one month earlier than the majority U.S. shareholder year. Paragraph (a)(3) defines majority U.S. shareholder year, and paragraph (a)(4) provides rules for situations in which more than one majority U.S. shareholder year exists. Paragraph (a)(5) defines testing days which are the days on which a specified foreign corporation must determine whether it is using the required year. Paragraph (b) provides special rules for foreign personal holding companies that are specified foreign corporations.

Section 1.898–4

Section 1.898–4 provides special rules applicable to specified foreign corporations. Paragraph (a) sets forth rules for changes to the required year of a specified foreign corporation for its first taxable year beginning after July 10, 1989, and paragraph (b) provides rules for changes in the required year of a specified foreign corporation during a taxable year subsequent to its first taxable year beginning after July 10, 1989.

Paragraph (c) provides rules for situations in which a specified foreign corporation maintains a foreign taxable year (for purposes of computing income tax liabilities due a foreign country) that is different from its required year, including rules relating to the computation of income and earnings and profits of the corporation and rules for the situation in which the U.S. majority shareholder year is a 52–53-week taxable year and the specified foreign corporation's taxable year is not, or in which the specified foreign corporation's taxable year is a 52–53-week taxable year and the U.S. majority shareholder year is not.

A foreign income tax accrues only when the liability for it is fixed and the amount of the liability can be determined. This event generally occurs at the end of the foreign taxable year with respect to a foreign income tax that is imposed on that year's income. Consequently, with the enactment of section 898, a mismatch may arise between the income that comprises a subpart F or foreign personal holding company inclusion and the creditable foreign taxes related to the inclusion when the foreign taxable year of a specified foreign corporation ends later than the corporation's United States taxable year.

Adherence to the foreign tax accrual rule in the context of section 898 may result in income being taxed under subpart F without the associated foreign income taxes being available as a credit under section 960. While we considered several options to address the effect of the foreign tax accrual rule in this context, we believe that adherence to the foreign tax accrual rule is justified for several reasons. First, unlike section 338 (i), there is no direct authority in section 898 to modify the rule. Second, rules that require the pooling of post-1986 undistributed earnings and foreign taxes mitigate the effect of the foreign tax accrual rule. Third, determining the foreign taxes on a specified foreign corporation's taxable income prior to the end of the foreign taxable year may not be possible, especially where that foreign taxable year has not ended by the filing date of the applicable U.S. tax return.

Accordingly, modifying the foreign tax accrual rule for specified foreign corporations that have foreign taxable years which differ from their required year would result in speculative foreign tax accruals, necessitating a corrective mechanism, and would result in a set of highly complex rules which would be difficult to administer. Such an approach would place additional pressure on the foreign tax credit rules, in particular, on the section 905(c) rules. Finally, the potential mismatch resulting from adherence to the foreign tax accrual rule is mitigated by the rule, discussed below, that applies to the first taxable year after section 898 was enacted and that spreads over four taxable years the recognition of certain income otherwise required to be recognized in one year as a result of section 898.

Section 1.898–4(d) provides rules to implement section 7401(d)(2)(C) of the Act. That section of the Act provides that if, because of the change in taxable year, any United States person would be required to include in gross income for its taxable year amounts attributable to two taxable years of the specified foreign corporation, the amount of income reported for the short taxable year of the specified foreign corporation shall be included in the United States person's gross income ratably over its next four taxable years beginning with its taxable year in which amounts attributable to two taxable years of the specified foreign corporation would have been included.

The foregoing four-year rule applies only when a United States person would otherwise be required to include deemed distributions of income from more than one taxable year of the specified foreign corporation in any one of its own taxable years, and only if the short taxable year of the specified foreign corporation was its first taxable year beginning after July 10, 1989. If a specified foreign corporation that changed its taxable year in accordance with section 898 derived subpart F income in its first taxable year, but not in its second (short) taxable year, which ended within the one taxable year of the United States person, then the ratable four-year inclusion would not be applicable. Finally, any United States person who would otherwise be subject to the four-year rule may not waive that rule and accelerate an income inclusion due to the application of section 898.

Section 1.563–3

Section 7401(b)(1) of the Act amended section 563 of the Code by adding a new subsection (c) which generally requires that, in determining the dividends paid deduction for purposes of the foreign personal holding company provisions of the Code, a dividend paid after the close of any taxable year, and on or before the 15th day of the third month following the close of that taxable year, will be considered as paid during that taxable year to the extent the foreign personal holding company designates the dividend as being taken into account under section 563(c). Section 1.563–3 provides rules to implement section 7401(b)(1).

D. Special Analyses

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

E. Comments and Requests for a Public Hearing

Before adopting these regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits timely written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the **Federal Register**.

F. Drafting Information

The principal author of this regulation is Bill Lundeen of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

§§ 1.441–1 Through 1.444–3T

Accounting, Income Taxes, Reporting and recordkeeping requirements.

§§ 1.561–1 Through 1.565–6

Income taxes, Reporting and recordkeeping requirements.

§§ 1.891–1 Through 1.907(f)–1A

Aliens, Foreign investments in United States, Income Taxes, Reporting and recordkeeping requirements, United States investments abroad.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Sections 1.898–1 through 1.898–4 also issued under 26 U.S.C. 898. * * *

Par. 2. Section 1.441–1T is amended by adding paragraph (b)(1)(ii)(I) to read as follows:

§ 1.441–1T Period for computation of taxable income (temporary).

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(I) In the case of any controlled foreign corporation or foreign personal holding company that is a specified foreign corporation, within the meaning of section 898 and § 1.898–2, the applicable rules are contained in section 898 and the regulations under that section.

* * * * *

Par. 3. Section 1.442–1 is amended by adding a sentence to the end of paragraphs (a)(1), (b)(3) and (c)(5), to read as follows:

§ 1.442–1 Change of annual accounting period.

(a) * * *

(1) * * * For special rules relating to controlled foreign corporations and foreign personal holding companies that are specified foreign corporations, within the meaning of section 898 and § 1.898–2, see section 898 and the regulations under that section.

* * * * *

(b) * * *

(3) * * * For special rules relating to controlled foreign corporations and foreign personal holding companies that are specified foreign corporations, within the meaning of section 898 and § 1.898–2, see section 898 and the regulations under that section.

* * * * *

(c) * * *

(5) * * * For special rules relating to controlled foreign corporations and foreign personal holding companies that are specified foreign corporations, within the meaning of section 898 and § 1.898–2, see section 898 and the regulations under that section.

* * * * *

Par. 4. Section 1.442–2T is amended by adding paragraph (a)(9) to read as follows:

§ 1.442–2T Special limitations on certain changes of annual accounting period (Temporary).

(a) * * *

(9) Any specified foreign corporation, within the meaning of section 898 and § 1.898–2, that is required to change its taxable year to the required year under section 898 and the regulations under that section.

* * * * *

Par. 5. Section 1.563–3 is redesignated as § 1.563–4 and new § 1.563–3 is added to read as follows:

§ 1.563–3 Foreign personal holding company tax; Procedure for designation of a dividend as being taken into account under section 563(c).

In determining the deduction for dividends paid under section 561, a foreign personal holding company may designate a dividend paid after the close of any taxable year beginning after July 10, 1989, and on or before the 15th day of the third month following the close of that taxable year, as being taken into account under section 563(c) and this section by making the designation on an attachment to Schedule N of Form 5471. The designation must set forth the date of the distribution and a statement indicating the extent to which the distribution is being taken into account under section 563(c), and any other information required by Form 5471 and the instructions to that form. The designation must be signed and dated by a duly authorized corporate officer of the foreign personal holding company. If a foreign personal holding company took a dividend paid into account under section 563(c) for any taxable year beginning after July 10, 1989, and ending prior to [Insert date that is 120 days after date of publication of Final Regulations in the Federal Register] but did not follow the procedures set forth in this paragraph, then a designation on an attachment to Schedule N of Form 5471 setting forth the information required above should be signed in a manner set forth above and attached to the first Form 5471 and, if applicable, Form 1120F, to be filed after [Insert date that is 120 days after date of publication of Final Regulations in the Federal Register.]

Par. 6. Sections 1.898–0 through 1.898–4 are added under the heading "miscellaneous provisions" to read as follows:

§ 1.898–0 Outline of regulations for section 898.

This section lists the major paragraphs contained in §§ 1.898–1 through 1.898–4.

§ 1.898–1 Taxable year of certain foreign corporations.

(a) In general.
(b) Effective dates.
(c) Exceptions to section 898.
  (1) Specified foreign corporations with no section 951(a) or foreign personal holding company income.
  (2) Elections to be treated as domestic corporations.

§ 1.898–2 Definition of specified foreign corporation.

(a) In general.
(b) Ownership requirements.
  (1) In general.
  (2) Ownership by attribution.
  (3) Definition of United States shareholder.
  (i) In general.
  (ii) Certain captive insurance companies.
  (iii) Foreign personal holding companies.
  (4) Illustrations.
(c) Special rule for foreign personal holding companies that are not controlled foreign corporations.
  (1) In general.
  (2) Illustrations.

§ 1.898–3 Determining the required year.

(a) Controlled foreign corporations.
  (1) In general.
  (2) One-month deferral election.
  (3) Majority U.S. shareholder year.
  (i) In general.
  (ii) Passthrough entities.
  (4) Inconsistent majority U.S. shareholder years.
  (i) In general.
  (ii) Formula for determining least aggregate deferral.
  (iii) Illustrations.
  (iv) Procedural requirements and effective date.
  (5) Testing days.
  (i) In general.
  (ii) Illustration.
  (iii) Additional testing days.
  (iv) Illustration.
  (v) Anti-abuse rule.
(b) Foreign personal holding companies.
  (1) In general.
  (2) One-month deferral election not available.
  (3) Testing days.

§ 1.898–4 Special rules.

(a) Changes in the required year of a specified foreign corporation for its first taxable year beginning after July 10, 1989.
  (1) In general.
  (2) Procedure for a specified foreign corporation to conform to the required year for the first taxable year beginning after July 10, 1989.
  (i) No section 898(c)(1)(B) election.
  (ii) With section 898 (c)(1)(B) election.
  (iii) Filing requirement.
(b) Changes in the required year of a specified foreign corporation during a taxable year of a specified foreign corporation subsequent to its first taxable year beginning after July 10, 1989.
  (1) In general.
  (2) Procedure for the change to a new required year of a specified foreign corporation for taxable years subsequent

to its first taxable year beginning after July 10, 1989.
(i) Different majority U.S. shareholder year.
(ii) Election under section 898(c)(1)(B).
(iii) Procedure for prior years.
(iv) Making a second election under section 898(c)(1)(B).
(v) Procedure for obtaining the consent of the Commissioner to change the required year of specified foreign corporations.
(3) Short period.
(i) In general.
(ii) Illustrations.
(4) Conforming changes in the majority U.S. shareholder year.
(c) Nonconforming foreign and United States taxable years of a specified foreign corporation.
(1) In general.
(2) Computation of income and earnings and profits of a specified foreign corporation.
(i) Separate books of account.
(ii) Income and earnings and profits computation in lieu of separate books.
(iii) Illustration.
(3) 52–53-week taxable year.
(i) In general.
(ii) Majority United States shareholder with 52–53-week taxable year.
(iii) Specified foreign corporation with a 52–53-week taxable year.
(iv) Illustrations.
(4) Certain captive insurance companies that elect to treat their related person insurance income as income effectively connected with the conduct of a United States trade or business.
(d) Four-year income spread.

§ 1.898–1 Taxable year of certain foreign corporations.

(a) *In general.* Pursuant to section 898(a), the taxable year of a specified foreign corporation is the required year. The required year is generally the majority U.S. shareholder year. These regulations define specified foreign corporation and United States shareholder, for purposes of these rules, at § 1.898–2 (a) and (b)(3), respectively. The ownership requirements of a specified foreign corporation, which are a part of the definition of specified foreign corporation, are set forth at § 1.898–2(b) (1) and (2). A special rule for determining whether a foreign corporation that meets the ownership requirements of a foreign personal holding company is a specified foreign corporation as located at § 1.898–2 (c). Section 1.898–3 sets forth the rules for the determination of the required year, including rules by which a specified foreign corporation that is a controlled foreign corporation may elect a taxable year beginning one month earlier than the majority U.S. shareholder year. Section 1.898–4 sets forth special rules including rules at paragraphs (a) and (b) of that section on changes in the required year, rules at paragraph (c) of that section covering situations where the required year under section 898 is different from the specified foreign corporation's foreign taxable year (the taxable year for purposes of computing income tax liabilities due a foreign country), and rules at paragraph (d) of that section regarding the four-year spread of certain income.

(b) *Effective dates.* Sections 1.898–1 through 1.898–4 are effective for taxable years of specified foreign corporations beginning after July 10, 1989. However, §§ 1.898–3(a)(4) (regarding situations in which inconsistent majority U.S. shareholder years exist) and 1.898–3(a)(5)(iii) (regarding situations in which additional testing days are required) are effective for taxable years beginning after [Insert Date 120 Days After Date of Publication of Final Regulations in the **Federal Register**], and section 1.898–4(b) is effective for changes in the required year of a specified foreign corporation subsequent to its first taxable year beginning after July 10, 1989.

(c) *Exceptions to section 898*—(1) *Specified foreign corporations with no section 951(a) or foreign personal holding company income.* A specified foreign corporation is not required to conform its taxable year to the required year so long as its United States shareholders do not have any amount includible in gross income pursuant to section 951(a) and do not receive any actual or deemed distributions attributable to amounts described in section 553 with respect to that corporation. Once any United States shareholder of that specified foreign corporation has any amount includible in gross income pursuant to section 951(a) or receives any actual or deemed distributions attributable to amounts described in section 553 with respect to that corporation, then the specified foreign corporation must comply with section 898 and §§ 1.898–3 and 1.898–4 beginning with its first taxable year subsequent to the taxable year to which that shareholder's income is attributable. Once the specified foreign corporation is required to conform its taxable year to the required year, the fact that the shareholders of the corporation cease to have any such amount includible in gross income pursuant to section 951(a) or section 553 is not relevant. Section 898 continues to apply.

(2) *Elections to be treated as domestic corporations.* A foreign corporation that is a foreign insurance company and that elects to be treated as a domestic corporation pursuant to section 953(d) is treated as a domestic corporation for all purposes of the Code and, thus, is not subject to section 898. Likewise, a foreign corporation organized under the laws of a contiguous foreign country and described in section 1504(d) is not subject to section 898 if the foreign corporation is treated as a domestic corporation in accordance with section 1504(d).

§ 1.898–2 Definition of specified foreign corporation.

(a) *In general.* For purposes of section 898 and §§ 1.898–1 through 1.898–4, a specified foreign corporation means any foreign corporation with respect to which the ownership requirements of section 898(b)(2) and paragraph (b) of this section are met and which either is treated as a controlled foreign corporation for any purpose under sections 951 through 964 of the Code (including sections 957(a), 957(b) and 953(c)), or is a foreign personal holding company, as defined in section 552.

(b) *Ownership requirements*—(1) *In general.* The ownership requirements of section 898(b)(2) and this paragraph (b)(1) are met with respect to any foreign corporation if a United States shareholder owns, or is considered to own by applying the attribution rules set forth in paragraph (b)(2) of this section, on each testing day, more than 50 percent of the total voting power of all classes of stock of the foreign corporation entitled to vote, or more than 50 percent of the total value of all classes of stock of the foreign corporation.

(2) *Ownership by attribution.* For purposes of section 898(b)(2)(A) and paragraph (b)(1) of this section, the rules contained in the following sections of the Internal Revenue Code apply in determining ownership—

(i) Section 958 (a) and (b) for determining direct, indirect, and constructive stock ownership of a controlled foreign corporation;

(ii) Section 551(f) pertaining to the stock of a foreign personal holding company held through a foreign entity; and,

(iii) Section 554 for determining stock ownership of a foreign personal holding company.

(3) *Definition of United States shareholder*—(i) *In general.* For purposes of §§ 1.898–1 through 1.898–4, United States shareholder has the meaning given to it by section 951(b), except that, in the case of a foreign corporation having related person insurance income, as defined in section 953(c)(2), a person will be treated as a United States shareholder for purposes of section 898 if that person is treated as a United States shareholder under section 953(c)(1). *See* section 898(b)(3)(A).

(ii) *Certain captive insurance companies.* The determination of whether certain shareholders are United States shareholders under section 953 (c)(1) and, consequently, whether the foreign corporation is a controlled foreign corporation for a particular taxable year, depends on the proportion of related person insurance income to total insurance income earned by the foreign corporation during the taxable year. If the related person insurance income of the foreign corporation is less than 20 percent of its total insurance income for the year, then the special rules of section 953(c) for captive insurance companies will not apply. The determination of whether the related person insurance income of a foreign corporation is less than 20 percent of its total insurance income for a particular taxable year cannot be made until the end of that year. Consequently, a foreign corporation that derives related person insurance income generally wil. not be required to consider non-10 percent United States shareholders (*i.e.*, persons who are United States shareholders only because of the special captive insurance rules) in determining whether it is a controlled foreign corporation on the first day of the foreign corporation's taxable year to determine further whether it is a specified foreign corporation and, therefore, subject to section 898, unless the foreign corporation was treated as a controlled foreign corporation because of the special captive insurance rules for the immediately preceding taxable year. When a foreign corporation is both a captive insurance company and a specified foreign corporation, it must consider all persons who are United States shareholders under both sections 951(b) and 953(c) in determining its required year.

(iii) *Foreign personal holding companies.* In the case of any foreign personal holding company as defined in section 552, which is not also a specified foreign corporation by reason of being a controlled foreign corporation under section 898(b)(1)(A)(i), United States shareholder means any person who is treated as a United States shareholder under section 551(a).

(4) *Illustrations.* The application of this paragraph (b) may be illustrated by the following examples:

Example 1. Z is a publicly traded United States corporation that owns all of the outstanding stock of FY, a foreign corporation. FY is not a foreign personal holding company. FY owns 51 percent (of both voting power and value) of all of the outstanding stock of FX, which is also a foreign corporation. The remainder of the stock is owned by an unrelated foreign corporation. FY is a controlled foreign corporation and a specified foreign corporation. In addition, pursuant to section 958(a)(2), Z is considered to own its proportionate share (*i.e.*, 51 percent) of the stock of FX which is owned by FY. Thus, FX is also both a controlled foreign corporation and specified foreign corporation, as defined in section 898(b) and this section.

Example 2. Z is a United States citizen who owns 51 percent of the value, but none of the voting stock, of FY, a foreign corporation. The remaining 49 percent of the value of FY, as well as all of FY's voting stock, is owned by a nonresident alien individual who is not related to Z. FY owns 51 percent (of both voting power and value) of all of the outstanding stock of FX, which is also a foreign corporation. FY is not a controlled foreign corporation because it does not have a United States shareholder within the meaning of section 951(b) (although if FY had related person insurance income it may be a controlled foreign corporation under the rules of section 953(c)). FY was a foreign personal holding company for its prior year. FY is a foreign personal holding company and a specified foreign corporation for the current year for purposes of section 898 because Z is a United States shareholder within the meaning of section 551(a) who owns 51 percent of the total value of the stock of FY. *See* section 552(a)(2)(B). Under section 551(f), however, the stock of FX owned by FY is not treated as being owned proportionately by Z. Accordingly, FX is not subject to section 898.

Example 3. FX has 20 equal shareholders, all of whom are related United States persons. Thus, FX does not qualify as a controlled foreign corporation under the general subpart F rules applicable to insurance companies because none of the United States persons are United States shareholders. However, if FX earns related person insurance income in a particular taxable year, then it will be considered a controlled foreign corporation for that year, unless the amount of the related person insurance income was less than 20 percent of its total insurance income for that year. If, in its taxable year ending December 31, 1990, FX earns related person insurance income in an amount that is less than 20 percent of its total insurance income and, thus, is not considered a controlled foreign corporation, then FX would not be required to determine its required year on January 1, 1991. Alternatively, if FX earns related person insurance income in its taxable year ending December 31, 1990, in excess of the 20 percent *de minimis* amount and, thus, is considered a controlled foreign corporation, FX would be required to determine whether it is a specified foreign corporation on January 1, 1991, and in making that determination, would be required to treat all United States persons owning its stock as United States shareholders.

(c) *Special rule for foreign personal holding companies that are not controlled foreign corporations*—(1) *In general.* A foreign corporation that is not a controlled foreign corporation for 30 days or more during the current taxable year will be required to determine whether it is a specified foreign corporation on any testing day during the current year only if the foreign corporation—

(i) meets the ownership requirements of section 552(a)(2) (ownership requirements for a foreign personal holding company) for the current taxable year, and

(ii) was a foreign personal holding company for its taxable year immediately preceding the current taxable year.

(2) *Illustrations.* The application of this paragraph (c) may be illustrated by the following examples:

Example 1. (i) FX is a foreign corporation that uses the calendar year as its taxable year. For calendar year 1989, its last taxable year beginning before the effective date of section 898, FX met the stock ownership requirements of section 552(a)(2) for a foreign personal holding company. More than 50 percent of the total value of all classes of stock of FX is owned by Y, a United States shareholder with a taxable year ending June 30. The remaining value of FX stock, and all of FX's voting stock, is owned by Z, a nonresident alien individual who is unrelated to Y. FX is not a controlled foreign corporation.

(ii) On January 1, 1990 (FX's first testing day after the effective date of section 898), FX examined its gross income for the taxable year ending December 31, 1989. FX met the gross income requirement of section 552(a)(1) for a foreign personal holding company for that year. Therefore, under the rules of this paragraph (c), FX was deemed to be a foreign personal holding company, for purposes of section 898, for the current taxable year beginning January 1, 1990. Accordingly, FX was required to determine whether it was a specified foreign corporation on January 1, 1990. FX was a specified foreign corporation on that date and, therefore, was required to change its taxable year to the required year ending on June 30.

Example 2. The facts are the same as in *Example 1*, with the additional fact that FX did not meet the gross income requirement for a foreign personal holding company for the short taxable year beginning January 1, 1990, and ending June 30, 1990. Nevertheless, FX will be required to maintain a taxable year beginning July 1, 1990, as its required year under section 898(c).

§ 1.898–3 Determining the required year.

(a) *Controlled foreign corporations*—(1) *In general.* The required year is the majority U.S. shareholder year prescribed in section 898 (c)(1)(C) and paragraph (a)(3) of this section. If, however, there are inconsistent majority U.S. shareholder years, then the required year is the taxable year prescribed in section 898(c)(1)(A)(ii) and paragraph (a)(4) of this section.

(2) *One-month deferral election.* A specified foreign corporation that is a controlled foreign corporation may elect

under section 898(c)(1)(B) and § 1.898–4(a)(2)(ii) and (b)(2)(ii) of this section a taxable year beginning one month earlier than the majority U.S. shareholder year. The specified foreign corporation may revoke this election; see § 1.898–4(b). If the specified foreign corporation revokes the election, it may re-elect the one-month deferral only if it follows the procedures set forth in § 2.898–4(b)(2) (iv) and (v). A specified foreign corporation that is a foreign personal holding company, but is not a controlled foreign corporation, may not make this election. Also, this election may not be made by a specified foreign corporation that is a controlled foreign corporation, but whose required year is the taxable year prescribed by section 898(c)(1)(A)(ii) and paragraph (a)(4) of this section because there are inconsistent majority U.S. shareholder years.

(3) *Majority U.S. shareholder year*—(i) *In general.* For the purpose of determining the required year of a specified foreign corporation, the majority U.S. shareholder year under section 898(c)(1)(C)(i) means the taxable year (if any) which, on each testing day as defined in paragraph (a)(5) of this section, constitutes the taxable year of a United States shareholder described in either paragraph (a)(3)(i) (A) or (B) of this section.

(A) Each United States shareholders, as defined in sections 898(b)(3)(A) and 1.898–2(b)(3),that owns more than 50 percent of the voting power of all classes of stock of the specified foreign corporation entitled to vote, or more than 50 percent of the total value of all classes of stock of the specified foreign corporation, after application of the attribution rules of section 898(b)(2)(B). This shareholder is described in section 898(b)(2)(A) and is referred to in this section as a "more than 50 percent United States shareholder."

(B) Each United States shareholder, as defined in section 898(b)(3)(A) and § 1.898–2(b)(3), that is not a more than 50 percent United States shareholder and whose stock was treated as owned under section 898(b)(2)(B) (the attribution rules) by a more than 50 percent United States shareholder.

(ii) *Passthrough entities.* For the purpose of determining the required year of a specified foreign corporation, if each United States shareholder described in paragraph (a)(3)(i)(A) or (B) of this section is a passthrough entity, such as an S corporation, partnership, trust, or estate, then the majority U.S. shareholder year is the taxable year which, on a testing day, constitutes the taxable year of the passthrough entity and not the taxable year or years of the passthrough entity's shareholders, partners, or beneficiaries.

(4) *Inconsistent majority U.S. shareholder years*—(i) *In general.* There may exist more than one majority U.S. shareholder year under section 898(c)(1)(C)(i) and paragraph (a)(3) of this section because the taxable years of shareholders described in paragraph (a)(3)(i)(A) or (B) of this section may be different taxable years. If the majority U.S. shareholder years are inconsistent, then the specified foreign corporation must adopt the taxable year that results in the least aggregate deferral of income to all United States shareholders of the specified foreign corporation, even if that taxable year is not a majority U.S. shareholder year. See paragraph (a)(4)(iii), *Example* 2, of this section. If the required year is the taxable year prescribed by this paragraph (a)(4) because there are inconsistent majority U.S. shareholder years, then the one-month deferral election under section 898(c)(1)(B) and paragraph (a)(2) of this section is not available.

(ii) *Formula for determining least aggregate deferral.* The aggregate deferral of income for a particular year is equal to the sum of the products determined by multiplying, on each testing day as defined in paragraph (a)(5) of this section, the number of month(s) of deferral for each United States shareholder, that are shareholders on the testing day, that would be generated by that year end by that United States shareholder's percentage interest in deemed distributions from the specified foreign corporation. The United States shareholder's taxable year that produces the lowest sum when compared to the other United States shareholders' taxable years is the taxable year that results in the least aggregate deferral of income to the United States shareholders. For purposes of this section, the number of months of deferral for a United States shareholder of a specified foreign corporation is measured by the number of months from the end of the taxable year of the specified foreign corporation to the end of the taxable year of the United States shareholder. Part of a month is treated as a month. If the calculation results in more than one taxable year qualifying as the taxable year with the least aggregate deferral, the specified foreign corporation may select any one of such taxable years as its required year. However, if one of such qualifying taxable years is also the specified foreign corporation's existing taxable year, the specified foreign corporation must maintain its existing taxable year.

(iii) *Illustrations.* The application of this paragraph (a)(4) may be illustrated by the following examples:

Example 1. (i) FX is a foreign corporation with two classes of stock, only one of which is voting stock. Each class of stock shares equally in distributions. FX has a June 30 taxable year. FX's shareholders, A, B and C are U.S. citizens. A owns 45 percent of each class of stock, B owns 35 percent of each class of stock, and C owns the remaining 20 percent of each class of stock. A is B's grandfather and C is unrelated to A and B. A and C are calendar year taxpayers. B's taxable year ends on June 30. Under sections 958(b)(1) and 318(a)(1)(A), A is considered to own the stock owned by B. Under section 898(c)(1)(C)(i)(I), A is a more than 50 percent United States shareholder and under section 898(c)(1)(C)(i)(II), B is a United States shareholder whose stock is considered to be owned by a more than 50 percent United States shareholder. Accordingly, FX has two majority U.S. shareholder years, the calendar year and the fiscal year ending June 30. These majority U.S. shareholder years are inconsistent.

(ii) Beginning July 1, 1990, the first day of FX's first taxable year beginning after July 10, 1989, FX must conform its taxable year to the required year by adopting the taxable year that results in the least aggregate deferral of income, taking into consideration the taxable year of each United States shareholder, including C. The taxable year ending December 31 produces .35×6 (B's percentage share of distributions from FX multiplied by the number of months of deferral if December 31 is the required year), or a product of 2.1. The taxable year ending June 30 produces [.45×6] plus [.20×6] (A and C's percentage shares of distributions from FX multiplied by the number of months of deferral if June 30 is the required year), or a product of 3.9. Accordingly, the taxable year ending December 31 is the required year. However, if C's year end were also June 30, or if only the nonvoting stock shared in distributions and B owned all of the nonvoting stock, then the taxable year ending June 30 would produce the least aggregate deferral of income, and would be the required year.

Example 2. (i) LX is a calendar year foreign corporation with one class of stock. LX's shareholders, A, B and C are U.S. citizens. A is B's grandfather and C is unrelated to A and B. A owns 10 percent of LX's stock and has a taxable year ending June 30. B owns 45 percent of LX's stock and has a taxable year ending March 31. C owns the remaining 45 percent of LX and has a September 30 taxable year. Under sections 958(b)(1) and 318(a)(1)(A), A is considered to own the stock owned by B. Under section 898(c)(1)(C)(i)(I), A is a more than 50 percent United States shareholder and under section 898(c)(1)(C)(i)(II), B is a United States shareholder whose stock is considered to be owned by a more than 50 percent United States shareholder. Accordingly, LX has two inconsistent majority U.S. shareholder years, the fiscal year ending June 30 and the fiscal year ending March 31.

(ii) Beginning January 1, 1990, the first day of LX's first taxable year beginning after July

10, 1989, LX must conform its taxable year to the required year by adopting the taxable year that results in the least aggregate deferral of income, taking into consideration the taxable year of each United States shareholder. The taxable year ending June 30 produces [.45×3] plus [.45×9] (B and C's, respective percentage shares of distributions multiplied by the number of months of deferral), or a product of 5.4. The taxable year ending March 31 produces [.1×9] plus [.45×6] (A and C's percentage shares of distributions multiplied by the number of months of deferral), or a product of 3.6. The taxable year ending September 30 produces [.1×3] plus [.45×6] (A and B's percentage shares of distributions multiplied by the number of months of deferral), or a product of 3.0. Accordingly, September 30 is the required year.

(iv) *Procedural requirements and effective date.* This paragraph (a)(4) is effective for taxable years beginning after [Insert Date 120 Days After Date of Publication of Final Regulations in the **Federal Register**]. In order to show that the requirements of this paragraph (a)(4) are satisfied, a statement setting forth the computations required to establish the taxable year that results in the least aggregate deferral of income to the United States shareholders of the specified foreign corporation must be attached to Form 5471 and, if applicable, to Form 1120F, and must indicate the following at the top of page one of the statement: "FILED UNDER § 1.898–3(a)(4)."

(5) *Testing days*—(i) *In general.* A specified foreign corporation must identify its majority U.S. shareholder year(s), if any, for the purpose of determining its required year. The specified foreign corporation must determine its majority U.S. shareholder year on each testing day. In general, the testing day is the first day of the specified foreign corporation's taxable year for U.S. tax purposes, determined without regard to section 898. *See* section 898(c)(1)(C)(ii).

(ii) *Illustration.* The application of paragraph (a)(5)(i) of this section may be illustrated by the following example:

Example. FX is a foreign corporation that, prior to the effective date of section 898, used the calendar year as its taxable year. Thus, on January 1, 1990, the first day of FX's first taxable year beginning after July 10, 1989, FX determined whether it was a specified foreign corporation and, thus, required to change its taxable year to the required year under section 898(c). Based on this test, FX changed to a taxable year ending on June 30 (because FX was a specified foreign corporation and its majority U.S. shareholder year ends on June 30). Accordingly, FX had a short period taxable year for the period beginning January 1, 1990, and ending June 30, 1990. On July 1, 1990, the first day of its new taxable year, FX again tested to determine whether it was using the required year.

(iii) *Additional testing days.* For taxable years of specified foreign corporations beginning after [Insert date that is 120 days after final regulations are published in the **Federal Register**], a specified foreign corporation must determine its majority U.S. shareholder year on each day, since the most recent testing day described in paragraph (a)(5)(i) of this section, on which a substantial change occurs in the United States ownership of the stock of the specified foreign corporation. A substantial change in the United States ownership of the stock of a specified foreign corporation is a change that results in a new more than 50 percent United States shareholder of the foreign corporation.

(iv) *Illustration.* The application of paragraph (a)(5)(iii) of this section may be illustrated by the following example:

Example. FX is a controlled foreign corporation with one class of stock and a taxable year ending on June 30. Y, the majority United States shareholder of FX, owns 51 percent of the stock of FX. Y also has a taxable year ending June 30. Thus, FX is a specified foreign corporation subject to section 898. On May 1, 1994, Y sold 10 percent of the stock in FX to Z, an unrelated United States corporation that owned 41 percent of the stock of FX before the sale. Z obtained, therefore, a sufficient amount of FX stock to qualify as a "more than 50 percent United States shareholder" of FX. Z has a taxable year ending on April 30. Consequently, on May 1, 1994, FX determined that its new required year was a taxable year ending April 30. FX has a taxable year ending June 30, 1994, and a short taxable year beginning July 1, 1994, and ending April 30, 1995. *See § 1.898–4 (b)(3).*

(v) *Anti-abuse rule.* The district director may require the use of a testing day other than that identified in paragraph (a)(5)(i) or (iii) of this section that will reflect more accurately the ownership of the specified foreign corporation and thereby the aggregate deferral of income to the United States shareholders of the specified foreign corporation where the United States shareholders engage in a transaction (or transactions) that has as its principal purpose the avoidance of the principles of this section. Thus, the anti-abuse rule of the preceding sentence would apply, for example, when there is a transfer of an interest in a specified foreign corporation that results in a temporary transfer of that interest principally for the purpose of qualifying for a specific taxable year under the principles of this section.

(b) *Foreign personal holding companies*—(1) *In general.* The required year is the majority U.S. shareholder year prescribed by section 898(c)(1)(A) and paragraph (a)(3) of this section. If, however, there are inconsistent majority U.S. shareholder years, then the required year is the taxable year determined under the provisions of paragraph (a)(4) of this section.

(2) *One-month deferral election not available.* A specified foreign corporation that is a foreign personal holding company, but is not a controlled foreign corporation, may not make the one-month deferral election of paragraph (a)(2) of this section.

(3) *Testing days. See* paragraph (a)(5) of this section.

§ 1.898–4 Special rules.

(a) *Changes in the required year of a specified foreign corporation for its first taxable year beginning after July 10, 1989*—(1) *In general.* A specified foreign corporation must conform its taxable year to the required year as defined in section 898(c) for taxable years beginning after July 10, 1989. In addition, section 898(c)(1)(B) permits a specified foreign corporation that is a controlled foreign corporation to elect a taxable year beginning one month earlier than the majority U.S. shareholder year.

(2) *Procedure for a specified foreign corporation to conform to the required year for the first taxable year beginning after July 10, 1989*—(i) *No section 898(c)(1)(B) election.* If no election under section 898(c)(1)(B) can be made because the specified foreign corporation is a foreign personal holding company, or no election is being made for a specified foreign corporation that is a controlled foreign corporation, but the specified foreign corporation is changing its first taxable year beginning after July 10, 1989, to conform to the required year, then unless the instructions to the forms provide otherwise, the words "Change in Taxable Year" must be placed in the upper left hand corner of the first page of Form 5471 and, if applicable, on Form 1120F, with respect to the specified foreign corporation for the taxable year for which the change is made. If a specified foreign corporation is not required to change its taxable year, then no notation concerning this fact need appear on Form 5471 and, if applicable, on Form 1120F.

(ii) *With section 898(c)(1)(B) election.* The election under section 898(c)(1)(B) may be made for a specified foreign corporation that is a controlled foreign corporation for its first taxable year beginning after July 10, 1989, by indicating on Form 5471 and, if applicable, on Form 1120F, that tne taxable year shown on the form with

respect to the controlled foreign corporation was determined in accordance with section 898(c)(1)(B). The following words must be used unless the instructions to the forms provide otherwise:

(A) If the election involves a change in the taxable year of the controlled foreign corporation, the words "Section 898(c)(1)(B) Election—Change in Taxable Year" must be placed in the upper left hand corner of the first page of Form 5471 and, if applicable, on Form 1120F; and

(B) If the election does not involve a change in the taxable year of the controlled foreign corporation, the words, "Section 898(c)(1)(B) Election" must be placed in the upper left hand corner of the first page of Form 5471 and, if applicable, on Form 1120.

(iii) *Filing requirement.* If a specified foreign corporation changed its required year for its first taxable year beginning after July 10, 1989, to conform to the requirements of section 898 and § 1.898–3 but did not follow the procedures set forth in Rev. Proc. 90–26 and this paragraph (a)(2), a statement must be attached to the first Form 5471 and, if applicable, Form 1120F, to be filed after [Insert Date That is 120 Days After Date of Publication of Final Regulations in the **Federal Register**] indicating that the corporation's taxable year was changed to conform to the requirements of section 898. If a specified foreign corporation has not conformed its first taxable year beginning after July 10, 1989, to the taxable year required by section 898 and § 1.898–3, an amended return with an amended Form 5471 (or Form 1120F) must be filed to satisfy the requirements of section 898, § 1.898–3 and this paragraph (a)(2).

(b) *Changes in the required year of a specified foreign corporation during a taxable year of a specified foreign corporation subsequent to its first taxable year beginning after July 10, 1989*—(1) *In general.* A specified foreign corporation must conform its taxable year to a different required year should circumstances arise in which the required year changes under the rules of § 1.898–3, such as when a substantial change in ownership of a specified foreign corporation results in a new more than 50 percent United States shareholder with a different majority U.S. shareholder year. The change in taxable year of a specified foreign corporation made to conform to a different required year shall be treated as initiated by the taxpayer and as having been made with the consent of the Commissioner. The requirements set forth in this paragraph (b) are effective for taxable years subsequent to a specified foreign corporation's first taxable year beginning after July 10, 1989.

(2) *Procedure for the change to a new required year of a specified foreign corporation for taxable years subsequent to its first taxable year beginning after July 10, 1989*—(i) *Different majority U.S. shareholder year.* If the specified foreign corporation is changing its taxable year to conform to a different required year under paragraph (b)(1) of this section, unless the instructions to the forms provide otherwise, the words "Change in Taxable Year" must be placed in the upper left hand corner of the first page of Form 5471 and, if applicable, on Form 1120F, with respect to the specified foreign corporation for the taxable year for which the change is made. This paragraph covers terminations of prior elections under section 898(c)(1)(B) made in conjunction with that change.

(ii) *Election under section 898(c)(1)(B).* If the specified foreign corporation that is a controlled foreign corporation is changing its taxable year to conform to a different required year under paragraph (b) of this section and an election under section 898(c)(1)(B) is made, the change in taxable year and the election under section 898(c)(1)(B) are to be noted on Form 5471 and, if applicable, on Form 1120F, with respect to that corporation for the taxable year for which the change and election are made. Unless the instructions to the forms provide otherwise, the words "Section 898(c)(1)(B) Election—Change in Taxable Year" must be placed in the upper left hand corner of the first page of each form. This paragraph covers terminations of prior elections under section 898(c)(1)(B) made in conjunction with that election.

(iii) *Procedure for prior years.* If a specified foreign corporation conformed its taxable year to that required by section 898 and § 1.898–3 prior to [Insert Date That is 120 Days After Date of Publication of Final Regulations in the **Federal Register**] but did not follow the procedures set forth in this paragraph (b)(2), a statement must be attached to the first Form 5471 and, if applicable, Form 1120F, to be filed after [Insert Date That is 120 Days After Date of Publication of Final Regulations in the **Federal Register**] indicating that the corporation's taxable year was changed to conform to the requirements of section 898 and § 1.898–3. If a specified foreign corporation has not conformed a taxable year subsequent to its first taxable year beginning after July 10, 1989, to the taxable year required by section 898 and § 1.898–3, an amended return, with an amended Form 5471 (or Form 1120F) must be filed to satisfy the requirements of section 898, § 1.898–3 and this paragraph (b)(2).

(iv) *Making a second election under section 898(c)(1)(B).* Except for an election under section 898(c)(1)(B) that is made in conjunction with a change in its taxable year to conform to a different required year under paragraph (b)(2)(ii) of this section, a specified foreign corporation that has elected the one-month deferral under section 898(c)(1)(B) and subsequently revoked that election shall not be eligible to make an election under section 898(c)(1)(B) for any taxable year before its fifth taxable year which begins after the first taxable year for which the revocation is effective, unless the consent of the Commissioner pursuant to the procedures set forth in paragraph (b)(2)(v) of this section is obtained.

(v) *Procedure for obtaining the consent of the Commissioner to change the required year of specified foreign corporations.* In the circumstance described in paragraph (b)(2)(iv) of this section, a specified foreign corporation must request the approval of the Commissioner for a change in taxable year by completing and filing Form 1128 (Application for Change in Accounting Period) with the Commissioner of Internal Revenue. The application may be filed either by the majority United States shareholder on behalf of the specified foreign corporation or by the specified foreign corporation. The application must be filed on or before the 15th day of the second calendar month following the close of the short period for which a return is required to effect the change in taxable year. Reference to this regulation must be made part of the application by placing the following statement at the top of page one of the application: "FILED UNDER § 1.898–4." Approval of a change in taxable year described in paragraph (b)(2)(iv) of this section will not be granted unless the taxpayer agrees to the terms, conditions, and adjustments, as set forth by the Commissioner, under which the change will be effected. Unless the instructions to the forms indicate otherwise, re-election of section 898(c)(1)(B) must be noted on Form 5471 and, if applicable, on Form 1120F, for the taxable year for which the re-election is made. Unless the instructions to the forms indicate otherwise, the words "Re-elected Section 898(c)(1)(B) Election—Change in Taxable Year" must be placed in the upper left hand corner of the first page of each form.

(3) *Short period*—(i) *In general.* Any short period required for a specified foreign corporation to effect the change in taxable year described in paragraph (b)(1) of this section will begin on the first day of the specified foreign corporation's current taxable year and will end on the last day of the new required year within which the change in ownership of the specified foreign corporation (or other event that necessitates a change in taxable year) occurs. If, however, the last day of the specified foreign corporation's current taxable year occurs prior to the last day of the new required year within which the change in ownership of the specified foreign corporation (or other event resulting in a new required year) occurs, then the short period will begin the day following the last day of the specified foreign corporation's current taxable year and end on the last day of the new required year subsequent to the required year within which the change in ownership of the specified foreign corporation (or other event resulting in a new required year) occurred. In no case shall the taxable year of the specified foreign corporation be in excess of one year.

(ii) *Illustrations.* The application of this paragraph (b)(3) may be illustrated by the following examples:

Example 1. FX is a foreign corporation that is a specified foreign corporation within the meaning of section 898(b). FX had been a calendar year taxpayer. On July 1, 1991, FX was purchased by a United States shareholder with a September 30 fiscal year. Accordingly, the short period required to change the taxable year of FX to the required year began on January 1, 1991, the first day of FX's current taxable year, and ended on September 30, 1991, the last day of the new required year within which the change in ownership of FX occurred.

Example 2. The facts are the same as in *Example 1* except that on July 1, 1991, FX was purchased by a United States shareholder with a June 30 fiscal year. Accordingly, the short period required to change the taxable year of FX to the required year did not begin until January 1, 1992, the day following the last day of FX's current taxable year because the last day of FX's current taxable year occurs prior to the last day of the new required year within which the change in ownership occurred. The short period will begin January 1, 1992, and will end June 30, 1992.

(4) *Conforming changes in the majority U.S. shareholder year.* The requirements of section 898 and §§ 1.898–3 and 1.898–4 may be satisfied by a majority United States shareholder of a specified foreign corporation changing its taxable year to conform to the taxable year of the specified foreign corporation. However, any change to the United States shareholder's taxable year requires the approval of the Commissioner, and must be made in accordance with section 442 and the regulations under that section, relating to changes of annual accounting period.

(c) *Nonconforming foreign and United States taxable years of a specified foreign corporation*—(1) *In general.* If a specified foreign corporation's foreign taxable year (for purposes of computing income tax liabilities due a foreign country) does not conform to the required year pursuant to section 898(c) and § 1.898–3, then the United States shareholders must compute any income inclusion relating to the specified foreign corporation including, but not limited to, subpart F income, increase in earnings invested in United States property, foreign personal holding company income, and section 864(d) income in accordance with the rules set forth in paragraphs (c)(2) and (3) of this section. However, see section 338 and the regulations under that section for rules applicable to certain domestic and foreign corporations, and the shareholders of those corporations where an election under that section is made.

(2) *Computation of income and earnings and profits of a specified foreign corporation*—(i) *Separate books of account.* A specified foreign corporation that has a foreign taxable year different from its required year, as determined under section 898(c) and § 1.898–3, will have portions of two foreign annual accounting periods in each required year. In this case, either separate books of account for the specified foreign corporation based upon the required year may be maintained, or income (and earnings and profits) shall be computed as set forth in paragraph (c)(2)(ii) of this section. Books of account must be maintained on a consistent basis for each foreign annual accounting period.

(ii) *Income and earnings and profits computation in lieu of separate books.* In lieu of maintaining separate books of account, income and earnings and profits shall be computed in two steps. First, for the foreign annual accounting period of the specified foreign corporation which ends within its required year, the income (and earnings and profits) of the specified foreign corporation is the entire income (or earnings and profits) of the foreign annual accounting period, less the income (or earnings and profits), if any, of that foreign annual accounting period properly allocable to the preceding taxable year, determined under a consistent application of the principles of section 964 and the regulations under that section. Second, for the foreign annual accounting period of the specified foreign corporation which ends after its required year, the income (and earnings and profits) of the specified foreign corporation is the income (and earnings and profits) of each month (or quarter) which has ended within the required year determined on the basis of interim actual book closings and computed by a consistent application of the principles of section 964 and the regulations under that section. If the amount of income properly includable in the gross income of United States shareholders in the preceding taxable year is different from the amount of income actually included by United States shareholders in the preceding taxable year, then an adjustment must be made by each United States person affected by means of an amended return for that preceding taxable year.

(iii) *Illustration.* The application of this paragraph (c)(2) may be illustrated by the following example:

Example. (i) FX is a specified foreign corporation organized in foreign country, FC. FX's annual accounting period and taxable year, for FC purposes, end March 31. FX's required year is the calendar year. FX did not conform its FC taxable year to the required year. Separate books for United States tax purposes are not maintained. Accordingly, FX's required year, Calendar Year 1, will include portions of two FC annual accounting periods and FC taxable years.

(ii) For the FC period ending March 31, during Calendar Year 1, FX's income (in U.S. dollars) was $1,000, all of which was foreign personal holding company income. This amount was determined on the basis of FX's annual March 31, FC financial reports, adjusted in accordance with section 964 and the regulations under that section. Of the $1,000, it was determined from the annual financial reports that $350 was earned during the months ending in Calendar Year 1. For the period April 1, during Calendar Year 1, to the end of Calendar Year 1, FX's income was $1,200, determined on the basis of FX's monthly interim FC books of account. Accordingly, the income of FX subject to inclusion in the gross income of United States shareholders for Calendar Year 1, is $1,550. However, based on FX's annual March 31, Year 2, financial reports (adjusted in accordance with section 964 and the regulations under that section), FX's income for the period April 1, during Calendar Year 1, to the end of Calendar Year 1 was $1,300, not $1,200. Accordingly, each United States shareholder of FX must file an amended return for Calendar Year 1 showing its portion of the additional $100 of income.

(3) *52–53-week taxable year*—(i) *Majority United States shareholder with a 52–53-week taxable year.* If a majority United States shareholder elects to follow a 52–53-week taxable year (determined under section 441(f) and the regulations under that section), and

the specified foreign corporation does not intend to follow a 52–53-week taxable year, then the required year of the specified foreign corporation, as determined under section 898(c) and § 1.898–3, shall be a 12-month taxable year, which must end on the last day of the same month used in determining the 52–53-week taxable year of its majority United States shareholder. If the election of the one-month deferral under section 898(c)(1)(B) and § 1.898–3(a)(2) is made, the election will be valid, and the specified foreign corporation may retain a 12-month taxable year, subject to the condition that the 12-month taxable year must end on the last day of the month which immediately precedes the month used in determining the 52–53-week taxable year of its majority United States shareholder.

(ii) *Specified foreign corporation with a 52–53-week taxable year.* If a specified foreign corporation elects to follow a 52–53-week taxable year, and the majority United States shareholder does not intend to follow a 52–53-week taxable year, then the required year, as determined under section 898(c) and § 1.898–3, of the specified foreign corporation shall be a 52–53-week taxable year, which must end within a seven-day period from the last day of the 12-month taxable year of its majority United States shareholder. If the election of the one-month deferral under section 898(c)(1)(B) and § 1.898–3(a)(2) is made, the election will be valid and the specified foreign corporation may retain a 52–53-week taxable year, subject to the condition that the 52–53-week taxable year must end within a seven-day period from the last day of the month which immediately precedes the 12-month taxable year of its majority United States shareholder.

(iii) *Illustrations.* The application of this paragraph (c)(3) may be illustrated by the following examples:

Example 1. X is a United States corporation created on January 1, 1990, that elected to follow a 52–53-week taxable year which ends on the Friday nearest the end of December. Thus, X's first United States taxable year began on Monday, January 1, 1990, and ended on Friday, December 28, 1990; its next taxable year began on Saturday, December 29, 1990, and ended on Friday, January 3, 1992. X owns 100 percent of FY, a specified foreign corporation that is a controlled foreign corporation which follows a 12-month taxable year ending on November 30. In these circumstances, X's taxable year may end either earlier or later than one month after the end of FY's taxable year. Nonetheless, an election under section 898(c)(1)(B), which would permit FY to retain its current taxable year, will be effective because FY's taxable year ends on the last day of the month which immediately precedes the same month used in determining the 52–53-week taxable year of X, its majority United States shareholder.

Example 2. Y is a United States person with a taxable year ending September 30. Y also is the majority United States shareholder of FX, a specified foreign corporation which is a controlled foreign corporation that wishes to make the one-month deferral election under section 898(c)(1)(B). FX follows a 52–53-week taxable year that ends on the Monday closest to the last day of August. In 1990, the last day of August fell on a Friday. Thus, FX's taxable year ended on Monday, September 3, 1990, a date within a seven-day period from the last day of the month which immediately precedes the 12-month taxable year of its majority United States shareholder, Y. In 1994, FX's taxable year will end on Monday, August 29, and its next taxable year will begin on August 30, 1994. Thus, in 1994, FX's taxable year will begin more than one month before the beginning of Y's United States taxable year. Nevertheless, the election made under section 898(c)(1)(B) will be effective because FX's taxable year will end within a seven-day period from the last day of the month which immediately precedes the 12-month taxable year of its majority United States shareholder.

(4) *Certain captive insurance companies that elect to treat their related person insurance income as income effectively connected with the conduct of a United States trade or business.* Section 953(c)(3)(C) permits a foreign corporation to elect to treat its related person insurance income as income effectively connected with the conduct of a trade or business in the United States. Under § 1.953–7(c)(3) of proposed regulations, such a foreign corporation must utilize the calendar year as its annual accounting period for United States tax purposes, as required by section 843. Further, if an election is made for the first taxable year beginning after December 31, 1987, or any subsequent taxable year, the election is effective from the first day of the taxable year for which the election is made (and all subsequent taxable years). Therefore, a foreign corporation that has a fiscal taxable year prior to making the election must file a short-year return for the period from the first day the election becomes effective to the last day of the calendar year in which the election is made. The rules under section 953(c)(3)(C) and § 1.953–7 will prevail over the rules under section 898 and this section. Thus, if a captive insurance company that is a specified foreign corporation makes an election pursuant to section 953(c)(3)(C) and § 1.953–7(c), it must use the calendar year as its annual accounting period for United States tax purposes, regardless of the taxable year of its majority United States shareholder. However, if a captive insurance company that is a specified foreign corporation does not make the election pursuant to section 953(c)(3)(C) and the regulations thereunder, it must conform its United States taxable year to that of its majority United States shareholder.

(d) *Four-year income spread.* For its first taxable year beginning after July 10, 1989, if, because of the change necessitated by section 898 in the taxable year of the specified foreign corporation, any United States person was required to include in gross income for one taxable year amounts attributable to two taxable years of the specified foreign corporation, the amount that the United States person would otherwise have included in gross income for the one taxable year by reason of the short taxable year of the specified foreign corporation resulting from the change shall be included in that person's gross income ratably over a four-taxable-year period beginning with that one taxable year. A United States person who is required by reason of section 898 to include in gross income amounts attributable to two taxable years of a specified foreign corporation may not waive the four-year ratable inclusion of such gross income.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–31469 Filed 12–31–92; 8:45 am]

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26 CFR Part 1

[INTL–0045–92]

RIN 1545–AL24

Change From Profit and Loss Method to DASTM

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to adjustments required when a qualified business unit (QBU) that used the profit and loss method of accounting in a post-1986 taxable year begins to use the dollar approximate separate transactions method of accounting (DASTM). The regulations provide rules for taxpayers to construct an opening dollar balance sheet for the QBU and require certain income adjustments in connection with this change in accounting method.

DATES: Comments and requests for a public hearing must be received by March 8, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal

Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0045–92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jacob Feldman at (202) 622–3870 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 985 of the Internal Revenue Code of 1986. These amendments are proposed to change the applicable rules with respect to a QBU that changes to the dollar approximate separate transactions method of accounting (DASTM).

General rules providing for adjustments for QBUs changing functional currency are provided in § 1.985–5. Transition rules for a QBU that uses DASTM for its first taxable year beginning in 1987 are provided in § 1.985–6. Those regulations were published as temporary and proposed regulations in the **Federal Register** on September 20, 1989 (54 FR 38649) and are finalized with minor changes in the accompanying Treasury decision. These proposed regulations are in response to taxpayer comments that the spot exchange rate translation convention of § 1.985–5 produces inappropriate results when a QBU changes to DASTM in a post-1987 taxable year. These regulations would replace § 1.985–5 for taxpayers with a QBU that begins to use DASTM in a taxable year beginning 30 days after the regulations are finalized and for taxpayers that elect to apply the regulations retroactively.

For post-1986 taxable years, sections 986(b) and 987 generally require taxpayers to compute the taxable income or loss of a QBU that is a foreign branch, and the earnings and profits (E&P) of a QBU that is a foreign corporation, in the QBU's functional currency using a profit and loss (P&L) method.[1] Under the P&L method, exchange gain or loss on earnings resulting from exchange-rate fluctuations that occur after earnings are included in income generally is deferred until the earnings are remitted. When earnings are remitted from a branch, or when a controlled foreign corporation (CFC) makes a distribution of previously taxed earnings and profits, exchange gain or loss is recognized to the extent that the dollar value of the remittance differs from the dollar value of the earlier income inclusion.

The deferral of exchange gain and loss that the P&L method allows may create significant distortions relative to the dollar when a QBU makes its income tax determinations using a hyperinflationary currency. One such distortion is the overstatement of income and E&P for QBUs with substantial depreciable assets. This occurs because, in terms of the hyperinflationary currency, sales revenues increase as the currency inflates, but depreciation and amortization deductions, which are based on hyperinflationary currency cost bases, remain constant.

Income and expense derived from financial assets and liabilities also may be distorted in dollar terms. For example, a QBU that borrows in a hyperinflationary currency pays a high nominal rate of interest, which is offset by an exchange gain (relative to the dollar) on the principal amount of the liability when it is repaid in depreciated local currency. Under the P&L method, however, recognition of the offsetting exchange gain on the QBU's hyperinflationary currency liabilities is deferred. Thus, under the P&L method, large interest deductions shelter other income of QBUs that are net borrowers, and income tends to be understated. Conversely, the income of QBUs that hold net financial assets in the hyperinflationary currency tends to be overstated under the P&L method, because such QBUs accrue large amounts of interest income while deferring the offsetting exchange losses on the loan principal.

Because in these situations use of the P&L method does not clearly reflect income, the regulations under section 985 permit QBUs that would otherwise have a hyperinflationary functional currency to elect to use the dollar and to compute income and E&P using a version of the net worth method of accounting,[2] the dollar approximate separate transactions method (DASTM). Proposed amendments to the regulations under § 1.985–3 published on July 17, 1991 would make DASTM mandatory for these QBUs.

DASTM uses historical exchange rates to translate into dollars the hyperinflationary currency basis of fixed assets and accumulated depreciation, which preserves the dollar value of depreciation deductions. Spot exchange rates are used to revalue the hyperinflationary currency basis or amount of certain of the QBU's financial assets and liabilities in determining the closing dollar balance sheet, which results in the current recognition of exchange gain or loss that offsets the overstatement of interest income or expense.

Under § 1.985–6, a QBU that elects DASTM for its first post-1986 taxable year may use its 1986 year-end dollar tax balance sheet, if any, as the starting point for its DASTM computations beginning in 1987. Generally, a U.S. taxpayer that used a net worth method in computing the pre-1987 income or loss of a foreign branch, and a U.S. taxpayer owning an interest in a controlled foreign corporation that had had a "significant event" requiring the preparation of a dollar balance sheet under § 1.964–1 prior to 1987, will have these records. Such a dollar balance sheet generally reflects the use of historical exchange rates to translate the foreign currency basis of fixed assets and long-term liabilities and the use of current exchange rates to translate the basis or amount of certain short-term financial and other assets and liabilities. Sections 1.985–6(b) and (e). U.S. shareholders of foreign corporations that begin using DASTM in 1987 but had not been required to compute earnings and profits in dollars prior to 1987 must use similar rules to set up an opening dollar balance sheet. Section 1.985–6(c).

In contrast, U.S. taxpayers that used a P&L method to account for the income or loss of a foreign branch prior to 1987 and that elect DASTM in 1987 must translate each item on the hyperinflationary currency balance sheet into dollars using the exchange rate in effect at the time the dollar election is made. See § 1.985–6(f). Use of spot (rather than historical) exchange rates also is required under the general

[1] Under the P&L method, the QBU maintains an income statement in foreign currency and translates the relevant amounts into dollars when such amounts are included in income for U.S. tax purposes. Section 989(b) provides translation rules for converting the foreign functional currency amounts into dollars.

[2] A net worth method uses a dollar balance sheet, rather than a foreign currency income statement, to measure earnings. Under this method the income or loss (or earnings and profits) of a QBU for the taxable year is the difference between the QBU's dollar net worth (assets minus liabilities) at the end of the year and its dollar net worth at the beginning of the year, adjusted for capital contributions and distributions.

A version of the net worth method was mandatory under pre-1987 law for computing the E&P of a CFC for purposes of subpart F unless the CFC kept dollar books using a separate transactions approach. See § 1.964–1. However, for purposes of measuring income inclusions and foreign tax credits under section 902 with respect to an actual dividend distribution, earnings and profits of a foreign corporation were computed in foreign currency using a P&L method. Taxpayers could elect to use either a P&L method or a net worth method to compute the taxable income or loss of a foreign branch in pre-1987 years. See generally Rev. Rul. 75–106, 1975–1 C.B. 31, and Rev. Rul. 75–107, 1975–1 C.B. 32.

rule of § 1.985–5 when a QBU branch or foreign corporation that used the P&L method in a post-1986 taxable year changes to DASTM.

The translation convention adopted by § 1.985–5 and § 1.985–6(f) (translation of the balance sheet into the new functional currency deferral of unrealized exchange gains and losses that were not recognized while the QBU used the P&L method. (However, certain income adjustments are required under § 1.985–5(b), (d)(2), and (e)(2) in connection with the spot rate rule.) The Service adopted the spot rate translation rule because it is relatively easy to apply and avoids the need, discussed in more detail below, for additional income adjustments in connection with the change in method.

One commenter objected to the application of different translation conventions depending on whether a foreign corporation that is a QBU begins to use DASTM in 1987 or in a later year. The use of historical exchange rates to determine the dollar basis of fixed assets will preserve the dollar value of depreciation deductions in determining the dollar earnings and profits of the foreign corporation, an attribute that is lost if the hyperinflationary currency cost basis is translated at the current spot exchange rate. Another taxpayer suggested that the use of historical exchange rates would permit increased reliance on financial accounting data in determining depreciation deductions and other tax accounting adjustments under DASTM. Closer conformity to financial accounting records is an important simplifying objective of the proposed amendments to § 1.985–3 and other proposed amendments to regulations under section 964 governing book-to-tax adjustments that are required in computing earnings and profits.

These proposed regulations are in response to the suggestion in these comments that equitable and administrative concerns that favor some use of historical exchange rates combined with an income adjustment outweigh the simplification benefits of the spot rate transition rule. The following discussion explains why income adjustments are necessary when historical exchange rates are used to translate certain balance sheet items from a hyperinflationary currency into dollars in the case of (1) a QBU branch that computed income or loss under the P&L method and that begins to use DASTM in any post-1986 taxable year, and (2) a CFC that used the P&L method in a post-1986 taxable year and subsequently begins to use DASTM.

In the case of a foreign branch, use of a combination of current and historical exchange rates to translate balance sheet items into dollars requires an income adjustment to the extent the equity reflected on the dollar balance sheet differs from the taxpayer's dollar basis in the branch determined under the P&L method. This adjustment is necessary because the effect of using DASTM translation rules is to step up (or down) the dollar basis of the branch's net assets to reflect amounts that would have been included in income in prior years under DASTM but were not taxed under the P&L method.

For example, a taxpayer with a QBU branch that is financed with short-term hyperinflationary debt would have recognized exchange gains with respect to the principal of the debt under DASTM but not under the P&L method. The DASTM balance sheet (which translates the basis of the fixed asset at the historical exchange rate and the amount of the short-term liability at the current spot rate) will reflect these previously unrecognized exchange gains in equity. An income adjustment is required to ensure that the taxpayer's dollar equity in the branch reflects only previously-taxed amounts.

In the case of a foreign corporation that used the P&L method in a post-1986 taxable year, use of historical exchange rates to translate certain balance sheet items also results in a different dollar amount of retained earnings than would result from a spot rate translation of the foreign functional currency retained earnings accumulated under the P&L method. In the case of a noncontrolled foreign corporation, such an adjustment to undistributed earnings and profits would not necessarily result in current Federal income tax consequences because such earnings are subject to tax only on distribution. However, in the case of a CFC, where E&P computed under DASTM would have differed from E&P computed under the P&L method, an income adjustment at the shareholder level is appropriate to the extent a different amount of subpart F income would have been recognized under DASTM.

For purposes of subpart F in pre-1987 taxable years, earnings and profits and subpart F income were required to be computed under a net worth method similar to DASTM. Therefore, the Service believes that no subpart F income adjustment should be required with respect to pre-1987 taxable years in the case of a U.S. shareholder of a foreign corporation that uses DASTM beginning in 1987 or in any subsequent year. Such adjustments are necessary only in the case of branch earnings and post-1986 subpart F income, where the use of the P&L method resulted in a different income inclusion than would have resulted under DASTM.

For purposes of section 902 in pre-1987 taxable years, accumulated profits were computed using a P&L method. It might be argued that pre-1987 accumulated profits should be restated in dollars computed under a net worth method when a foreign corporation begins to use DASTM in a post-1986 taxable year, so that the corporation's total earnings and profits would be computed using a single method. However, the Service believes that such a rule would be inconsistent with the requirement of section 902(c)(6) that the tax effect of dividends paid out of pre-1987 earnings be determined under old law (using a P&L method) and also would be extraordinarily complex for taxpayers to implement. In addition, use of a net worth method rather than a P&L method to compute earnings generally would not alter the amount of a dividend inclusion with respect to a distribution out of pre-1987 earnings and profits (although it might alter the available foreign tax credit). Accordingly, the Service believes that use of DASTM translation conventions necessitates an income adjustment at the shareholder level only with respect to post-1986 subpart F income amounts.

Explanation of Provisions

The proposed regulations would amend the transition rules applicable to a QBU branch or foreign corporation that begins to use DASTM in a taxable year beginning after the proposed regulations are finalized. In addition, taxpayers may choose to apply the proposed rule retroactively as an alternative to applying the spot rate translation rule of § 1.985–5 (or § 1.985–5T) and § 1.985–6T(e). (For the text of the temporary regulations, see the April 1, 1992 edition of 26 CFR part 1 (1.908 to 1.1000)). Thus, U.S. shareholders who elect DASTM on behalf of a foreign corporation in an open post-1987 taxable year, but before the effective date of the proposed regulations, may apply the proposed rule to all prior open years instead of complying with the rules of § 1.985–5T. The proposed rule also may be applied retroactively to any open post-1986 year for which a U.S. taxpayer makes the DASTM election with respect to a QBU branch.

In the case of a foreign corporation that is not a CFC, the general rule would require the preparation of opening and closing dollar balance sheets for the year of change under the rules of § 1.985–3(c). Earnings and profits would be adjusted in the year of change. The

opening balance in the post-1986 undistributed earnings pool for the year of change would be determined by subtracting the accumulated earnings and profits determined under DASTM principles at the end of the foreign corporation's last taxable year beginning before 1987 (or, if section 902(c)(3)(A) applies, the last pre-acquisition year) from the accumulated earnings and profits determined under DASTM at the end of the taxable year ending before the year of change. No adjustments to income at either the corporate level or the shareholder level would be required.

Comments are requested as to whether this method of determining post-1986 earnings is an appropriate substitute for making annual DASTM computations for each post-1986 year, and in particular whether there is any need to compute the amount of DASTM earnings in each section 904(d) separate category for a foreign corporation that is not a CFC. Suggestions as to alternative methods are invited. Note that since the retained earnings on the dollar balance sheet for the year of change reflects both pre-1987 and post-1986 earnings computed in dollars under DASTM, subtracting the pre-1987 accumulated profits (translated from the old functional currency into dollars at the appropriate spot exchange rate) from the total retained earnings reflected on the dollar balance sheet for the year of change will not accurately reflect post-1986 earnings computed under DASTM.

In the case of a CFC or a noncontrolled foreign corporation subject to the special rules of § 1.904–6(a)(2), the proposed rule would apply the rules of § 1.985–3 in determining the opening dollars balance sheet for the year of change. The post-1986 undistributed earnings pool would be determined under DASTM for each post-1986 year (or later pre-acquisition year) prior to the year of change. An adjustment to income would be required at the shareholder level to the extent the aggregate amount of subpart F income in any section 904(d) separate category that was realized during the post-1986 period when the CFC had a foreign functional currency differs from the aggregate amount of subpart F income that would have been realized if the CFC had used DASTM for such years. Any excess of subpart F income determined under DASTM over that determined under the P&L method is deemed distributed to the CFC's United States shareholder(s) as subpart F income (along with associated deemed-paid foreign income taxes, if any) in the year of the change to DASTM. Generally, any positive or negative adjustment to income would be accounted for ratably over three years.

For taxpayers who choose to apply the revised transition rule to DASTM elections made in prior years, the Service believes that this adjustment with respect to subpart F income is necessary to avoid creating an opportunity for taxpayers to choose whether to elect DASTM in a prior, open year and compute subpart F income under DASTM for the intervening years, or to elect DASTM prospectively while avoiding any increased subpart F inclusions attributable to prior years. However, the Service is concerned that computation of the shareholder-level income adjustment may impose substantial administrative burdens in future years, should a CFC's functional currency become hyperinflationary after its earnings have been computed in a non-dollar functional currency using the P&L method for a number of post-1986 taxable years. Comments are requested as to whether a simpler method of approximately the appropriate adjustment to previously reported subpart F income might be utilized. Options being considered include requiring separate year DASTM computations for a limited period prior to the year of the change, such as the shorter of all post-1986 taxable years or the base years used to determined that the old functional currency becomes hyperinflationary, in which case the rules of § 1.985–5 would apply in preparing the opening balance sheet for the first year of the look-back period. Another possible method would treat a portion of the retained earnings on the historic dollar balance sheet as subpart F income based on an average historical ratio of subpart F income to total earnings and profits.

Alternatively, the Service is considering whether it might be preferable to retain the general rule of § 1.985–5 to use current spot exchange rates to translate balance sheet items, including earnings, with a special provision to allow the use of historical exchange rates to step up the basis of fixed assets to the extent of the dollar amount of the shareholder's unrealized exchange losses on paid-in capital. This approach would avoid the "disappearing plant" problem to the extent assets were funded with capital contributions, while denying a basis step-up (that must be accounted for by an income adjustment) to the extent assets were funded with hyperinflationary currency liabilities with respect to which exchange gains on repayment were not recognized under the P&L method. Comments are requested on these issues.

Under the proposed rule, in the case of a QBU branch, the taxpayer prepares an opening dollar balance sheet for the year of change in accordance with the rules of § 1.985–3. Any difference between the dollar amount of retained earnings reflected on this balance sheet and the taxpayer's dollar basis pool with respect to the branch must be included in income, generally over three years beginning with the year of change. This income or loss is characterized and sourced in the same manner as exchange gain or loss determined under section 987(3). Comments are requested as to the appropriateness of these character and source rules.

Special Analysis

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time, place, and date for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Barbara Felker of the Office of the Associate Chief Counsel (International), Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.985–0 through 1.989(c)–1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.985–7 is added to read as follows:

§ 1.985–7 Adjustments required in connection with a change to DASTM.

(a) *In general.* If a QBU begins to use the dollar approximate separate transactions method of accounting set forth in § 1.985–3 (DASTM) in a taxable year beginning after [Date 30 days after the date final regulations are published in the **Federal Register**], the rules of § 1.985–3 shall apply in determining the QBU's opening and closing dollar balance sheets for the year of change as defined in § 1.481–1(a)(1). In addition, an adjustment to income shall be made to the extent required by this section. See paragraph (b) of this section for transition rules regarding earnings and profits adjustments, paragraph (c) of this section for rules with respect to adjustments to the income of United States shareholders of controlled foreign corporations, paragraph (d) of this section for rules with respect to adjustments to income with respect to QBU branches, and paragraph (e) of this section for the effective date of this section. For rules applicable to a QBU that used DASTM for its first taxable year beginning in 1987, see § 1.985–6.

(b) *Earnings and profits adjustments*—(1) *Pre-1987 accumulated profits.* The foreign income taxes and accumulated profits or deficits in accumulated profits of a foreign corporation that are attributable to taxable years of the foreign corporation beginning before January 1, 1987, and that were maintained for purposes of section 902 in the old functional currency, shall be translated into dollars at the spot exchange rate in effect on the first day of the foreign corporation's first taxable year beginning after December 31, 1986. Once translated into dollars, these pre-1987 taxes and accumulated profits or deficits in accumulated profits shall (absent a change in functional currency) remain in dollars for all federal income tax purposes.

(2) *Post-1986 undistributed earnings.* In the case of a controlled foreign corporation (within the meaning of section 957 or section 953(c)(1)(B)) (CFC) or a foreign corporation subject to the rules of § 1.904–6(a)(2), the corporation's post-1986 undistributed earnings in each separate category as defined in § 1.904–5(a)(1) as of the first day of the taxable year of change (and prior to adjustment under paragraph (c)(1) of this section) shall equal the sum of the earnings and profits (or deficit in earnings and profits) in such separate category determined under § 1.985–3 for each post-1986 taxable year (or such later year determined under section 902(c)(3)(A)) prior to the year of change, reduced by the aggregate dollar amount (translated from functional currency in accordance with the rules of section 989(b)) attributable to earnings and profits (including previously taxed earnings and profits within the meaning of sections 959 and 1293(c)) that were distributed or treated as distributed in prior years out of post-1986 earnings and profits in such separate category. In the case of all other foreign corporations, post-1986 undistributed earnings shall be determined by subtracting the accumulated earnings and profits determined under the principles of § 1.985–3 at the end of the foreign corporation's last taxable year beginning before January 1, 1987, or such later year determined under section 902(c)(3)(A), from the accumulated earnings and profits determined under § 1.985–3 at the end of the taxable year ending before the year of change.

(c) *United States shareholders of controlled foreign corporations*—(1) *Income adjustment*—(i) *Computation.* A United States shareholder (within the meaning of section 951(b) or section 953(c)(1)(A)) of a CFC that changes to DASTM shall adjust gross income in accordance with the rules of this paragraph (c)(1) to the extent that its pro rata share of the CFC's subpart F income in post-1986 years as determined under DASTM differs from the CFC's subpart F income as previously determined. The shareholder first shall compute, in each separate category, the sum of the CFC's subpart F income in post-1986 years as determined under DASTM for each post-1986 taxable year prior to the year of change (post-1986 DASTM subpart F income). The shareholder next shall compute, in each separate category, the sum of the CFC's subpart F income in post-1986 years as determined under the profit and loss method using the old functional currency and translated into dollars in accordance with section 989(b) for each post-1986 taxable year prior to the year of change (post-1986 P&L subpart F income). The shareholder then shall determine the difference, for each separate category in the post-1986 period, between the post-1986 DASTM subpart F income and the post-1986 P&L subpart F income.

(ii) *Manner of adjustment.* An excess of post-1986 DASTM subpart F income over post-1986 P&L subpart F income in any separate category shall be deemed distributed pro rata to the CFC's United States shareholder(s) on the first day of the taxable year of change. Any such deemed distribution shall be accounted for as an amount included in income under section 951(a)(1) for all federal income tax purposes (including sections 902, 959, 960, 961, 1248, and 6038). In addition, the CFC's United States shareholder(s) shall reduce gross income in a separate category to reflect a pro rata share of an excess of post-1986 P&L subpart F income over post-1986 DASTM subpart F income in that separate category. See section 904(f) and the regulations thereunder for rules applicable if an adjustment under this section results in a loss for the taxable year in a separate category. Adjustments under this section shall be taken into account by the shareholder ratably over three taxable years, beginning with the year of change, or any applicable shorter period. An appropriate adjustment shall be made to the basis of the shareholder's stock under section 961. Similar rules shall apply in determining adjustments to income of United States persons who have made an election under section 1295 to treat a passive foreign investment company as a qualified electing fund.

(2) *Foreign tax credit.* A United States shareholder of a CFC shall compute an amount of foreign taxes deemed paid under section 960 with respect to any deemed distribution determined under paragraph (c)(1) of this section. The amount of foreign taxes deemed paid shall be computed with reference to the full amount of the deemed distribution and to the post-1986 undistributed earnings determined under paragraph (b)(2) of this section and the post-1986 foreign income taxes of the CFC on the first day of the taxable year of change (*i.e.*, without taking into account earnings and taxes for the year of change). For purposes of section 960, the associated taxes in each separate category shall be allocated pro rata among, and deemed paid in, the shareholder's taxable year or years in which the income is taken into account. (No adjustment to foreign taxes deemed paid in prior years is required solely by

reason of a negative adjustment to income under paragraph (c)(1) of this section.)

(d) *QBU branches.* The adjustment required when a QBU branch of a taxpayer changes to DASTM shall be determined by subtracting the dollar amount of the taxpayer's basis pool with respect to the branch on the last day of the taxable year prior to the year of change from the dollar equity reflected on the branch's opening dollar balance sheet for the year of change, as determined under paragraph (a) of this section. The adjustment shall be taken into account by the taxpayer ratably over three taxable years, beginning with the year of change, or any applicable shorter period. The adjustment shall be characterized and sourced in the same manner as section 987 gain or loss.

(e) *Effective date.* This section is effective for taxable years beginning after [Date that is 30 days after the publication of final regulations in the **Federal Register**]. However, a taxpayer may choose to apply this section to all open taxable years beginning after December 31, 1986, provided each person, and each QBU branch of a person, that is related (within the meaning of § 1.985–2(d)(3)) to the taxpayer also applies these rules.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–31468 Filed 12–31–92; 8:45 am]

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26 CFR Parts 1, 20 and 25

[PS–102–88]

RIN 1455–AM85

Income, Gift and Estate Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to income tax imposed under chapter 1, the estate tax imposed under chapter 11 and the gift tax imposed under chapter 12 of the Internal Revenue Code of 1986. Changes to the marital deduction provisions of the estate and gift tax chapters were made by the Technical and Miscellaneous Revenue Act of 1988. Further amendments were made by the Revenue Reconciliation Act of 1989, and the Revenue Reconciliation Act of 1990. The proposed regulations will provide the guidance needed to comply with the changes to the marital deduction provisions of the estate and gift tax chapters.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for March 2, 1993, must be received by February 16, 1993.

ADDRESSES: Send comments, requests to appear, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS 102–88), Room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, Susan Hurwitz or George Masnik at (202) 622–3090 (not a toll free call); concerning the hearing, Michael Slaughter, (202) 622–7190 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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

The collection of information requirements contained in these regulations are in §§ 20.2056A–2, 20.2056A–4, 20.2056A–10(a) and 20.2056A–10(b). This information is required by the Internal Revenue Service in order to administer the qualified domestic trust provisions in section 2056(d) and section 2056A. This information will be used to monitor qualified domestic trusts regarding their compliance with the statutory and regulatory requirements. The likely respondents are trustees and executors.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances. Estimated total annual reporting and recordkeeping burden: 7,650 hours. The estimated burden per respondent varies from 30 minutes to 3 hours, with an estimated average of 2 hours. Estimated number of respondents: 3,000. Estimated annual frequency of responses: one.

Background

This document contains proposed additions to the Income, Estate and Gift Tax Regulations (26 CFR parts 1, 20 and 25) under sections 1015, 2056, 2056A, 2101, 2102, 2106, 2503, and 2523 of the Code. The Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) (the 1988 Act) added section 2056A to the Code and amended sections 2056, 2523, 2101, 2102, and 2106. Some of these sections have been further amended by the Revenue Reconciliation Act of 1989 (Pub. L. 101–239) (the 1989 Act), and the Revenue Reconciliation Act of 1990 (Pub. L. 101–508) (the 1990 Act). The 1988, 1989, and 1990 Acts place restrictions on the allowance of the estate and gift tax marital deduction where the surviving spouse (in the case of a transfer at death) or the donee spouse (in the case of a lifetime transfer) is not a citizen of the United States. In addition, the gift tax annual exclusion allowable in the case of a transfer to a noncitizen spouse was increased to $100,000. The statutory amendments also changed the tax rate and the amount of the unified credit applicable in the case of the estate of a decedent nonresident not a citizen of the United States (nonresident alien). The terms "resident" and "nonresident" are used in this document to refer to residence status for estate tax purposes only, and not for income tax purposes.

Explanation of Provisions

Overview

Prior to the enactment of the 1988 Act, section 2056 of the Code provided an unlimited estate tax marital deduction for estates of United States citizens or residents regardless of the citizenship of the surviving spouse. Similarly, under section 2523, the gift tax marital deduction was allowable for transfers by a United States citizen or resident to a spouse, regardless of the citizenship of the spouse. The 1988 Act placed restrictions on the availability of the estate tax marital deduction if the surviving spouse is not a United States citizen and eliminated the gift tax marital deduction if the donee spouse is not a United States citizen. These new rules are generally effective with respect to estates of decedents dying after November 10, 1988, and for gifts made on or after July 14, 1988. However, the 1989 Act (as amended by the 1990 Act) limited the application of these rules in the case of certain estate and gift tax transfers otherwise covered by certain tax treaties.

With respect to the estate tax, in the case of decedents dying after November 10, 1988, the marital deduction is

allowable for property passing to a noncitizen spouse only if the property passes (or is deemed to have passed) in a "Qualified Domestic Trust" (QDOT). An exception to this rule is provided if the surviving spouse becomes a citizen of the United States before the estate tax return is filed and the spouse was a resident of the United States (as defined for estate tax and not for income tax purposes) at all times after the date of the decedent's death and before becoming a United States citizen. Further, with certain exceptions, a deferred estate tax under section 2056A(b) of the Code is imposed on distributions of corpus from the QDOT during the spouse's lifetime and on the balance of the corpus held in the trust at the spouse's death.

Under section 2056(d) of the Code, property passing to a trust that does not satisfy the requirements for a QDOT may be reformed to qualify under section 2056A. Similarly, where an interest in property passes outright to a noncitizen surviving spouse, either by testamentary bequest or by operation of law, the property is treated as passing to the surviving spouse in a QDOT if the spouse (or the executor of the decedent's estate) transfers the property to a QDOT before the estate tax return is filed and during the time the QDOT election may be made. Alternatively, the spouse can assign the property to a QDOT under an enforceable and irrevocable assignment made on or before the date on which the return is filed and during the time that the QDOT election may be made. The spouse must thereafter transfer the property to the QDOT in a timely manner.

If the surviving spouse becomes a citizen of the United States after the establishment of a QDOT, special rules apply. If the surviving spouse has been a United States resident from the date of the death of the decedent or if no taxable distributions have been made from the QDOT prior to such time, the deferred estate tax no longer applies. If neither of these conditions is satisfied, the surviving spouse must make certain elections in order to avoid the future application of the deferred estate tax.

Where property is held by a United States citizen or resident decedent and a noncitizen surviving spouse as joint tenants or as tenants by the entirety, the joint property is subject to inclusion in the decedent's gross estate under section 2040(a) of the Code, based on the relative contribution of the decedent towards the purchase of the property and section 2040(b) (which provides for the inclusion of only one-half of the value of the property in the case of joint interests of husbands and wives) does not apply. A limited transition rule may apply to treat prior gifts to the spouse as the spouse's contributions for this purpose. In accordance with sections 2103, 2031, and 2040(a) of the Code, similar rules apply if the decedent was a nonresident alien and the spouse is not a United States citizen.

These new provisions are contained in sections 2056(d) and 2056A of the Code. In order to ensure that the new regulations are readily accessible, all of the proposed regulations are promulgated under section 2056A.

With respect to the gift tax, the statutory amendments eliminated the marital deduction for gifts made by a United States citizen or resident donor to a noncitizen spouse, effective for gifts made on or after July 14, 1988. However, the gift tax annual exclusion was increased to $100,000 for qualifying transfers to a noncitizen spouse. The statutory amendments also reinstated the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) with respect to the creation of joint tenancies and tenancies by the entirety where the donee spouse is not a United States citizen, except that the provisions of section 2515 providing for an election to treat the creation of the tenancy as a gift do not apply.

The statutory amendments also substantially revised the estate and gift tax provisions previously applicable to nonresident aliens in a number of ways. First, the estate tax rates applicable to United States citizen and resident decedents are made applicable to estates of nonresident aliens. Second, the allowable unified credit is increased to $13,000. Where permitted by treaty, however, the estate of a nonresident alien is allowed the unified credit applicable to estates of United States citizen or resident decedents multiplied by the proportion of the total gross estate situated in the United States (compared to the entire gross estate, wherever situated).

The statutory amendments also provided, for the first time, that a nonresident alien decedent or donor is allowed the estate and gift tax marital deduction for qualifying transfers to a surviving or donee spouse on the same basis as a United States citizen or resident donor or decedent. Thus, a transfer to the surviving spouse of a nonresident alien decedent will qualify for the estate tax marital deduction if the requirements of section 2056 (including, subject to the special rules for treaties, the QDOT requirements) are satisfied. Similarly, a transfer by a nonresident alien donor to a spouse who is a United States citizen will qualify for the gift tax marital deduction if the requirements of section 2523 are satisfied. The statutory amendments also clarified that the increased $100,000 annual exclusion is available to a nonresident alien donor whose spouse is not a United States citizen. The changes made with respect to joint tenancy property between spouses are also made applicable to nonresident alien decedents and donors.

Qualified Domestic Trust

A QDOT is a trust that otherwise qualifies for the marital deduction under section 2056(b)(5) (life estate with power of appointment), section 2056(b)(7) (qualified terminable interest property), § 20.2056(e)–2(b)(1)(i)–(iii) of the Estate Tax Regulations (estate trust), or section 2056(b)(8) (lifetime beneficiary of a charitable remainder trust described in section 664), and that also meets the requirements of section 2056A(a). Those requirements are: (1) The trust must require that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation; (2) the trust must provide that no distribution, other than a distribution of income, may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the tax imposed by section 2056A(b) on the distribution; (3) the trust must meet any additional requirements as prescribed by regulations to ensure collection of any tax imposed; and (4) the executor must elect on the decedent's estate tax return to treat the trust as a QDOT. Even though the requirements for qualifying as a QDOT have been modified several times since the 1988 Act, the requirements as provided above are applicable for all decedents dying after November 10, 1988.

The legislative history underlying the 1988 Act expresses Congress' concern that insufficient assets might be subject to United States tax jurisdiction when the deferred estate tax imposed under section 2056A(b) becomes due, thus jeopardizing collection of the tax deferred upon the death of the first decedent. See H.R. Rep. No. 1104, 100th Cong., 2d Sess. 115 (1988). To protect against this possibility, section 2056A(a)(2) specifically authorizes the Secretary to promulgate regulations to ensure collection of the tax. These proposed regulations are issued pursuant to that authority. Under the proposed regulations, if the fair market value of the assets of the QDOT at the death of the first decedent exceeds $2 million, the trust instrument must

require that: (1) At least one trustee be a bank as defined in section 581, or (2) the trustee furnish a bond or security to the Service in an amount equal to 65 percent of the fair market value of the trust corpus, determined as of the date of the decedent's death, and subject to review. If the fair market value of the QDOT assets at the first decedent's death is $2 million or less, the QDOT need not meet the foregoing trustee or security requirements to qualify as a QDOT (although it may electively do so). As an alternative, if the trustee or security arrangements are not elected, the trust instrument of these smaller trusts must expressly provide that no more than 35 percent of the fair market value of the trust assets, determined annually, may be invested in real property that is not located in the United States.

In arriving at the $2 million dollar threshold, the Service weighed various factors including administrative burden, impact of institutional trustees' fees, and the need to ensure the collectability of the deferred estate tax. The Service believes that the $2 million threshold for requiring an institutional trustee appropriately balances these considerations. The Service requests comments as to whether a monetary threshold for imposing stricter trust requirements designed to provide greater assurance for collection of the tax is appropriate and if so, whether $2 million is the appropriate threshold.

The proposed regulations also contain an anti-abuse rule that provides for disqualification of a QDOT if the trust uses any device or arrangement that has as a principal purpose the avoidance of liability for the deferred estate tax. The regulations also require that the trustee report annually (by statement attached to the Form 1041 filed for the trust) regrading the trust's compliance with these regulatory requirements. Certain restrictions are also imposed on U.S. citizens who act as a trustee of the QDOT.

The Service will publish guidance in the Internal Revenue Bulletin pursuant to which either larger or smaller trusts can request approval for an alternate plan to assure collection of the deferred estate tax.

Section 20.2056A–13 contains a special effective date rule for implementing these requirements.

Election of Treat Trust as a QDOT

The QDOT election must be made by the executor on the last estate tax return filed before the due date or, if a timely return is not filed, on the first return filed after the due date. If the election is made on a late-filed return, it must be made no later than one year after the due date (including extensions).

The proposed regulations allow an executor to make a protective QDOT election if there is a bona fide legal controversy that would render the making of the election at the time the return is filed not feasible; for example, a controversy as to whether property otherwise eligible for the deduction is includable in the gross estate. However, due to the time-period restrictions imposed by the statute on the making of the election, a return must be filed making the protective election within the time period prescribed by the statute.

The proposed regulations do not permit an executor to make a partial QDOT election; that is, an election with respect to less than all of the property held in the QDOT (or deemed to be so held under the nonassignable annuity rules discussed below). Partial elections are not authorized by the statute and would present computational difficulties in determining the deferred estate tax in the event of a distribution of corpus from the trust.

Imposition of Deferred Estate Tax

Under section 2056A(b), a deferred estate tax is imposed in the case of certain "taxable events." In general, distributions from the trust during the spouse's lifetime constitute taxable events. However, distributions of income to the spouse and distributions of principal to the surviving spouse on account of hardship are exempted from the deferred tax. The tax is also imposed on the value of the trust corpus (1) at the time of the noncitizen surviving spouse's death, or (2) if the trust ceases to meet the requirements of a QDOT (including the requirements proposed by these regulations to ensure collection of the tax).

Regarding the exemption for lifetime distributions of income, section 2056A(c)(2) provides that except as provided by regulations, the term "income" has the same meaning as provided in section 643(b). This definition generally allocates items between principal and income based on local law and the terms of the governing instrument. However, the section 643(b) definition of income is modified under the proposed regulations to prevent the characterization as income of items that would normally be viewed as corpus, such as gain realized on the sale of a trust asset. In the absence of this modification, such items could be allocated to income under the terms of the trust and, thus, possibly be distributed without incurring a deferred estate tax. Accordingly, under the proposed regulations, items that would ordinarily be allocated to principal by applicable local law, such as capital gains, are treated as principal for purposes of determining whether the distribution is tax exempt, regardless of how the item is allocated under the terms of the trust. Items of income in respect of a decedent (IRD), described in section 691 of the Code, are treated as income or principal in accordance with the foregoing standards. Although the legislative history gives no indication of providing special treatment for IRD items, comments are requested as to the treatment of IRD for these purposes.

Regarding the hardship exemption, the proposed regulations define "hardship" generally in the same manner as does § 1.401(k)–1(d)(2)(i) (involving permissible distributions from certain deferred compensation plans). A distribution is made on account of hardship under the proposed regulations if the distribution is in response to an immediate and heavy financial need relating to the noncitizen surviving spouse's health, maintenance, or support. A distribution is not considered made on account of hardship to the extent that the amount distributed may be obtained from other sources that are reasonably available to the noncitizen surviving spouse or if the conditions of section 2056A(b)(2)(C), pertaining to the appointment of a designated filer in the case of multiple QDOTs, are not satisfied.

In the case of a taxable event, the deferred estate tax is the amount of tax that would have been imposed under section 2001 had the property subject to the tax been included in the first decedent's taxable estate. These proposed regulations define "the tax which would have been imposed" on a net basis (*i.e.*, after all applicable credits).

Generally, in computing the deferred estate tax, the rate of tax is determined by reference to the actual size of the first decedent's estate, as increased by the amount involved in the taxable event. However, the highest estate tax rate must be used if the tax imposed on the first decedent's estate has not been finally determined at the time of the taxable event, or if there is more than one QDOT with respect to the first decedent and the designated filer provisions of these proposed regulations are not complied with. Use of the highest rate of tax may be avoided in the case of multiple QDOTs if a designated filer is appointed to file the Form 706QDT and to pay the tax for all of the QDOTs.

The deferred estate tax imposed on lifetime distributions under section

2056A(b)(1)(A) is due on April 15th of the calendar year following the end of the taxable year in which the taxable event occurs, except for taxable events which occur during the calendar year in which the surviving spouse dies. In the latter case and for purposes of the tax imposed on the surviving spouse's death under section 2056A(b)(1)(B), the tax is due no later than 9 months after the date of the surviving spouse's death, unless an extension of time for payment is granted. The trustee of a QDOT is personally liable for the deferred estate tax and may make written application to the Service for a determination of the final deferred estate tax and for a discharge of personal liability. Under section 2056A(b)(8), the deferred estate tax is treated as an estate tax for purposes of the section 6324 estate tax lien provisions.

The proposed regulations impose certain limitations on the use of the section 2011 and section 2014 credits and extend the benefits allowed to the estate of a nonresident alien surviving spouse under section 2106(a)(2) (charitable deduction) and section 2106(a)(3) (marital deduction).

Credit for Tax on Prior Transfers

Section 2056(d)(3) provides two special rules for the application of the credit for tax on prior transfers provided under section 2013. First, if a marital deduction is allowed to the estate of the first spouse to die (the transferor) for QDOT property passing to the surviving spouse (the transferee), the deferred estate tax imposed is treated as an estate tax paid by the estate of the transferor spouse with respect to the QDOT property. Accordingly, if the transferee spouse's estate is subject to U.S. estate tax under sections 2001 or 2101, the deferred estate tax, whether imposed on distributions during the transferee spouse's lifetime under section 2056A(b)(1)(A) or on the transferee spouse's death under section 2056A(b)(1)(B), is creditable within the section 2013 framework against the transferee spouse's estate tax. The proposed regulations provide that the "first limitation" in determining the allowable credit is deemed to be the deferred estate tax imposed under section 2056A(b)(1). The Service considered a rule which would require that the first limitation be determined based on the methodology described in section 2013(b) and § 20.2013–2, with certain modifications. This approach was rejected because it would require complex computations and would raise difficult interpretative problems.

Section 2056(d)(3) provides a second special rule affecting the application of the section 2013 credit where property included in the transferor spouse's gross estate is not deducted under section 2056(a), solely because the property does not satisfy the alien spouse requirements under sections 2056(d) and 2056A (*e.g.*, the transferee spouse elects not to transfer an outright bequest to a QDOT). Under these circumstances, on the death of the transferee spouse, if the transferee's estate is subject to the estate tax under chapter 11, the allowable section 2013 credit is determined without any percentage reduction otherwise required under section 2013(a). The proposed regulations clarify that the credit is computed in accordance with the Code and applicable regulations, except that the percentage reductions contained in section 2013(a) do not apply.

Assignment or Transfer by Surviving Spouse to QDOT

Under section 2056(d)(2)(B), probate and nonprobate property that passes from the decedent to the noncitizen surviving spouse outside of a QDOT is treated as passing from the decedent to a QDOT if the noncitizen spouse either actually transfers the property to a QDOT or irrevocably assigns the property to a QDOT pursuant to an assignment that is enforceable under local law before the estate tax return is filed and at a time when the QDOT election may still be made. Property that is assigned or transferred to a QDOT is treated as passing from the decedent in a QDOT solely for purposes of qualifying for the marital deduction. For all other purposes (*e.g.*, income, gift, estate, generation-skipping transfer tax, and section 1491 excise tax), the proposed regulations treat the surviving spouse as the transferor of the property to the QDOT. This result comports with section 2056(d)(2)(B), which provides that property transferred or assigned by the spouse to a QDOT is treated as passing from the decedent to the QDOT solely for purposes of section 2056(d)(2)(A), and not for purposes of the income and transfer tax provisions of the Code. The Service invites comments on the treatment for income, estate, gift, generation-skipping transfer and excise tax purposes of a transfer or assignment of property by the surviving spouse to a QDOT.

The proposed regulations also generally impose restrictions on the time period during which an actual transfer of property passing outside of a QDOT to a noncitizen surviving spouse must be made to the QDOT in the case of an irrevocable timely assignment.

Nonassignable Annuities or Other Similar Payments

Post-death transfer or assignment relief provided under the statute is not available in the case of survivor benefits payable under qualified pension and profit-sharing plans and annuity contracts described in sections 401(a) and 403(b), because under federal law these benefits cannot be assigned or transferred prior to the time distributions are received under the plan. Similarly, many annuity contracts payable by insurance companies, state lotteries, and other obligors contain provisions that prevent assignment or transfer. Accordingly, section 2056A(e) and the Conference Report accompanying the 1989 Act, H.R. Rep. No. 386, 101st Cong., 1st Sess. 670 (1989), authorize the Secretary to promulgate regulations that provide QDOT treatment for survivor annuities payable under these arrangements.

Section 20.2056A–4(c) provides the surviving spouse with two options for qualifying a nonassignable survivor annuity or similar payment for the marital deduction. Under the first option, the noncitizen surviving spouse must agree to pay a deferred estate tax under section 2056A(b)(1)(A), on an annual basis, on the "corpus portion" (as defined in the regulations) of such payment received. A detailed information statement must be filed with the QDOT return and the noncitizen surviving spouse must execute an agreement acknowledging, *inter alia*, the obligation to pay this annual tax, and agreeing to the imposition of the deferred estate tax under section 2056A(b)(1)(B), on the entire value of the annuity or similar nonassignable payment, if the tax is not paid when due (as if the surviving spouse had died on that date).

Under the second option for these nonassignable arrangements, the noncitizen surviving spouse must agree to transfer or "roll over" to a QDOT, within 60 days of receipt, that portion of each such payment received that constitutes the "corpus portion" of the distribution. As is the case with the first option, a specific information statement must be filed with the QDOT return, and the noncitizen surviving spouse must execute an agreement acknowledging the obligation to make the transfer to the QDOT on an annual basis and in a timely manner, and agreeing to the imposition of the deferred estate tax under section 2056A(b)(1)(B) on the entire value of the annuity or similar nonassignable payment if the noncitizen surviving spouse fails to make any required

transfer (as if the surviving spouse had died on that date). In some cases, all or a portion of the distribution may constitute taxable income on receipt by the spouse. Under section 2056A(b)(15) and § 20.2056A–5(c)(3) of the proposed regulations, any amounts distributed to the spouse from the QDOT, reimbursing the spouse for income taxes paid by the spouse with respect to the receipt of the annuity or similar payment (by actual payment of the spouse's income tax or through withholding), are not subject to the deferred estate tax. This should alleviate any undue burden arising from the imposition of income tax on funds the spouse agrees to transfer to the QDOT.

The rollover option is intended to approximate the same result as if the present value of the survivor benefit were transferred to a QDOT in a lump sum and, thereafter, the noncitizen surviving spouse received the income from the QDOT. Similarly, the tax-payment option is intended to approximate the result that would occur if the plan or annuity arrangement itself constituted a QDOT (which it could not unless it is an explicit trust as defined in § 301.7701–4(a)), and distributed a portion of corpus to the spouse annually. Under either option, a portion of each payment is deemed to constitute income and may be received and retained by the noncitizen surviving spouse without imposition of the deferred estate tax. The corpus portion of each payment will either be transferred to a QDOT, thereby ensuring the collection of the appropriate amount of tax on the occurrence of a taxable event (such as the death of the spouse), or will immediately be subject to tax on receipt as a corpus distribution (except in the case of hardship).

The Service recognizes that the rules regarding treatment of nonassignable annuity or similar payments impact on a significant number of estates subject to the QDOT rules. It is also recognized that the proposed regulations define a QDOT as an "explicit trust", thereby preventing annuity or other trust-equivalent arrangements from qualifying as a QDOT as a separate entity. In the case of annuities or similar arrangements not subject to transfer restrictions (and, thus, not eligible for the elections described above), the proposed regulations authorize the assignment of the spouse's rights under such plans to a QDOT without the actual transfer of the plan assets to a QDOT. The Service invites comments on the proposed rules, as well as suggested revisions that will facilitate the payment of these benefits but, nevertheless, will ensure collection of the appropriate deferred estate tax when due.

Special Rules for Treaties

Several estate and gift tax treaties entered into by the United States were negotiated on the assumption that the United States estate and gift tax marital deduction was not available in the case of an estate of, or transfer by, a nonresident alien. Section 7815(d)(14) of the 1989 Act added a special rule under which the statutory amendments affecting the estate and gift tax marital deduction do not apply when the decedent or donor is not a United States citizen or resident and is a resident of a country with which the United States has an estate, gift or inheritance tax treaty, to the extent such amendments would be inconsistent with the treaty provisions.

Similarly, the United States negotiated several treaties on the basis that the United States marital deduction was allowable in cases involving transfers by United States citizen or resident decedents and donors. Section 7815(d)(14) of the 1989 Act exempts estates of United States citizen or resident decedents, and United States citizen or resident donors, from the statutory amendments for a three-year transition period ending December 18, 1992, if the transfer comes within the purview of a treaty and the estate and gift tax provisions of the treaty are inconsistent with the statutory amendments. This three-year delay was intended to allow renegotiation of the treaties.

The Treasury may conclude treaty negotiations that may supplement the rules contained in these regulations. Further, the Service is considering issuing additional guidance on the application of these special treaty rules on or prior to the issuance of these regulations as final regulations. Comments are requested as to the scope and extent of this guidance.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations; therefore, an initial Regulatory Flexibility Analysis is not required.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably nine copies) to the Internal Revenue Service. All comments will be made available for public inspection and copying in their entirety. A public hearing is scheduled for March 2, 1993. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these regulations is Susan B. Hurwitz, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR 1.1011–1 through 1.1021–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20 and 25 are proposed to be amended as follows:

PART 1—INCOME TAX REGULATIONS; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. § 1.1015–5 is amended by adding paragraph (d) to read as follows:

§ 1.1015–5 Increased basis for gift tax paid.

* * * * *

(d) *Special rule for increased basis for gift tax paid.* Section 1015(d) provides for an increase in basis with respect to a gift for which a gift tax is paid under chapter 12.

(1) *Amount of gift.* For purposes of section 1015(d)(6)(A)(ii), the amount of the gift is the amount included with respect to the gift in determining (for purposes of section 2503(a)) the total amount of gifts made during the calendar year, reduced by the amount of any deduction allowed with respect to the gift under section 2522 (relating to the charitable deduction) or under section 2523 (relating to the marital deduction).

(2) *Special rules.* For purposes of section 1015(d)(6), it is immaterial whether the gift tax is paid by the donor or the donee. Where more than one gift of a present interest in property is made to the same donee during a calendar year, the annual exclusion applies to the earliest of such gifts in point of time. Where the donor and the donor's spouse elect under section 2513 to have any gifts made by either of them considered as made one-half by each, the amount of gift tax paid with respect to the gift is the sum of the amounts of tax paid (computed separately) with respect to each half of the gift by the donor and the donor's spouse.

(3) *Qualified domestic trusts.* In the case of a qualified domestic trust (QDOT) described in section 2056A(a), any distribution during the noncitizen surviving spouse's lifetime on which a tax is imposed under section 2056A(b)(1)(A) is treated as a transfer by gift, and any tax paid on the distribution under section 2056A(b)(1)(A) is treated as a gift tax for purposes of section 1015(d)(6). The rules under this section apply for purposes of determining the extent to which basis is increased by the section 2056A(b)(1)(A) tax paid in the case of a taxable distribution from a QDOT.

(4) *Examples.* The method provided in section 1015(d)(6) and this paragraph (d) for computing the increased basis with respect to any gift tax paid may be illustrated by the following examples:

Example 1. (i) Prior to 1993, *X* exhausts *X*'s unified credit against gift tax under section 2505. In 1994, *X* makes a gift to *Y*, an unrelated third party, of a parcel of real estate having a value for gift tax purposes of $100,000. *X*'s adjusted basis in the real estate immediately before making the gift was $70,000. *X* also makes a gift the same year to *Z*, an unrelated third party, of a painting having a value for gift tax purposes of $70,000. *X* files a timely gift tax return for 1994 with respect to which *X* paid gift tax in the amount of $55,500 computed as follows:

Value of real estate given to *Y*	$100,000	
Less: Annual exclusion	10,000	
Included amount of gift (C)		$90,000
Value of painting given to *Z*	70,000	
Less: annual exclusion	10,000	
Included amount of gift		60,000
Total included gifts (D)		150,000
Total gift tax liability for 1994 gifts (B)		55,500

(ii) In determining the gift tax paid with respect to the real estate given to *Y*, the amount of gift tax paid with respect to the gift of $100,000 is determined as follows:

$$\frac{\$90{,}000\ (C)}{\$150{,}000\ (D)} \times \$55{,}500\ (B) = \$33{,}300$$

(iii) (A) The amount by which *Y*'s basis in the real property is increased is determined as follows:

$$\frac{\$30{,}000\ \text{(net appreciation)}}{\$90{,}000\ \text{(amount of gift)}} \times \$33{,}300 = \$11{,}100$$

(B) *Y*'s basis in the real property is $70,000 plus $11,100, or $81,100.

Example 2. (i) *X* dies in 1993. *X*'s spouse, *Y*, is not a United States citizen. In order to obtain the marital deduction for property passing to *X*'s spouse, *X* established a QDOT in *X*'s will. In 1996, the trustee of the QDOT makes a distribution of principal from the QDOT in the form of shares of stock having a value of $70,000 and a basis of $50,000. The distribution is not made on account of hardship. No previous taxable distributions from the QDOT have been made. A deferred estate tax under section 2056A(b)(1)(A) is imposed and paid in the amount of $38,500 on the distribution. The amount by which *Y*'s basis in the shares of stock is increased is determined as follows:

$$\frac{\$20{,}000\ \text{(net appreciation)}}{\$70{,}000\ \text{(amount of distribution)}} \times \$38{,}500 = \$11{,}000$$

(ii) *Y*'s basis in the stock is $50,000 plus $11,000, or $61,000.

(5) *Effective date.* The provisions of § 1.1015–5(d) are effective in the case of any gift made after the date these regulations are published in the Federal Register as final regulations.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 20.2056(d)–1 is revised to read as follows:

§ 20.2056(d)–1 Marital deduction; special rules for marital deduction if surviving spouse is not a United States citizen.

Rules pertaining to the application of section 2056(d), including certain transition rules, are contained in §§ 20.2056A–1 through 20.2056A–13.

Par. 5. Sections 20.2056A–0 through 20.2056A–13 are added to read as follows:

§ 20.2056A–0 Table of contents.

This section lists the captions that appear in the regulations under §§ 20.2056A–1 through 20.2056A–13

Section 20.2056A–1 Restrictions on allowance of marital deduction if surviving spouse is not United States citizen.

(a) General rule.
(b) Marital deduction allowed if resident spouse becomes citizen.
(c) Special rules in the case of certain transfers subject to estate and gift tax treaties.

Section 20.2056A–2 Requirements for qualified domestic trust.

(a) In general.
(b) Qualified marital interest requirements.
(1) Property passing to QDOT.
(2) Property passing outright to spouse.
(3) Property passing under a nontransferable plan or arrangement.
(c) Statutory requirements.
(d) Additional requirements to ensure collection of the deferred estate tax.
(1) Security and other arrangements for payment of tax imposed under section 2056A(b)(1).
(2) Individual trustees.
(3) Tangible personal property and intangible personal property.
(4) Annual reporting requirements.
(5) Request for alternate arrangement or waiver.

Section 20.2056A–3 QDOT election.

(a) General rule.
(b) No partial elections.
(c) Protective elections.
(d) Manner of election.

Section 20.2056A–4 Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust.

(a) Marital trusts.
(1) In general.
(2) Time for commencing reformation.
(3) Tolling of statutory assessment period.

(b) Nontrust marital transfers.
(1) In general.
(2) Form of assignment.
(3) Assets eligible for assignment.
(4) Pecuniary assignment—special rules.
(5) Transfer tax treatment of assignment.
(6) Period for completion of transfer.
(7) Protective assignment.
(c) Nonassignable annuities and other arrangements.
(1) Definition and general rule.
(2) Agreement to remit deferred estate tax on corpus portion of each annuity payment.
(3) Agreement to roll over corpus portion of annuity payment to QDOT.
(4) Determination of corpus portion.
(5) Information statement.
(6) Agreement to pay deferred estate tax.
(7) Agreement to roll over annuity Payments.
(d) Examples.

Section 20.2056A–5 Imposition of deferred estate tax.

(a) In general.
(b) Amounts subject to tax.
(1) Distribution of principal during the spouse's lifetime.
(2) Death of surviving spouse.
(3) Trust ceases to qualify as QDOT.
(c) Distributions and dispositions not subject to tax.
(1) Distributions of principal on account of hardship.
(2) Distributions of income to the surviving spouse.
(3) Certain miscellaneous distributions and dispositions.

Section 20.2056A–6 Amount of tax.

(a) Definition of tax.
(b) Example.
(c) Benefits allowed in determining amount of deferred estate tax.
(1) General rule.
(2) Presumption of residency.
(3) Special rule in the case of trusts described in section 2056(b)(8).
(4) Credit for state and foreign death taxes.
(5) Alternate valuation and special use valuation.
(d) Miscellaneous rules.

Section 20.2056A–7 Allowance of prior transfer credit under section 2013.

(a) Property subject to QDOT election.
(b) Property not subject to QDOT election.

Section 20.2056A–8 Special rules for joint property.

(a) Inclusion in gross estate.
(1) General rule.
(2) Consideration furnished by surviving spouse.
(3) Amount required to be transferred to QDOT.
(b) Surviving spouse becomes citizen.
(c) Example.

Section 20.2056A–9 Designated filer.

Section 20.2056A–10 Surviving spouse becomes citizen after QDOT established.

(a) Deferred estate tax no longer imposed under certain circumstances.
(1) General rule.
(2) [Reserved].
(b) Special election by spouse.
(1) In general.
(2) [Reserved].

Section 20.2056A–11 Filing requirements and payment of the deferred estate tax.

(a) Distributions during surviving spouse's life.
(b) Tax at death of surviving spouse.
(c) Extension of time for paying deferred estate tax.
(1) Extension of time for paying tax under section 6161(a)(2).
(2) Extension of time for paying tax under section 6161(a)(1).
(d) Liability for tax.

Section 20.2056A–12 Increased basis for deferred estate tax paid with respect to distribution from a QDOT.

Section 20.2056A–13 Effective dates.

(a) In general.
(b) Transition rules for reporting and paying the deferred estate tax.

§ 20.2056A–1 Restrictions on allowance of marital deduction if surviving spouse is not United States citizen.

(a) *General rule.* Subject to the special rules provided in section 7815(d)(14) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239; 103 Stat. 2106), in the case of a decedent who dies after November 10, 1988, the federal estate tax marital deduction is not allowed for property passing to or for the benefit of a surviving spouse who is not a United States citizen at the date of the decedent's death (whether or not the surviving spouse is a resident of the United States) unless—

(1) The property passes from the decedent to (or pursuant to)—

(i) A "qualified domestic trust" (QDOT) described in section 2056A and § 20.2056A–2;

(ii) A trust that, although not meeting all of the requirements for a QDOT, is reformed after the decedent's death to meet the requirements of a QDOT (see § 20.2056A–4(a));

(iii) The surviving spouse not in trust (*e.g.*, by outright bequest or devise, by operation of law, or pursuant to the terms of a plan or arrangement) and, prior to the date that the estate tax return is filed and during the time that the QDOT election may be made, the surviving spouse either actually transfers the property to a QDOT or irrevocably assigns the property to a QDOT (see § 20.2056A–4(b)); or

(iv) A plan or other arrangement that would have qualified for the marital deduction but for section 2056(d)(1)(A), and whose payments are not assignable or transferable to a QDOT (see § 20.2056A–4(c)); and

(2) The executor makes a timely QDOT election under § 20.2056A–3.

(b) *Marital deduction allowed if resident spouse becomes citizen.* The marital deduction is determined as if the surviving spouse is a citizen of the United States if the requirements of section 2056(d)(4) are satisfied. For purposes of section 2056(d)(4)(A) and notwithstanding § 20.2056A–3(a), a return filed prior to the due date (including extensions) is considered filed on the last date that the return is required to be filed (including extensions), and a late return filed at any time after the due date is considered filed on the date that it is actually filed. A surviving spouse is a "resident" only if the spouse is a resident under chapter 11 of the Internal Revenue Code. See § 20.0–1(b)(1). The status of the spouse as a resident under section 7701(b) is not relevant to this determination.

(c) *Special rules in the case of certain transfers subject to estate and gift tax treaties.* See section 7815(d)(14) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) for certain rules applicable in the case of transfers governed by certain estate and gift tax treaties to which the United States is a party.

§ 20.2056A–2 Requirements for qualified domestic trust.

(a) *In general.* In order to qualify as a "qualified domestic trust" (QDOT), the requirements of § 20.2056A–2 (b), (c), and (d) must be satisfied. In addition, the trust must be created and maintained under the laws of the United States or any state or the District of Columbia and must constitute an "explicit trust," as defined in § 301.7701–4(a) of this chapter, and not any other type of entity.

(b) *Qualified marital interest requirements*—(1) *Property passing to QDOT.* If property passes from a decedent to a QDOT, the trust must qualify for the federal estate tax marital deduction under section 2056(b)(5) (life estate with power of appointment), section 2056(b)(7) (qualified terminable interest property, including joint and survivor annuities under section 2056(b)(7)(C), or section 2056(b)(8) (surviving spouse is the only noncharitable beneficiary of a charitable remainder trust), or meet the requirements of an estate trust as defined in § 20.2056(e)–2(b)(1)(i)–(iii).

(2) *Property passing outright to spouse.* If property does not pass from a decedent to a QDOT, but passes to a noncitizen surviving spouse in a form that meets the requirements for a marital deduction without regard to section 2056(d)(1)(A), and that is not described in paragraph (b)(1) of this section, the surviving spouse must either actually transfer the property, or irrevocably assign the property, to a trust (whether

created by the decedent, the decedent's executor or by the surviving spouse) that meets the requirements of paragraphs (c) and (d) of this section (pertaining, respectively, to statutory requirements and regulatory requirements imposed to ensure collection of tax) prior to the filing of the estate tax return for the decedent's estate and before the due date of the QDOT election (see § 20.2056A–3(a)).

(3) *Property passing under a nontransferable plan or arrangement.* If property does not pass from a decedent to a QDOT, but passes under a plan or other arrangement that meets the requirements for a marital deduction without regard to section 2056(d)(1)(A) and whose payments are not assignable or transferable (see § 20.2056A–4(c)), the property is treated as meeting the requirements of § 20.2056A–2(b), (c) and (d), if the requirements of § 20.2056A–4(c) are satisfied. In addition, where an annuity or similar arrangement is described above except that it is assignable or transferable, see § 20.2056A–4(b)(6).

(c) *Statutory requirements.* The requirements of section 2056A(a)(1)(A) and (B) must be satisfied. For purposes of that section, a domestic corporation is a corporation that is created or organized under the laws of the United States or under the laws of any state or the District of Columbia. The trustee required under that section is referred to herein as the "United States Trustee".

(d) *Additional requirements to ensure collection of the deferred estate tax*—(1) *Security and other arrangements for payment of tax imposed under section 2056A(b)(1)—(i) QDOTs with assets in excess of $2 million.* If the fair market value of the assets passing or deemed to have passed to the QDOT, determined as of the date of the decedent's death, exceeds $2,000,000, the trust instrument must also require that either—

(A) At least one United States Trustee be a bank, as defined in section 581; or

(B) The United States Trustee furnish a bond or security in an amount equal to 65 percent of the fair market value of the trust corpus determined as of the date of the decedent's death. The bond or security shall be made on the appropriate form and with satisfactory surety, as prescribed under section 7101 and § 301.7101–1 of this chapter (Regulations on Procedure and Administration), and subject to such review as may be prescribed.

(ii) *QDOTs with assets of $2 million or less.* If the fair market value of assets passing or deemed to have passed to the QDOT, determined as of the date of the decedent's death, is $2,000,000 or less, the trust instrument must either meet the requirements prescribed by paragraph (d)(1)(i)(A) or (d)(1)(i)(B) of this section, or require that no more than 35 percent of the fair market value of the trust assets, determined annually on the last day of the taxable year of the trust, may consist of real property located outside of the United States that is owned by the trust.

(A) For purposes of paragraph (d)(1)(ii) of this section, if more than one QDOT is established for the benefit of the surviving spouse, the fair market value of all trusts is aggregated in determining whether the $2,000,000 threshold under paragraph (d)(1)(ii) of this section is exceeded.

(B) For purposes of paragraph (d)(1)(ii) of this section, all assets owned by a corporation with 15 or fewer shareholders, or by a partnership with 15 or fewer partners, are deemed to be owned directly by a QDOT that owns stock in the corporation, or an interest in the profits or capital of the partnership, to the extent of the QDOT's pro rata share of the assets of the corporation or partnership. All stock in the corporations, or interests in the partnerships, as the case may be, owned or held for the benefit of the surviving spouse or any members of the surviving spouse's family (within the meaning of section 267(c)(4)) are treated as owned by one person solely for purposes of determining the number of partners or shareholders in the entity.

(C) Interests owned by the QDOT in other entities (such as an interest in a trust) are accorded treatment consistent with that described in paragraph (d)(1)(ii)(B) of this section.

(iii) *Anti-abuse rule.* Regardless of whether the QDOT designates a bank as the United States Trustee under paragraph (d)(1)(i)(A) of this section, furnishes security under paragraph (d)(1)(i)(B), or is subject to the foreign real property requirements of paragraph (d)(1)(ii) of this section, the trust immediately ceases to qualify as a QDOT if the trust utilizes any device or arrangement that has, as a principal purpose, the avoidance of liability for the deferred estate tax under section 2056A(b)(1), or the prevention of the collection of the tax. For example, the trust may become subject to this paragraph (d)(1)(iii) of this section if the United States Trustee that is selected is a domestic corporation established with insubstantial capitalization by the surviving spouse or members of the spouse's family.

(2) *Individual trustees.* If the United States Trustee is an individual United States citizen, the individual must have a tax home (as defined in section 911(d)(3)) in the United States.

(3) *Tangible personal property and intangible personal property.* Except when either paragraph (d)(1)(i) or (d)(5) of this section apply, the trust instrument must provide that all other trust assets (including tangible personal property, written evidence of intangible property, stock certificates, bonds, notes, and similar property) must be physically located in the United States at all times during the term of the trust. Securities held in a brokerage account must be held in an account established with a domestic corporation (as defined in § 20.2056A–2(c)).

(4) *Annual reporting requirements*—(i) *In general.* The United States Trustee must file a statement annually with the Internal Revenue Service, setting forth the information described in § 20.2056A–2(d)(4)(ii). Such statement must be attached to Form 1041—U.S. Fiduciary Income Tax Return, filed by the QDOT.

(ii) The statement filed with the Form 1041 must contain the following information—

(A) The name, address, and taxpayer identification number of the United States Trustee and of the QDOT; and

(B) A list summarizing the assets held by the QDOT, together with the fair market value of each listed QDOT asset, determined as of the last day of the taxable year for which the Form 1041 is filed. If a QDOT subject to paragraph (d)(1)(ii) of this section holds stock of a corporation with 15 or fewer shareholders, or an interest in the profits or capital of a partnership with 15 or fewer partners, or an interest in a trust or other entity, the partnership, corporation, trust or other entity must be identified and the QDOT's pro rata share of the assets owned by that entity must be listed on the statement as if directly owned by the QDOT. Failure to timely file the statement may subject the QDOT to the rules of paragraph (d)(1)(iii) of this section.

(5) *Request for alternate arrangement or waiver.* The Commissioner will provide guidance published in the Internal Revenue Bulletin pursuant to which a testator, executor, or the United States Trustee may submit a request for approval of an alternate plan or arrangement to assure collection of the deferred estate tax.

§ 20.2056A–3 QDOT election.

(a) *General rule.* Subject to the time period prescribed in section 2056A(d), the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is

not filed, on the first federal estate tax return filed after the due date.

(b) *No partial elections.* An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire trust that would otherwise qualify for the marital deduction but for the application of section 2056(d). However, if the trust is actually severed in accordance with the applicable requirements of section 2056(b)(7), a QDOT election may be made separately for each separate trust.

(c) *Protective elections.* A protective election may be made to treat property as a QDOT only if there is a bona fide controversy at the time the federal estate tax return is filed as to the property includible in the decedent's gross estate or the property the surviving spouse is entitled to receive; *e.g.*, in the case of a bona fide will contest, or controversy regarding the inclusion in the gross estate of an asset which, if includible, would be eligible for the QDOT election. The protective election is in addition to, and is not in lieu of, the requirements set forth in § 20.2056A–4. The protective election must identify the specific assets to which the protective election refers and the specific reason for the protective election, but may otherwise be defined by means of a formula. Once made, the protective election cannot be revoked. For example, if a protective election is made because a bona fide question exists as to the includibility of an asset in the decedent's gross estate and if it is later determined that the asset is so includible, the protective election becomes effective with respect to the asset and cannot be revoked.

(d) *Manner of election.* The QDOT election is made in the form and manner as set forth in the decedent's estate tax return, including applicable instructions.

§ 20.2056A–4 Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust.

(a) *Marital trusts*—(1) *In general.* If an interest in property passes from the decedent to a trust for the benefit of a noncitizen surviving spouse and if the trust otherwise qualifies for a marital deduction but for the provisions of section 2056(d)(1)(A), the property interest is treated as passing to the surviving spouse in a QDOT if the trust is reformed, either in accordance with the terms of the decedent's will or trust agreement, or pursuant to a judicial proceeding to meet the requirements of a QDOT.

(2) *Time for commencing reformation.* In general, a reformation pursuant to a judicial proceeding is permitted under this section if the reformation is commenced on or before the due date (determined with regard to extensions actually granted) for filing the return of tax imposed by chapter 11 of the Internal Revenue Code. The reformation (either pursuant to a judicial proceeding or otherwise) must result in a trust that is effective and irrevocable under local law.

(3) *Tolling of statutory assessment period.* For the tolling of the statute of limitations in the case of a judicial reformation, see section 2056(d)(5)(B).

(b) *Nontrust marital transfers*—(1) *In general.* Under section 2056(d)(2)(B), if an interest in property passes outright from a decedent to a noncitizen surviving spouse either by testamentary bequest or devise, by operation of law, or pursuant to an annuity or other similar plan or arrangement, and such property interest otherwise qualifies for a marital deduction except that it does not pass in a QDOT, solely for purposes of section 2056(d)(2)(A), the property is treated as passing to the surviving spouse in a QDOT if the property interest is either actually transferred to a QDOT before the estate tax return is filed and during the time that the QDOT election may be made, or is assigned to a QDOT under an enforceable and irrevocable assignment made on or before the date on which the return is filed and during the time that the QDOT election may be made. For purposes of section 2056(d)(2)(B), the terms of the QDOT are not required to meet the qualified marital interest requirements under § 20.2056A–2(b)(1). See § 20.2056A–3(a) with respect to the time limitations for making the QDOT election.

(2) *Form of assignment.* A transfer or assignment of property to a QDOT must be in writing. The transfer or assignment may be of a specific asset or a group of assets, or a fractional share of either, or may be of a pecuniary amount. A transfer or assignment of less than an entire interest in an asset or a group of assets may be expressed as a formula (such as the minimum amount necessary to reduce the estate tax to zero).

(3) *Assets eligible for assignment.* If a transfer or assignment is of a specific asset or group of assets, only assets passing from the decedent to the spouse and included in the decedent's gross estate (or the proceeds from the sale, exchange or conversion of such assets) may be transferred or assigned to the QDOT. The noncitizen surviving spouse may not fund the QDOT with property initially owned by the surviving spouse.

(4) *Pecuniary assignment—special rules.* If the transfer or assignment is expressed in the form of a pecuniary amount (such as a fixed dollar amount or a formula designed to reduce the decedent's estate tax to zero), the transfer or assignment must specify that:

(i) Assets actually transferred to the QDOT in satisfaction of the transfer or assignment have an aggregate fair market value on the date of actual transfer to the QDOT amounting to no less than the amount of the pecuniary transfer or assignment; or

(ii) The assets actually transferred to the QDOT be fairly representative of appreciation or depreciation in the value of all property available for transfer to the QDOT between the valuation date and the date of actual transfer to the QDOT, if the assignment is to be satisfied by accounting for the assets on the basis of their fair market value as of some date before the date of actual transfer to the QDOT.

(5) *Transfer tax treatment of assignment.* Property assigned or transferred to a QDOT pursuant to section 2056(d)(2)(B) is treated as passing from the decedent in a QDOT solely for purposes of section 2056(d)(2)(A). For all other purposes (*e.g.*, income, gift, estate, generation-skipping transfer tax, and section 1491 excise tax), the surviving spouse is treated as the transferor of the property to the QDOT.

(6) *Period for completion of transfer.* Property irrevocably assigned but not actually transferred to the QDOT before the estate tax return is filed must actually be conveyed and transferred to the QDOT under applicable local law before the administration of the decedent's estate is completed. If an actual transfer to the QDOT is not timely made, section 2056(d)(1)(A) applies and the marital deduction is not allowed. The executor of the decedent's estate may request a private letter ruling from the Internal Revenue Service extending the time for completing the conveyance or waiving the actual conveyance under specified circumstances. For purposes of this § 20.2056A–4(b)(6), an assignment in compliance with this paragraph (b) of rights under annuities or other similar arrangements which are assignable or transferable under § 20.2056A–4(c)(1) is treated as having been actually transferred (regardless of the method of payment actually elected under such annuity or plan) to the QDOT.

(7) *Protective assignment.* A protective assignment of property to a QDOT may be made if there is a bona fide controversy at the time the federal estate tax return is filed as to the extent

to which property passing to the surviving spouse is includible in the decedent's gross estate. For example, a bona fide question may be presented regarding the extent to which the decedent contributed towards the purchase of joint property held with the spouse, thereby affecting the extent to which the property is included in the gross estate under section 2040(a) and the portion of the property the spouse must assign to the QDOT. The protective assignment must identify the specific assets to which the assignment refers and the reason for the protective assignment, but may otherwise be defined by means of a formula (such as the minimum amount necessary to reduce the estate tax to zero). Once made, the protective assignment cannot be revoked. For example, if a protective assignment is made because a question exists as to the includibility of an asset in the decedent's gross estate and it is later determined that the asset is so includible, the protective assignment becomes effective with respect to the asset and cannot be revoked. Protective assignments are, in all events, subject to § 20.2056A–4(b)(6).

(c) *Nonassignable annuities and other arrangements*—(1) *Definition and general rule.* For purposes of this section, a "nonassignable annuity or other payment" means a plan, annuity, or other arrangement (whether qualified or not qualified under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code) that qualifies for the marital deduction but for section 2056(d)(1)(A), and whose payments are not assignable or transferable to the QDOT under either federal law (*see, e.g.*, section 401(a)(13)), state law, foreign law, or the terms of the plan or arrangement itself. In the case of a plan, annuity, or other arrangement which is not so assignable or transferable, the property passing under the plan from the decedent is treated as meeting the requirements of § 20.2056A–2(b), (c) and (d) (pertaining, respectively, to qualified marital interest requirements, statutory requirements, and requirements to ensure collection of the tax). Thus, the property is treated as passing in the form of a QDOT, notwithstanding that the spouse does not irrevocably transfer or assign the annuity or other payment to the QDOT as provided in § 20.2056A–4(b), but only if the requirements of § 20.2056A–4(c) (2) or (3) are satisfied.

(2) *Agreement to remit deferred estate tax on corpus portion of each annuity payment.* The requirements of this paragraph (c)(2) are satisfied if—

(i) The noncitizen surviving spouse agrees to pay the deferred estate tax under section 2056A(b)(1) due on the "corpus portion," as defined in paragraph (c)(4) of this section, of each nonassignable annuity or other payment received under the plan or arrangement;

(ii) The executor of the decedent's estate files with the estate tax return the Information Statement described in paragraph (c)(5) of this section;

(iii) The executor files with the estate tax return the Agreement To Pay Deferred Estate Tax described in paragraph (c)(6) of this section; and

(iv) The executor makes the election under § 20.2056A–3 with respect to the nonassignable annuity or other payment.

(3) *Agreement to roll over corpus portion of annuity payment to QDOT.* The requirements of this paragraph (c)(3) are satisfied if—

(i) The noncitizen surviving spouse agrees to roll over and transfer the corpus portion of each annuity payment to a QDOT, whether the QDOT is created by the decedent's will, the executor of the decedent's estate, or the surviving spouse;

(ii) A QDOT for the benefit of the surviving spouse is established prior to the date that the estate tax return is filed and during the time that the QDOT election may be made;

(iii) The executor of the decedent's estate files with the estate tax return the Information Statement described in paragraph (c)(5) of this section;

(iv) The executor files with the estate tax return the Agreement To Roll Over Annuity Payments described in paragraph (c)(7) of this section; and

(v) The executor makes the election under § 20.2056A–3 with respect to the nonassignable annuity or other payment. See § 20.2056A–5(c)(3)(iv) regarding distributions from the QDOT reimbursing the spouse for income taxes paid (either by actual payment or withholding) by the spouse with respect to amounts transferred to the QDOT pursuant to this § 20.2056A–4(c)(3).

(4) *Determination of corpus portion*—(i) *Corpus portion.* For purposes of this § 20.2056A–4(c), the "corpus portion" of each nonassignable annuity or other payment is the "corpus amount" of the annual payment divided by the total annual payment.

(ii) *Corpus amount.* (A) The "corpus amount" of the annual payment is determined in accordance with the following formula:

$$\text{Corpus Amount} = \frac{\text{Total present value of annuity or other payment}}{\text{Expected annuity term}}$$

(B) The "total present value of the annuity or other payment" is the present value of the nonassignable annuity or other payment as of the date of the decedent's death, determined in accordance with the interest rates and mortality data prescribed by section 7520. The "expected annuity term" is the number of years that would be required for the scheduled payments to exhaust a hypothetical fund equal to the present value of the scheduled payments. This is determined by first dividing the total present value of the payments by the annual payment. From the quotient so obtained, the expected annuity term is derived by identifying the term of years that corresponds to the annuity factor equal to the quotient. This is determined by using column 1 of Table B, for the applicable interest rate, contained in Internal Revenue Service Publication 1457, "Actuarial Values, Alpha Volume" (8–89), which is available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402. If the quotient obtained falls between two terms, the longer term is used.

(5) *Information Statement*—(i) *In general.* In order for a nonassignable annuity or other payment described in this § 20.2056A–4(c) to qualify under either paragraph (c)(2) or (c)(3) of this section, the Information Statement described in paragraph (c)(5)(ii) of this section must be filed with the decedent's federal estate tax return. The Information Statement must be signed under penalties of perjury by both the executor of the decedent's estate and by the surviving spouse of the decedent. The Statement must contain all of the information prescribed by this paragraph (c)(5).

(ii) *Annuity source information*—(A) *Employment-related annuity.* If the nonassignable annuity or other payment is employment-related, the following information must be provided:

(*1*) The name and address of the employer;

(*2*) The date of retirement or other separation from employment of the decedent;

(*3*) The name and address of the pension fund, insurance company, or other obligor that is paying the annuity (or similar payment); and

(*4*) The identification number that the obligor has assigned to the annuity or other payment.

(B) *Annuity not employment-related.* If the nonassignable annuity or other payment is not employment-related, the following information must be provided:

(*1*) The name and address of the person or entity paying the

nonassignable annuity or other payment;

(2) The date of acquisition of the nonassignable annuity contract by the decedent or by the decedent and the surviving spouse; and

(3) The identification number, if any, that the obligor has assigned to the nonassignable annuity or other payment.

(iii) *The total annuity amount payable each year.* The total amount payable annually under the nonassignable annuity or other arrangement, including a description of whether the annuity is payable on a monthly, quarterly, or other interval and a description of any scheduled changes in the annuity payout amount.

(iv) *The duration of the annuity.* A description of the term of the nonassignable annuity or other payment in years, if it is determined by a term certain, and the name, address, and birthdate of any measuring life if the nonassignable annuity or other payment is determined by one or more lives.

(v) *The market interest rate under section 7520.* The applicable interest rate as determined under section 7520.

(vi) *Determination of corpus portion of each payment (in accordance with paragraph (c)(4) of this section).* (A) The present value of the nonassignable annuity or other payment as of the decedent's death;

(B) The expected annuity term;

(C) The corpus amount of the annual annuity payments ((A) divided by (B));

(D) The corpus portion of the annual payments ((C) divided by the total amount payable annually).

(vii) *The recipient QDOT* (applicable only in the case of an agreement to rollover under paragraph (c)(3) of this section).

(A) The name and address of the trustee of the QDOT who is the United States Trustee;

(B) The name and taxpayer identification number of the QDOT.

(viii) *Certification statement.* The executor of the decedent's estate and the surviving spouse of the decedent must each sign a Certification Statement as follows:

Under penalties of perjury, I hereby certify that, to the best of my knowledge and belief, the information reported in this Information Statement is true, correct and complete.

(6) *Agreement To Pay Deferred Estate Tax.* In order for a nonassignable annuity or other payment described in this § 20.2056A–4(c) to qualify under paragraph (c)(2) of this section, the executor of the decedent's estate must file with the estate tax return the following Agreement To Pay Deferred Estate Tax, which must be signed by the surviving spouse of the decedent.

I [*name*] hereby agree that I will report all annuity payments received under the [*name of plan or arrangement*] on Form 706QDT for the calendar year and remit, on an annual basis, to the Internal Revenue Service the deferred estate tax that is imposed under section 2056A(b)(1) of the Internal Revenue Code on the corpus portion of each annuity payment (as defined in section 20.2056A–4(c)(4) of the Estate Tax Regulations) received under the plan during the calendar year. I also agree that form 706QDT is to be filed no later than April 15th of the year following the calendar year in which any annuity payments are received except in the year of my death, in which case it must be filed no later than the date my estate tax return is filed (or if no return is filed, no later than 9 months from the date of my death). I further agree that if I fail to timely file Form 706QDT or pay the tax imposed on the corpus portion of any annuity payment, I will become immediately liable to pay the tax imposed by section 2056A(b)(1) on the full remaining present value of the annuity, calculated as of the beginning of the calendar year in which the payment was received with respect to which I failed to report or remit payment of the tax imposed under section 2056A(b)(1). I agree, at the request of the District Director, to enter into a security agreement to secure my undertakings under this agreement.

(7) *Agreement To Roll Over Annuity Payments.* In order for a nonassignable annuity or other payment described in this § 20.2056A–4(c) to qualify under paragraph (c)(3) of this section, the executor of the decedent's estate must file with the estate tax return the following Agreement To Roll Over Annuity Payments, which must be signed by the surviving spouse of the decedent.

I [*name*] hereby agree that within 60 days of receipt of each annuity payment paid under the [*name of plan or arrangement*], I will transfer an amount equal to _____ percent (the corpus portion determined under section 20.2056A–4(c)(4) of the Estate Tax Regulations) of each annuity payment to [*identify the QDOT*]. Further, I will report all annuity payments received during the calendar year under the [*name of plan or arrangement*] on Form 706QDT including a schedule of transfers to the [*identify the QDOT*]. I also agree that Form 706QDT is to be filed no later than April 15th of the year following the year in which any annuity payments are received except in the year of my death, in which case it must be filed no later than the date my estate tax return is filed (or if no such return is filed, no later than 9 months from the date of my death). I further agree that if I fail to timely transfer any required amount with respect to any annuity payment, or fail to timely file Form 706QDT reporting the transfers for any year, I will become immediately liable to pay the amount of the tax determined by application of section 2056A(b)(1) on the entire remaining present value of the annuity, calculated as of the beginning of the year in which the payment was received with respect to which I failed to make the transfer or file a return. I agree, at the request of the District Director, to enter into a security agreement to secure my undertakings under this agreement.

(d) *Examples.* The provisions of this section are illustrated by the following examples. In each of the following examples the decedent, *D*, a citizen of the United States, died after the date these regulations are published as final regulations and *D*'s surviving spouse, *S*, is not a United States citizen at the time of *D*'s death.

Example 1. Transfer and assignment of probate and nonprobate property to QDOT. (i) *S* is the beneficiary of the following probate and nonprobate assets included in *D*'s gross estate:

Pecuniary bequest under will	$400,000
Proceeds of life insurance	200,000
D's interest in property owned jointly with *S* includible in the gross estate under § 2040 (a)	300,000
Devise of real property under will	100,000
Total	1,000,000

(ii) Before the estate tax return for *D*'s estate is filed and before the date that the QDOT election must be made, *S* creates a QDOT pursuant to which all income is payable to *S* for life and the remainder is distributable to *S*'s children. *S* retains a power of appointment over the disposition of the remainder to ensure that *S* does not make an immediate gift of the remainder of the trust. Also, before the estate tax return is filed and before the date that the QDOT election must be made, *S* transfers the life insurance proceeds and the specifically devised real property to the QDOT. *S* decides not to transfer the property that had been jointly owned to the QDOT. Because *S* has not received distribution of the pecuniary bequest before *D*'s estate tax return is filed and before the QDOT election must be made, *S* irrevocably assigns the interest in the pecuniary bequest to the QDOT. Assume that the pecuniary bequest is in fact transferred by *S* to the QDOT before the estate administration is concluded. *D*'s executor makes a QDOT election on the estate tax return for the $700,000 in property that *S* has transferred and assigned to the QDOT. A marital deduction of $700,000 is allowed to *D*'s estate assuming the estate tax return is filed and the QDOT election is made within the time limitation prescribed in § 20.2056A-3 (a). No marital deduction is allowed for the $300,000 interest in jointly-owned property not transferred to the QDOT.

Example 2. Formula assignment. Under the terms of *D*'s will, the entire probate estate passes outright to *S*. Prior to the date *D's* estate tax return is filed and before the date that the QDOT election must be made, *S* establishes a QDOT and irrevocably assigns to the QDOT that portion of the gross estate necessary to reduce the estate tax to zero, taking into account all available credits and deductions. The assignment meets the requirements of § 20.2056A-4 (b), assuming that the QDOT is funded by the time that administration of *D*'s estate is completed.

Example 3. Jointly owned property. At the time of *D*'s death, *D* and *S* hold real property as joint tenants with right of survivorship. In accordance with section 2056(d) (1) (B), section 2040(a), and § 20.2056A-8, 60 percent of the value of the property is included in *D*'s gross estate. *S* establishes a QDOT and, prior to the date the estate tax return is filed and before the QDOT election must be made, *S* transfers a 60 percent interest in the real property to the QDOT. The transfer satisfies the requirements of § 20.2056A-4(b).

Example 4. Computation of corpus portion of annuity payment. (i) At the time of *D*'s death in October 1994, *D* is a participant in an employee's pension plan described in section 401(a). On *D*'s death, *D*'s spouse *S*, a resident of the United States, becomes entitled to receive a survivor's annuity of $72,000 per year, payable monthly, for life. At the time of *D*'s death, *S* is age 60. Assume that under section 7520, the appropriate discount rate to be used for valuing annuities in the case of a decedent who dies in October 1994, is 9 percent. The annuity factor at 9 percent for a person age 60 is 8.3031. The adjustment factor at 9 percent for monthly payments is 1.0406. Accordingly, the right to receive $72,000 a year on a monthly basis is equal to the right to receive $74,923 ($72,000×1.0406) on an annual basis.

(ii) The corpus portion of each annuity payment received by *S* is determined as follows. The first step is to determine the annuity factor for the number of years that would be required to exhaust a hypothetical fund that has a present value and a payout corresponding to *S*'s interest in the payment under the plan, determined as follows:

(A) Present value of *S*'s annuity:
$74,923×8.3031=$622,093

(B) Annuity Factor for Expected Annuity Term: $622,093/$74,923=8.3031

(iii) The second step is to determine the number of years that would be required for *S*'s annuity to exhaust a hypothetical fund of $622,093. The term certain annuity factor of 8.3031 falls between the annuity factors for 15 and 16 years in a 9 percent term certain annuity table (Column 1 of Table B, Publication 1457—Alpha Volume). Accordingly, the expected annuity term is 16 years.

(iv) The third step is to determine the corpus amount by dividing the expected term of 16 years into the present value of the hypothetical fund as follows:

Corpus amount of annual payment:
$622,093/16=$38,881

(v) In the fourth step, the corpus portion of each annuity payment is determined by dividing the corpus amount of each annual payment by the annual annuity payment as follows:

Corpus portion of each annuity payment:
$38,881/$74,923=.52

(vi) Accordingly, 52 percent of each payment to *S* is deemed to be a distribution of corpus. A marital deduction is allowed for $622,093, the present value of the annuity as of *D*'s date of death, if either: *S* agrees to roll over the corpus portion of each payment to a QDOT and the executor files the Information Statement described in § 20.2056A–4(c)(5) and the Roll Over Agreement described in § 20.2056A–4(c)(7); or *S* agrees to pay the tax due on the corpus portion of each payment and the executor files the Information Statement described in § 20.2056A–4(c)(5) and the payment Agreement described in § 20.2056A–4(c)(6).

Example 5. Transfer to QDOT subject to gift tax. *D* dies on April 1, 1994. *D*'s will bequeaths $700,000 outright to *S*. The bequest qualifies for a marital deduction under section 2056(a) except that it does not pass in a QDOT. On September 1, 1994, *S* creates an irrevocable trust that meets the requirements for a QDOT and transfers the $700,000 to the QDOT. The QDOT instrument provides that *S* is entitled to all the income from the QDOT payable at least annually and that, upon the death of *S*, the property remaining in the QDOT is to be distributed to the grandchildren of *D* and *S* in equal shares. The trust instrument contains all other provisions required to qualify as a QDOT. On *D*'s estate tax return, *D*'s executor makes a QDOT election under section 2056A(a)(3). Solely for purposes of the marital deduction, the property is deemed to pass from *D* to the QDOT trust. *D*'s estate is entitled to a marital deduction for the $700,000 value of the property passing from *D* to *S*. *S*'s transfer of property to the QDOT is treated as a gift of the remainder interest for gift tax purposes because *S*'s transfer creates a vested remainder interest in the grandchildren of *D* and *S*. Accordingly, as of the date that *S* transfers the property to the QDOT, a gift tax is imposed on the present value of the remainder interest. Since *S* made the transfer after October 8, 1990, *S* is deemed to make a gift with a value equal to the entire value of the property under section 2702. In addition, at *S*'s death, *S* is treated as the transferor of the property into the trust for estate tax and generation-skipping transfer tax purposes. *See, e.g.*, sections 2036 and 2652(a)(1). The trust is not eligible for a reverse QTIP election by *D*'s estate under section 2652(a)(3) because a QTIP election cannot be made for the QDOT. This is so because the marital deduction is allowed under section 2056(a) for the outright bequest to the spouse and the spouse is then separately treated as the transferor of the property to the QDOT.

§ 20.2056A–5 Imposition of deferred estate tax.

(a) *In general.* A deferred estate tax is imposed under section 2056A(b)(1) on the occurrence of a "taxable event," as defined in section 2056A(b)(9). The tax is generally equal to the amount of estate tax that would have been imposed if the amount involved in the taxable event had been included in the decedent's taxable estate and had not been deductible under section 2056. See section 2056A(b)(3) and § 20.2056A–5(c) for certain exceptions from taxable events.

(b) *Amounts subject to tax*—(1) *Distributions of principal during the spouse's lifetime.* If a taxable event occurs during the noncitizen surviving spouse's lifetime, the amount subject to tax is the amount of the distribution including any amount withheld from the distribution by the United States Trustee to pay the deferred estate tax. If, however, the tax is not withheld by the United States Trustee but is paid by the Trustee out of other assets of the QDOT, an amount equal to the tax so paid is treated as an additional distribution to the spouse in the year that the tax is paid.

(2) *Death of surviving spouse.* If a taxable event occurs as a result of the death of the surviving spouse, the amount subject to tax is the value of the trust corpus on the date of the spouse's death (or alternate valuation date if applicable). *See also* section 2032A.

(3) *Trust ceases to qualify as QDOT.* If a taxable event occurs as a result of the trust ceasing to qualify as a QDOT (for example, the trust ceases to have at least one United States Trustee), the amount subject to tax is the value of the trust corpus on the date of disqualification.

(c) *Distributions and dispositions not subject to tax*—(1) *Distributions of principal on account of hardship.* Section 2056A(b)(3)(B) provides an exemption from the deferred estate tax for distributions to the surviving spouse on account of hardship. A distribution of principal is made on account of hardship if the distribution is made to the spouse from the QDOT in response to an immediate and substantial financial need relating to the spouse's health, maintenance, or support. A distribution is not considered made on account of hardship if the amount distributed may be obtained from other sources that are reasonably available to the surviving spouse; *e.g.*, the sale by the surviving spouse of personally owned, publicly traded stock or the cashing in of a certificate of deposit owned by the surviving spouse. Although a hardship distribution of principal is exempt from the deferred estate tax, it must be reported on Form 706QDT even if it is the only distribution that occurred during the filing period. See § 20.2056A–11 regarding filing requirements for the Form 706QDT.

(2) *Distributions of income to the surviving spouse.* Section 2056A(b)(3)(A) provides an exemption from the deferred estate tax for distributions of income to the surviving spouse. For purposes of section 2056A(b)(3)(A), "income" refers to income as defined in section 643(b), except that income does not include capital gains or other items that would be allocated to corpus under applicable local law governing the administration

of trusts without regard to any specific trust provision to the contrary.

(3) *Certain miscellaneous distributions and dispositions.* Certain additional miscellaneous distributions and dispositions of trust assets are exempt from the deferred estate tax, including but not limited to the following—

(i) Payments for ordinary and necessary expenses of the QDOT;

(ii) Payments to applicable governmental authorities for income tax or any other applicable tax imposed on the QDOT (other than a payment of the deferred estate tax due on the occurrence of a taxable event as described in paragraph (b) of this section);

(iii) Dispositions of trust assets by the trustees (such as sales, exchanges, or pledging as collateral) for full and adequate consideration in money or money's worth; and

(iv) Amounts paid from the QDOT to reimburse the spouse for income taxes paid by the spouse (either by actual payment or through withholding) with respect to amounts received from a nonassignable annuity or other arrangement that are transferred by the spouse to a QDOT pursuant to § 20.2056A–4(c)(3).

§ 20.2056A–6 Amount of tax.

(a) *Definition of tax.* Section 2056A(b)(2) provides for the computation of the deferred estate tax. For purposes of section 2056A(b)(2)(A) (i) and (ii), except as provided in § 20.2056A–6(d), in determining the tax that would have been imposed under section 2001 on the estate of the first decedent, the rates in effect on the date of the first decedent's death are used. In addition, for purposes of section 2056A(b)(2)(A) (i) and (ii), "the tax which would have been imposed by section 2001 on the estate of the decedent" means the net tax after allowance of any allowable credits, including the unified credit allowable under section 2010, the credit for state death taxes under section 2011, the credit for tax on prior transfers under section 2013, and the credit for foreign death taxes under section 2014. In the case of a decedent nonresident not a citizen of the United States, the applicable credits are determined under section 2102.

(b) *Example.* The rules of § 20.2056A–6 are illustrated as follows:

Example. (i) *D*, a United States citizen, dies in 1994 with a gross estate of $1,200,000. Under *D*'s will, a pecuniary bequest of $700,000 passes to a QDOT for the benefit of *D*'s spouse *S*, who is a resident but not a citizen of the United States. *D*'s estate tax is computed as follows:

Gross estate	$1,200,000	
Marital Deduction	(700,000)	
Taxable Estate	500,000	
Gross Tax		$155,800
Less: $192,800 Unified Credit		(155,800)
Net Tax		0

(ii) *S* dies in 1996 at which time the value of the corpus of the QDOT is $700,000. Assuming there were no taxable events during *S*'s lifetime with respect to the QDOT, the tax imposed under section 2056A(b)(1)(B) is $235,000, computed as follows:

D's actual taxable estate	$500,000	
QDOT property	700,000	
Total	1,200,000	
Gross Tax		$427,800
Less: Unified Credit		(192,800)
Net Tax		235,000
Less: Tax that would have been imposed on *D*'s actual taxable estate of $500,000		0
Deferred Estate Tax		235,000

(c) *Benefits allowed in determining amount of deferred estate tax*—(1) *General rule.* Section 2056A(b)(10) provides for the allowance of certain benefits in computing the deferred estate tax. Except as provided in this paragraph, the rules of each of the credit, deduction and deferral provisions referred to therein must be complied with.

(2) *Presumption of residency.* For purposes of section 2056A(b)(10)(A), it is presumed that the noncitizen spouse is a resident of the United States for purposes of determining whether the QDOT property is includible in the spouse's gross estate under chapter 11 and for purposes of determining whether any of the credits, deductions or deferral provisions are allowable with respect to the QDOT property to the estate of the spouse.

(3) *Special rule in the case of trusts described in section 2056(b)(8).* In the case of a QDOT in which the spouse's interest qualifies for a marital deduction under section 2056(b)(8), the provisions of section 2056A(b)(10)(A) apply in determining the allowance of a charitable deduction in computing the deferred estate tax, notwithstanding that the QDOT is not includible in the spouse's gross estate.

(4) *Credit for state and foreign death taxes.* In order for a credit to be finally allowed for either state death taxes under section 2011 or foreign death taxes under section 2014, the state or foreign jurisdiction must actually impose death taxes on the property subject to the section 2056A(b)(1) tax and those taxes must actually be paid to the state or foreign jurisdiction. The credit allowable cannot exceed the state or foreign death taxes previously paid at the time of death of the first decedent, and any additional state or foreign taxes imposed on the surviving spouse's death on the QDOT property, other than taxes imposed on property includible in the spouse's gross estate.

(5) *Alternate valuation and special use valuation*—(i) *In general.* In order to claim the benefits of alternate valuation under section 2032, or special use valuation under section 2032A, for purposes of computing the deferred estate tax, an election must be made on the Form 706QDT that is filed with respect to the balance remaining in the QDOT upon the death of the surviving spouse. In addition, the separate requirements for making the section 2032 and/or section 2032A elections under those sections and the regulations thereunder must be complied with except that, for this purpose, the surviving spouse is treated as a resident of the United States regardless of the surviving spouse's actual residency status. Solely for purposes of this paragraph (d)(5), the citizenship of the first decedent is immaterial.

(ii) *Alternate valuation.* For purposes of the alternate valuation election under section 2032, the election may not be made unless the election decreases both the value of the property remaining in the QDOT upon the death of the surviving spouse and the net amount of deferred estate tax due. Once made, the election is irrevocable.

(iii) *Special valuation.* For purposes of section 2032A, the Designated Filer (in the case of multiple QDOTs) or the United States Trustee may elect to value certain farm and closely held business real property at its farm or business use value, rather than its fair market value, if all of the requirements under section 2032A and the applicable regulations are met, except that, for this purpose, the surviving spouse is treated as a resident of the United States regardless of the spouse's actual residency status. The total value of property valued under section 2032A in the QDOT cannot be decreased from fair market value by more than $750,000.

(d) *Miscellaneous rules.* See sections 2056A(b)(2)(B)(i) and 2056A(b)(2)(C) for special rules regarding the appropriate rate of tax. See section 2056A(b)(2)(B)(ii) for provisions regarding a credit or refund with respect to the deferred estate tax.

§ 20.2056A–7 Allowance of prior transfer credit under section 2013.

(a) *Property subject to QDOT election.* Section 2056(d)(3) provides special rules for computing the section 2013 credit allowed with respect to property subject to a QDOT election. In computing the credit under section 2013, the amount of the credit is determined under section 2013 and the regulations thereunder, except that:

(1) The "first limitation" as described in section 2013(b) and § 20.2013–2 is the amount of the deferred estate tax imposed under section 2056A(b)(1)(A), with respect to distributions during the spouse's life, and under section 2056A(b)(1)(B), with respect to the value of the trust corpus on the spouse's death; and

(2) The amount of the credit is determined without regard to the percentage limitations contained in section 2013(a).

(b) *Property not subject to QDOT election.* If property includible in a decedent's gross estate passes to a noncitizen surviving spouse (the transferee) and no deduction is allowed to the decedent's estate for the property under section 2056(a) solely because the requirements of section 2056(d)(2) are not satisfied, and the transferee spouse dies with an estate that is subject to tax under section 2001 or section 2101, as the case may be, any credit for tax on prior transfers allowable to the estate of the transferee spouse under section 2013 with respect to such property is determined in accordance with the rules of section 2013 and the regulations thereunder, except that the amount of the credit is determined without regard to the percentage limitations contained in section 2013(a).

§ 20.2056A–8 Special rules for joint property.

(a) *Inclusion in gross estate*—(1) *General rule.* If property is held by the decedent and the surviving spouse of the decedent as joint tenants with right of survivorship, or as tenants by the entirety, and the surviving spouse is not a United States citizen at the time of the decedent's death, the property is subject to inclusion in the decedent's gross estate in accordance with the rules of section 2040(a) (general rule for includibility of joint interests), and section 2040(b) (special rule for includibility of certain joint interests of husbands and wives) does not apply. Accordingly, the rules contained in section 2040(a) and § 20.2040–1 govern the extent to which such joint interests are includible in the gross estate of a decedent who was a citizen or resident of the United States. If the decedent is a nonresident not a citizen of the United States, the foregoing rule applies pursuant to sections 2103, 2031, 2040(a), and 2056(c)(1)(B).

(2) *Consideration furnished by surviving spouse.* For purposes of applying section 2040(a), in determining the amount of consideration furnished by the surviving spouse, any consideration furnished by the decedent with respect to the property before July 14, 1988, is treated as consideration furnished by the surviving spouse to the extent that the consideration was treated as a gift under section 2511, or to the extent that the decedent elected to treat the transfer as a gift to the spouse under section 2515 (to the extent applicable). For purposes of determining whether the consideration was a gift by the decedent under section 2511, it is presumed that the decedent was a citizen of the United States at the time the consideration was so furnished to the spouse. The special rule of this § 20.2056A–8(a)(2) is applicable only if the donor spouse predeceases the donee spouse and not if the donee spouse predeceases the donor spouse.

(3) *Amount required to be transferred to QDOT.* If, as a result of the application of the rules described above, only a portion of the value of a jointly-held property interest is includible in a decedent's gross estate, only that portion that is so includible must be transferred to a QDOT in order to obtain the estate tax marital deduction for the property. See § 20.2056A–4(d), *Example 3.*

(b) *Surviving spouse becomes citizen.* Paragraph (a) of this section does not apply if the surviving spouse meets the requirements of section 2056(d)(4). For the definition of resident in applying section 2056(d)(4), see § 20.0–1(b).

(c) *Example.* The provisions of § 20.2056A–8 are illustrated by the following example:

Example. In 1987, *D*, a United States citizen, purchases real property and takes title in the names of *D* and *S*, *D*'s spouse (a noncitizen, but a United States resident), as joint tenants with right of survivorship. In accordance with § 25.2511–1(h)(5), one-half the value of the property is a gift to *S*. *D* dies in 1993. Because *S* is not a United States citizen, the provisions of section 2040(a) are determinative of the extent to which the real property is includible in *D*'s gross estate. Because the joint tenancy was established before July 14, 1988, and under the applicable provisions of the Internal Revenue Code and regulations the transfer was treated as a gift of one-half the property, one-half of the value of the property is deemed attributable to consideration furnished by *S* for purposes of section 2040(a). Accordingly, only one-half of the value of the property is includible in *D*'s gross estate under section 2040(a).

§ 20.2056A–9 Designated Filer.

Section 2056A(b)(2)(C) provides special rules where more than one QDOT is established with respect to a decedent. The designation of a person responsible for filing a return under section 2056A(b)(2)(C)(i) (the Designated Filer) must be made on the decedent's federal estate tax return, or on the first 706QDT that is due and is filed by its prescribed date, including extensions. The Designated Filer must be a United States Trustee of the QDOT. If the United States Trustee is an individual United States Trustee, the individual must have a tax home (as defined in section 911(d)(3)) in the United States. At least thirty days before the due date for filing the tax returns for all of the QDOTs, the United States Trustee(s) of each of the QDOTs must provide to the Designated Filer all of the necessary information relating to distributions from their respective QDOTs. The Designated Filer may allocate the deferred estate tax due from each QDOT in the Designated Filer's discretion.

§ 20.2056A–10 Surviving spouse becomes citizen after QDOT established.

(a) *Deferred estate tax no longer imposed under certain circumstances*—(1) *General rule.* Section 2056A(b)(12) provides that a QDOT is no longer subject to the imposition of the deferred estate tax if the spouse becomes a citizen of the United States and the following conditions are satisfied—

(i) The spouse either was a United States resident (for the definition of resident for this purpose, see § 20.2056A–1(b)) at all times after the death of the decedent and before becoming a United States citizen, or no taxable distributions are made from the QDOT before the spouse became a United States citizen (regardless of the residency status of the spouse); and

(ii) The United States Trustee(s) of the QDOT notifies the Internal Revenue Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706QDT on or before April 15th of the year following the year in which the surviving spouse becomes a United States citizen, unless an extension of time for filing is granted under section 6081.

(2) [Reserved].

(b) *Special election by spouse*—(1) *In general.* If the surviving spouse becomes a United States citizen and the spouse is not a United States resident (see § 20.2056A–1(b)) at all times after the death of the decedent and before becoming a United States citizen, and a tax was previously imposed under

section 2056A(b)(1)(A) with respect to any distribution from the QDOT before the surviving spouse becomes a United States citizen, the deferred estate tax under section 2056A(b)(1) does not apply to distributions after the spouse becomes a citizen if:

(i) The spouse elects to treat any taxable distribution from a QDOT prior to the spouse's election as a taxable gift made by the spouse for purposes of section 2001(b)(1)(B) (referring to adjusted taxable gifts) and for purposes of determining the amount of the tax imposed by section 2501 on actual taxable gifts made by the spouse during the year in which the spouse becomes a citizen or in any subsequent year;

(ii) The spouse elects to treat any previous reduction in the tax by reason of the decedent's unified credit (under either section 2010 or section 2102(c)) as a reduction in the spouse's unified credit under section 2505 for purposes of determining the amount of the credit allowable with respect to taxable gifts made by the surviving spouse during the taxable year in which the spouse becomes a citizen, or in any subsequent year; and

(iii) The elections referred to in § 20.2056A–10(b)(1)(i) and (ii) are made by timely filing a Form 706QDT on or before April 15th of the year following the year in which the surviving spouse becomes a citizen (unless an extension of time for filing is granted under section 6081) and attaching notification of the election to the return.

(2) [Reserved].

§ 20.2056A–11 Filing requirements and payment of the deferred estate tax.

(a) *Distributions during surviving spouse's life.* Section 2056A(b)(5)(A) provides the due date for the deferred estate tax due on distributions during the spouse's lifetime. An extension of not more than 6 months may be obtained for the filing of Form 706QDT under section 6081(a) if the conditions specified therein are satisfied. See also § 20.2056A–5(c)(1) regarding the requirements for filing a Form 706QDT in the case of a distribution on account of hardship.

(b) *Tax at death of surviving spouse.* Section 2056A(b)(5)(B) provides the due date for payment of the deferred estate tax imposed on the death of the spouse under section 2056A(b)(1)(B). An extension of not more than 6 months may be obtained for the filing of the Form 706QDT under section 6081(a), if the conditions specified therein are satisfied.

(c) *Extension of time for paying deferred estate tax*—(1) *Extension of time for paying tax under section 6161(a)(2).* Pursuant to sections 2056A(b)(10)(C) and 6161(a)(2), upon a showing of reasonable cause, an extension of time beyond the due date to pay any part of the deferred estate tax that is imposed upon the surviving spouse's death under section 2056A(b)(1)(B) and shown on the final Form 706QDT, or any part of any installments of such tax under section 6166 (including any part of a deficiency prorated to any installment under such section), may be granted for a reasonable period of time, not to exceed 10 years from the date prescribed for payment of the tax (or in the case of an installment or part of a deficiency prorated to an installment, if later, not beyond the date that is 12 months after the due date for the last installment), by the district director or the director of the service center where the Form 706QDT is filed.

(2) *Extension of time for paying tax under section 6161(a)(1).* An extension of time beyond the due date to pay any part of the deferred estate tax imposed on lifetime distributions under section 2056A(b)(1)(A), or imposed at the death of the surviving spouse under section 2056A(b)(1)(B), may be granted for a reasonable period of time, not to exceed 6 months (12 months in the case of the tax imposed under section 2056A(b)(1)(B) at the surviving spouse's death), by the district director or the director of the service center where the Form 706QDT is filed.

(d) *Liability for tax.* Under section 2056A(b)(6), each trustee (and not solely the United States Trustee(s)) of a QDOT is personally liable for the amount of the deferred estate tax imposed in the case of any taxable event under section 2056A(b)(1). In the case of multiple QDOTs with respect to the same decedent, the trustee(s) of each trust are jointly and severally liable to the extent of the assets within the trustee's control notwithstanding the appointment of a Designated Filer under § 20.2056A–9. The trustee may also be personally liable as a withholding agent under section 1461 or other applicable provisions of the Internal Revenue Code.

§ 20.2056A–12 Increased basis for deferred estate tax paid with respect to distribution from a QDOT.

Under section 2056A(b)(13), in the case of any distribution from a QDOT on which a tax is imposed under section 2056A(b)(1)(A), the distribution is treated as a transfer by gift for purposes of section 1015, and any deferred estate tax paid under section 2056A(b)(1)(A) is treated as a gift tax. See § 1.1015–5(d) for rules for determining the amount by which the basis of the distributed property is increased.

§ 20.2056A–13 Effective dates.

(a) *In general.* Except as provided below, the provisions of §§ 20.2056A–1 through 20.2056A–12 are effective with respect to estates of decedents dying after the date these regulations are published as final regulations in the **Federal Register.** With respect to estates of decedents dying on or before such date, taxpayers may rely on any reasonable interpretation of the statutory provisions. The provisions of § 20.2056A–2(d), pertaining to the additional QDOT qualification requirements, are effective in the case of estates of decedents dying 180 days after the date these regulations are published as final regulations in the **Federal Register.** With respect to estates of decedents dying before such date, taxpayers may rely on any reasonable interpretation of the statutory provisions.

(b) *Transition rules for reporting and paying the deferred estate tax.* For certain transition rules for reporting and paying the tax imposed under section 2056A(b)(1), see Announcement 90–39, 1990–12 I.R.B. 26, and Announcement 91–58, 1991–15 I.R.B. 39 (See § 601.601(d)(2)(ii)(*b*) of this chapter for the availability of the I.R.B.).

Par. 6. Section 20.2101–1 is revised to read as follows:

§ 20.2101–1 Estates of nonresidents not citizens; tax imposed.

(a) *Imposition of tax.* Section 2101 imposes a tax on the transfer of the taxable estate of a nonresident who is not a citizen of the United States at the time of death. In the case of an estate of a decedent dying after November 10, 1988, the tax is computed at the same rates as the tax that is imposed on the transfer of the taxable estate of a citizen or resident of the United States in accordance with the provisions of section 2101 (b) and (c). For the meaning of the terms "resident," "nonresident," and "United States," as applied to a decedent for purposes of the estate tax, see paragraphs (b) (1) and (2) of § 20.0–1. For the liability of the executor for the payment of the tax, see section 2002.

(b) *Special rates in the case of certain decedents.* In the case of an estate of a nonresident who was not a citizen of the United States and who died after December 31, 1976, and on or before November 10, 1988, the tax on the nonresident's taxable estate is computed using the formula provided under section 2102(b), except that the rate schedule in paragraph (c) of this section

is to be used in lieu of the rate schedule in section 2001(c).

(c) *Rate schedule for decedents dying after 12/31/76 and on or before 11/10/88.*

If the amount for which the tentative tax to be computed is:	The tentative tax is:
Not over $100,000	6% of such amount.
Over $100,000 but not over $500,000.	$6,000, plus 12% of excess over $100,000.
Over $500,000 but not over $1,000,000.	$54,000, plus 18% of excess over $500,000.
Over $1,000,000 but not over $2,000,000.	$144,000 plus 24% of excess over $1,000,000.
Over $2,000,000	$384,000, plus 30% of excess over $2,000,000.

(d) *Effective date.* The provisions of § 20.2101–1 are effective with respect to estates of decedents dying after the date these regulations are published as final regulations in the **Federal Register**. With respect to estates of decedents dying on or before such date, taxpayers may rely on any reasonable interpretation of the statutory provisions.

Par. 7. § 20.2102–1 is amended by adding a new paragraph (c) to read as follows:

§ 20.2102–1 Estates of nonresidents not citizens; credits against tax.

* * * * *

(c) *Unified credit*—(1) *In general.* Subject to paragraph (c)(2) of this section, in the case of decedents dying after November 10, 1988, a unified credit of $13,000 is allowed against the tax imposed by section 2101 subject to the limitations of section 2102(c).

(2) *When treaty is applicable.* To the extent required under any treaty obligation of the United States, the estate of a nonresident not a citizen of the United States is allowed the unified credit permitted to a United States citizen or resident of $192,800 multiplied by the proportion that the total gross estate of the decedent situated in the United States bears to the decedent's total gross estate wherever situated.

(3) *Certain residents of possessions.* In the case of a decedent who is considered to be a "nonresident not a citizen of the United States" under section 2209, there is allowed a unified credit equal to the greater of $13,000, or $46,800 multiplied by the proportion that the decedent's gross estate situated in the United States bears to the total gross estate of the decedent wherever situated.

(4) *Effective date.* The provisions of § 20.2102–1(c) are effective with respect to estates of decedents dying after the date these regulations are published as final regulations in the **Federal Register**. With respect to estates of decedents dying on or before such date, taxpayers may rely on any reasonable interpretation of the statutory provisions.

Par. 8. § 20.2106–1 is amended by revising paragraph (a)(3) (including concluding text following paragraph (a)(3)(ii)(*b*)), adding paragraph (a)(4), and removing paragraph (c) to read as follows:

§ 20.2106–1 Estates of nonresidents not citizens; taxable estate; deductions in general.

(a) * * *

(3) Subject to the special rules set forth at § 20.2056A–1(c), the amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056. Thus, if the surviving spouse of the decedent is a citizen of the United States at the time of the decedent's death, a marital deduction is allowed with respect to the estate of the decedent if all other applicable requirements of section 2056 are satisfied. If the surviving spouse of the decedent is not a citizen of the United States at the time of the decedent's death, the provisions of section 2056, including specifically the provisions of section 2056(d) and (unless section 2056(d)(4) applies) the provisions of section 2056A (QDOTs) must be satisfied.

(4) *Effective date.* The provisions of § 20.2106–1(a)(3) are effective with respect to estates of decedents dying after the date these regulations are published as final regulations in the **Federal Register**. With respect to estates of decedents dying on or before such date, taxpayers may rely on any reasonable interpretation of the statutory provisions.

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 9. The authority citation for part 25 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 25.2503–2 is amended as follows:

1. The first sentence in paragraph (a) is revised to read as set forth below.

2. New paragraph (f) is added to read as set forth below.

§ 25.2503–2 Exclusion from gifts.

(a) * * * Except as provided in paragraph (f) of this section (involving gifts to a noncitizen spouse), the first $10,000 of gifts made to any one donee during the calendar year 1982 or any calendar year thereafter, except gifts of future interests in property as defined in §§ 25.2503–3 and 25.2503–4, is excluded in determining the total amount of gifts for the calendar year. * * *

* * * * *

(f) *Special rule in the case of gifts made on or after July 14, 1988, to a spouse who is not a United States citizen*—(1) *In general.* Subject to the special rules set forth at § 20.2056A–1(c) of this chapter, in the case of gifts made on or after July 14, 1988, if the donee of the gift is the donor's spouse and the donee spouse is not a citizen of the United States at the time of the gift, the first $100,000 of gifts made during the calendar year to the donee spouse (except gifts of future interests) is excludable in determining the total amount of gifts for the calendar year. It is not relevant for purposes of this paragraph (f) whether the donor is a citizen or resident of the United States for purposes of chapter 12.

(2) *Gifts made after June 29, 1989.* In the case of gifts made after June 29, 1989, the $100,000 exclusion provided in paragraph (f)(1) of this section applies only if the gift in excess of the otherwise applicable annual exclusion is in a form that qualifies for the gift tax marital deduction under section 2523(a) but for the provisions of section 2523(i)(1) (disallowing the marital deduction if the donee spouse is not a United States citizen.)

(3) *Effective date.* The provisions of § 25.2503–2(f) (1) and (2) are effective with respect to gifts made after the date these regulations are published as final regulations in the **Federal Register**. With respect to gifts made on or before such date, donors may rely on any reasonable interpretation of the statutory provisions.

Par. 11. Sections 25.2523(i)–1, 25.2523(i)–2 and 25.2523(i)–3 are added to read as follows:

§ 25.2523(i)–1 Disallowance of marital deduction when spouse is not a United States citizen.

(a) *In general.* Subject to § 20.2056A–1(c) of this chapter, section 2523(i)(1) disallows the marital deduction if the spouse of the donor is not a citizen of the United States at the time of the gift. If the spouse of the donor is a citizen of the United States at the time of the gift, the gift tax marital deduction under section 2523(a) is allowed regardless of whether the donor is a citizen or resident of the United States at the time of the gift, subject to the otherwise applicable rules of section 2523.

(b) *Exception for certain joint and survivor annuities.* Paragraph (a) does not apply to disallow the marital deduction with respect to any transfer resulting in the acquisition of rights by a noncitizen spouse under a joint and survivor annuity described in section 2523(f)(6).

(c) *Increased annual exclusion*—(1) *In general.* In the case of gifts made from a donor to the donor's spouse for which a marital deduction is not allowable under this section, if the gift otherwise qualifies for the gift tax annual exclusion under section 2503(b), the amount of the annual exclusion under section 2503(b) is $100,000 in lieu of $10,000. In the case of gifts made after June 29, 1989, in order for the increased annual exclusion to apply, the gift in excess of the otherwise applicable annual exclusion under section 2503(b) must be in a form that qualifies for the marital deduction but for the disallowance provision of section 2523(i)(1).

(2) *Status of donor.* The $100,000 annual exclusion for gifts to a noncitizen spouse is available regardless of the status of the donor. Accordingly, it is immaterial whether the donor is a citizen, resident or a nonresident not a citizen of the United States as long as the spouse of the donor is not a citizen of the United States at the time of the gift. See § 25.2503–2(f).

(d) *Examples.* The principles outlined in the preceding paragraphs are illustrated in the following examples. Assume in each of the examples that the donee, *S*, is *D*'s spouse and is not a United States citizen at the time of the gift.

Example 1. Outright transfer of present interest. In 1993, *D*, a United States citizen, transfers to *S*, outright, 100 shares of *X* corporation stock valued for federal gift tax purposes at $130,000. The transfer is a gift of a present interest in property under section 2503(b). Additionally, the gift qualifies for the gift tax marital deduction except for the disallowance provision of section 2523(i)(1). Accordingly, $100,000 of the $130,000 gift is excluded from the total amount of gifts made during the calendar year by *D* for gift tax purposes.

Example 2. Transfer of survivor benefits. In 1993, *D*, a United States citizen, retires from employment in the United States and elects to receive a reduced retirement annuity in order to provide *S* with a survivor annuity upon *D*'s death. The transfer of rights to *S* in the joint and survivor annuity is a gift by *D* for gift tax purposes. However, under § 25.2523(i)–1(b), the gift qualifies for the gift tax marital deduction even though *S* is not a United States citizen.

Example 3. Transfer of present interest in trust property. In 1993, *D*, a resident alien, transfers property valued at $500,000 in trust to *S*, who is also a resident alien. The trust instrument provides that the trust income is payable to *S* at least quarterly and *S* has a testamentary general power to appoint the trust corpus. The transfer to *S* qualifies for the marital deduction under section 2523 but for the provisions of section 2523(i)(1). Because *S* has a life income interest in the trust, *S* has a present interest in a portion of the trust. Accordingly, *D* may exclude the present value of *S*'s income interest (up to $100,000) from *D*'s total 1993 calendar year gifts.

Example 4. Transfer of present interest in trust property. The facts are the same as in *Example 3*, except that *S* does not have a testamentary general power to appoint the trust corpus. Instead, *D*'s child, *C*, has a remainder interest in the trust. If *S* were a United States citizen, the transfer would qualify for the gift tax marital deduction if a qualified terminable interest property election is made under section 2523(f)(4). Accordingly, the gift qualifies for the gift tax marital deduction but for the disallowance provision of section 2523(i)(1). The annual exclusion under section 2523(i)(2) is available with respect to *D*'s transfer in trust and *D* may exclude the present value of *S*'s income interest (up to $100,000) from *D*'s total 1993 calendar year gifts.

Example 5. Spouse becomes citizen after transfer. *D*, a United States citizen, transfers a residence valued at $350,000 on December 20, 1993, to *D*'s spouse, *S*, a resident alien. On January 31, 1994, *S* becomes a naturalized United States citizen. On *D*'s federal gift tax return for 1993, *D* must include $250,000 as a gift ($350,000 transfer less $100,000 exclusion). Although *S* becomes a citizen in January, 1994, *S* is not a citizen of the United States at the time the transfer is made. Therefore, no gift tax marital deduction is allowable. However, the transfer does qualify for the $100,000 annual exclusion.

§ 25.2523(i)–2 Treatment of spousal joint tenancy property where one spouse is not a United States citizen.

(a) *In general.* In the case of the creation of a joint tenancy with right of survivorship between spouses, or a tenancy by the entirety, where the donee spouse is not a United States citizen at the time of the creation of the tenancy, the gift tax treatment of the creation and termination of the tenancy (regardless of whether the donor is a citizen, resident or nonresident not a citizen of the United States at such time), is governed by the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981). However, in applying these principles, the donor spouse cannot elect to treat the creation of a tenancy in real property as a gift, as provided in section 2515(c) prior to its repeal by the Economic Recovery Tax Act of 1981.

(b) *Tenancies by the entirety and joint tenancies in real property*—(1) *In general.* Under the principles of section 2515, the creation of a tenancy by the entirety (or joint tenancy) in real property (either by one spouse alone or by both spouses) and any additions to the value of the tenancy in the form of improvements, reductions in indebtedness thereon, or otherwise, are not deemed to be transfers of property for purposes of the gift tax, regardless of the proportion of the consideration furnished by each spouse, but only if the creation of the tenancy otherwise is a gift to the donee spouse who is not a citizen of the United States at the time of the gift.

(2) *Termination.* When a tenancy described in paragraph (b)(1) of this section is terminated, other than by reason of the death of a spouse, a spouse is deemed to have made a gift to the extent that the proportion of the total consideration furnished by the spouse multiplied by the proceeds of the termination (whether in the form of cash, property, or interests in property) exceeds the value of the proceeds of termination received by the spouse. See section 2523(i), and §§ 25.2523(i)–1 and 25.2503–2(f) as to certain of the tax consequences that may result upon termination of the tenancy.

(3) *Tenancy by the entirety.* For purposes of this section, "tenancy by the entirety" includes a joint tenancy between husband and wife with right of survivorship.

(4) *Section 2515 regulations.* The regulations under section 2515 are applicable for purposes of determining the amount of consideration furnished by each spouse, whether a termination has occurred, the extent of the termination, and the amount of the gift upon termination.

(5) *No election to treat as gift.* The regulations under section 2515 that relate to the election to treat the creation of a tenancy by the entirety as constituting a gift and the consequences of such an election upon termination of the tenancy (§§ 25.2515–2 and 25.2515–4) do not apply for purposes of section 2523(i)(3).

(c) *Tenancies by the entirety in personal property where one spouse is not a United States citizen*—(1) *In general.* In the case of the creation (either by one spouse alone or by both spouses where at least one of the spouses is not a United States citizen) of a joint interest in personal property with right of survivorship, or additions to the value thereof in the form of improvements, reductions in the indebtedness thereof, or otherwise, the retained interest of each spouse, solely for purposes of determining whether there has been a gift by the donor to the spouse who is not a citizen of the

United States at the time of the gift, is treated as one-half the value of the joint interest. See section 2523(i) and §§ 25.2523(i)–1 and 25.2503–2(f) as to certain of the tax consequences that may result upon creation and termination of the tenancy.

(2) *Exception.* The rule provided in paragraph (c)(1) of this section does not apply with respect to any joint interest in property if the fair market value of the interest in property (determined as if each spouse had a right to sever) cannot reasonably be ascertained except by reference to the life expectancy of one or both spouses. In these cases, actuarial principles may need to be resorted to in determining the gift tax consequences of the transaction.

§ 25.2523(i)–3 Effective date.

The provisions of §§ 25.2523(i)–1 and 25.2523(i)–2 are effective in the case of gifts made after the date that these regulations are published in the **Federal Register** as final regulations.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–31190 Filed 12–31–92; 8:45 am]

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26 CFR Part 1, 20 and 25

[PS–102–88]

RIN 1545–AM85

Income, Gift and Estate Tax; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to income tax imposed under chapter 1, the estate tax imposed under chapter 11 and the gift tax imposed under chapter 12 of the Internal Revenue Code of 1986.

DATES: The public hearing will be held on Tuesday, March 2, 1993, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, February 16, 1993.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–102–88], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that would provide guidance needed to comply with the changes to the marital deduction provisions of the estate and gift tax chapters.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, February 16, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

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

[FR Doc. 92–31935 Filed 12–31–92; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–37–1–5617; FRL–4551–8]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; San Bernardino County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a new rule submitted to revise the California State Implementation Plan (SIP) adopted by the San Bernardino County Air Pollution Control District (San Bernardino County APCD) on March 2, 1992. The California Air Resources Board (CARB) submitted this new rule to EPA on June 19, 1992. The new rule concerns San Bernardino County APCD Rule 1115, Metal Parts and Products Coating Operations, which controls the emission of volatile organic compounds (VOCs) from metal coating operations. EPA has evaluated Rule 1115 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because the rule will strengthen the SIP. At the same time, EPA is proposing a limited disapproval under sections 110(k)(3) and 301(a) of the CAA because the rule does not meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before February 4, 1993.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section II (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the new rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

San Bernardino County Air Pollution Control District, 15428 Civic Drive, Victorville, California 92392.

FOR FURTHER INFORMATION CONTACT: Christine D. Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1195, FTS: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the San Bernardino Area. 43 FR 8964; 40 CFR 81.305. Because the San Bernardino Area was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.40 CFR 52.238. The

San Bernardino Area did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the San Bernardino County APCD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 74401–7671q. In amended § 182 (a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182 (a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Bernardino Area is classified as severe;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on June 19, 1992, including the rule being acted on in this notice. This notice addresses EPA's proposed action for Rule 1115, Metal Parts and Products Coating Operations. This submitted rule was found to be complete on August 27, 1992 pursuant to EPA's completeness criteria adopted on August 26, 1991 (56 FR 42216) and set forth in 40 CFR part 51, appendix V and is being proposed for limited approval and limited disapproval.

Rule 1115 controls the emission of volatile organic compounds (VOCs) from metal coating operations. VOCs contribute to the production of ground level ozone and smog. Rule 1115 is a new rule which has been adopted to meet EPA's SIP-Call and the section 182 (a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for San Bernardino County APCD's Rule 1115.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the preamended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 1115, Metal parts and Products Coating Operations is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources (Volume VI: Surface Coating of Miscellaneous Metal Parts and Products)", EPA–450/2–78–015. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

San Bernardino County APCD's Rule 1115, Metal Parts and Products Coating Operations, is a new rule which was adopted to reduce the amount of VOC's emitted by metal coating operations. EPA has evaluated San Bernardino County APCD's submitted Rule 1115 for consistency with the CAA, EPA regulations, and EPA policy and has found that the submitted rule will strengthen the SIP by providing emission limits, recordkeeping for coatings and solvents used, and test methods for the determination of compliance.

Although the approval of San Bernardino County APCD's Rule 1115 will strengthen the SIP, this rule still contains deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. The rule allows the Air Pollution Control Officer discretion in choosing equivalent test methods for determination of compliance, it contains specialty coatings which exceed the CTG limits, and lacks recordkeeping requirements for add-on control equipment. A detailed description of the deficiencies is contained in the technical support document (TSD) for Rule 1115. Because of these deficiencies, the rule is not approvable pursuant to the section 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of San Bernardino County APCD's submitted Rule 1115 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA and, as such, the rule does not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 months period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the

[1] Among other things, the pre-amended guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] San Bernardino County APCD retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this notice of proposed rulemaking has been adopted by the San Bernardino County APCD and is currently in effect in the San Bernardino Country district. EPA's limited disapproval action in the notice of proposed rulemaking does not prevent the San Bernardino County APCD from fully enforcing this rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited approval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. §§ 7401–7671q.

Dated: December 22, 1992.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 93–73 Filed 1–4–93; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[CA 12–6–5606; FRL–4551–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) adopted by the San Diego County Air Pollution Control District (San Diego County APCD) on October 16, 1990. The California Air Resources Board submitted this revision to EPA on April 5, 1991. The revision concerns the adoption of San Diego County APCD's Rule 67.5, Paper, Fabric and Film Coating Operations. This rule regulates volatile organic compound (VOC) emissions from paper, fabric and film operations. EPA has evaluated this rule and is proposing to approve it under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before [February 4, 1993].

ADDRESSES: Comments may be mailed to: Daniel Meer, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revision are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation, 1219 "K" Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District; 9150 Chesapeake Drive, San Diego, CA 92123–1095.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX; 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1195, FAX: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the San Diego Area. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401.7671q. In amended § 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the

date of enactment. It requires such areas to adopt and correct RACT rules pursuant to preamended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Diego Area is classified as a severe ozone area; therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.[2]

The State of California submitted many revised RACT rules for incorporation into its SIP on May 30, 1991, including the rule being acted on in this notice. This notice addresses EPA's proposed action for San Diego County APCD, Rule 67.5, Paper, Fabric and Film Coating Operations. This submitted rule was found to be complete on May 21, 1991 pursuant to EPA's completeness criteria adopted on February 26, 1990 (55 FR 5830) and set forth in 40 CFR part 51 appendix V.[3] Today, EPA is proposing approval of the rule into the federally-enforceable SIP.

Rule 67.5 regulates volatile organic compound (VOC) emissions from coatings used in paper, fabric and film operations. VOCs contribute to the production of ground level ozone and smog. The rule was adopted as part of each district's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to this rule is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources (Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks)", EPA–450/2–77–008. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

San Diego County APCD's Rule 67.5, Paper Fabric and Film Coating Operations, includes the following significant changes from the current SIP approved rule (for more detailed information please refer to the Technical Support Document):

- The scope of the rule has been expanded to include reverse osmosis membrane manufacturing.
- Several new definitions were added to clarify the revisions of the rule.
- The emissions limit was revised to 265 grams of VOC per liter of coating as applied.
- A provision was added to emissions from noncompliant coatings to be controlled by an emission control system with combined collection and abatement efficiency of at least 90 percent on a mass basis at all times during operation.
- Specific operating requirements were added for cleaning equipment using VOC containing materials.
- Daily recordkeeping requirements were added to reflect compliance of day-to-day operations.
- Test methods were added for determination of compliance.
- A revised compliance schedule was added to reflect the new time frame for achieving compliance.
- A low solvent usage exemption was added for laboratory equipment.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, San Diego APCD's Rule 67.5, Paper, Fabric and Film Coating Operations, is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has

[1] Among other things, the pre-amended guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The San Diego Area was redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the CAA to be codified at 40 CFR part 51, Appendix V. See 56 FR 42216 (August 26, 1991).

agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 22, 1992.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 93–74 Filed 1–4–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[WI 13–1–5278; FRL–4551–6]

Approval and Promulgation of Implementation Plans; Wisconsin, Rhinelander Sulfur Dioxide Maintenance Plan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove rule S. NR 418.07: Rhinelander Reasonably Available Control Technology (RACT) Sulfur Limitations, Wis. Adm. Code, (NR 418.07) as a revision to Wisconsin's State Implementation Plan (SIP) for sulfur dioxide.

USEPA's action is based upon a SIP revision request which was submitted by the State on April 28, 1989, to satisfy the requirements of the Clean Air Act.

DATES: Comments on this revision and on the proposed USEPA action must be received by February 4, 1993.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Sheila Breen at (312) 886–6053, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Sheila Breen, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6053.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

A. Reasons for SIP Submittal

On April 26, 1984, USEPA notified the Governor of Wisconsin, pursuant to section 110(a)(2)(H) of the Clean Air Act, that the Wisconsin sulfur dioxide (SO_2) SIP was inadequate to achieve the primary and secondary national ambient air quality standards (NAAQS). This finding of SIP inadequacy applied statewide, except for certain sources and areas which are not subject to this proposed rulemaking. USEPA found that the Wisconsin SIP did not contain sufficient specific SO_2 emission limitations and timetables for compliance with such limitation as required by section 110(a)(2)(B) of the Clean Air Act in order to ensure attainment and maintenance of the SO_2 NAAQS. Wisconsin has responded to the notice of SIP deficiency with numerous submittals to USEPA, including NR 418.07: Rhinelander RACT Sulfur Limitations, which is the focus of today's proposed rulemaking.

Additionally, section 191(b) of the Clean Air Act, as amended in 1990, required States with areas designated primary nonattainment for sulfur dioxide that lacked fully approved SIPs prior to November 15, 1990, to submit to USEPA by May 15, 1992, a SIP revision meeting the requirements of part D of the Act for the applicable area. USEPA promulgated a nonattainment designation for a subportion of the city of Rhinelander in Oneida County on October 9, 1985, (50 FR 41139). The Wisconsin Department of Natural Resources (WDNR) submitted to USEPA on April 28, 1989, a part D SIP revision for the Rhinelander nonattainment area. The SIP revision consists of NR 418.07 which regulates SO_2 emissions from the Rhinelander Paper Company.

B. Historical Information

In 1981 and 1983, exceedances of the primary SO_2 NAAQS were monitored in Rhinelander. After further investigation, it was determined that the Rhinelander Paper Company, the only significant SO_2 source in the city, was responsible for the violations. WDNR performed a modeling analysis, using the USEPA guideline model: Industrial Source Complex Short Term (ISCST), to determine the appropriate emission limits for this source. As a result of this analysis, the State adopted a rule, effective on April 1, 1985, s. NR 154.12(9), Wis. Adm. Code which prescribed specific emission limits for boilers and process sources at Rhinelander Paper Company.

During the second half of 1985, three more exceedances were monitored in Rhinelander from a monitor 0.6 kilometers to the north-northeast of the paper mill. WDNR performed a field investigation, which identified the facility's boiler stacks as the culpable sources. As noted above, the emission limits at which the source was operating at the time of the violations were based upon an air dispersion modeling analysis using a USEPA guideline model (ISCST). It was subsequently determined that the volumetric flow rates originally modeled were higher than the actual volumetric flow rates as identified in a stack test, possibly resulting in the underprediction of SO_2 concentrations by ISCST. A subsequent analysis, using ISCST and the correct flow rates still underpredicted the ambient data. USEPA modeling guidelines counsel that in the event of an independently performing guideline model, ambient data (i.e., a rollback analysis) may be used to determine appropriate emission limits.

A rollback analysis is a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately. A rollback takes a monitored ambient exeedance recorded during a specific set of facility operating conditions, determines the amount of exceedance due to each SO_2 source at the facility, and then determines how much the emissions from any given SO_2 source must be linearly scaled back to provide for attainment of the NAAQS under that set of operating conditions.

Using the results of a rollback calculation, WDNR issued an administrative order for Rhinelander Paper Company on October 2, 1986, which limited its five fossil fuel fired steam generating stoker boilers to a maximum of 1.25 pounds of SO_2 per million British Thermal Units (lbs. SO_2/mmBTU) and limited its one fossil fuel fired steam generating cyclone boiler to a maxium of 3.50 lbs. SO_2/mmBTU.

WDNR met with the Rhinelander Paper Company on December 8, 1987, regarding the administrative order. The source proposed to WDNR that the stoker boiler limit be relaxed to 1.60 lbs. SO_2/mmBTU. This stoker boiler limit and the other limits from the administrative order were incorporated into NR 418.07. Along with the SIP revisions submittal, WDNR submitted to USEPA an ISCST analysis that shows the NAAQS are attained at these rollback-relaxed stoker boiler limits.

C. Proposed SIP Regulations

The revised Rhinelander SO_2 rule regulations the emission of sulfur dioxide within the corporate boundaries of Rhinelander, Wisconsin, from sources constructed before April 1, 1985. A paper mill (Rhinelander Paper Company) is the only source affected by the rule limits. The limits for each SO_2 source in the proposed SIP revision and its other provisions are summarized below.

NR 418.07(1)(a)(1): Fossil fuel fired stoker boilers—1.60 lbs. SO_2/mmBTU.
NR 418.07(1)(a)(2): Fossil fuel fired cyclone boilers—3.50 lbs. SO_2/mmBTU.
NR 418.07(1)(a)(3): Surface condenser—0.40 lbs./hour and 7.92 lbs./24 hours.
NR 418.07(1)(a)(4): Yeast dryer—4.20 lbs./hour and 88.1 lbs./24 hours.
NR 418.07(1)(a)(5): Liquor dryer—2.10 lbs./hour and 44.9 lbs./24 hours.
NR 418.07(1)(c)(1): Vacuum compression evaporator—28.8 lbs./hour and 600.0 lbs./24 hours.
NR 418.07(1)(c)(2): All other sources: 0.0 lbs./hour.
NR 418.07(2): Requires source subject to above limits to achieve compliance by April 1, 1985.
NR 418.07(3): Requires source subject to above limits to submit a plan by May 1, 1985, demonstrating continuous compliance with the above limits.
NR 418.07(4): Prohibits source subject to above limits from lowering the heights of SO_2 emission releases from those that existed on December 1, 1983, without permission by WDNR.
NR 418.07(5): Requires source subject to above limits to notify WDNR in writing 30 days prior to resumption of pulp manufacturing.

II. Analysis of State Submittal

USEPA has reviewed the technical analyses that were submitted in conjunction with the Rhinelander SO_2 rule and is proposing to disapprove the SIP revision for the following reasons:

A. Inappropriate Use of Underpredicting Model

In order to technically support the relaxed emission limits in s. NR 418.07(1)(a)(1), Wis. Adm. Code, for the stoker boilers that were requested by Rhinelander Paper Company (i.e., 1.60 lbs. SO_2/mmBTU), WDNR submitted a dispersion modeling analysis using ISCST. This is the same model that has twice been shown to be underpredicting ambient sulfur dioxide concentrations in the Rhinelander area. According to USEPA modeling policy in the "Guideline on Air Quality Models (revised)", in all cases the model applied to a given situation should be the one that provides the most accurate representation of atmospheric conditions in the area. USEPA has concluded that ISCST-derived limits do not adequately ensure the NAAQS will be attained in Rhinelander.

B. Inappropriate Use of Rollback Analysis

USEPA has determined that the rollback analysis used by WDNR to technically support all of the limits in NR 418.07 (except (1)(a)(1), which was supported by a dispersion modeling analysis) does not adequately ensure that the NAAQS will be attained at these emission limitations.

Wisconsin's analysis was based on the second-highest 24 hour rolling average concentration monitored in 1985: 453 micrograms per cubic meter, recorded from 8 a.m. on September 16, to 8 a.m. on September 17. The 24 hour sulfur dioxide NAAQS is 365 micrograms per cubic meter. The background SO_2 concentration in Rhinelander was estimated to be 20 micrograms per cubic meter. Thus, the emission sources at the Rhinelander Paper Company must not cause concentrations greater than 345 micrograms per cubic meter (365–20 = 345). The next step in the analysis is to determine which process sources were operating during the time of the exceedance. According to operating data from the Rhinelander Paper Company and an eyewitness account, WDNR determined that the stack emissions from the cyclone boilers and two stoker boilers were impacting the monitor during the time of the exceedance. The facility's other three stoker boilers and the surface condenser were not operating during the period. The plant's other SO_2 sources (the liquor dryer, the yeast dryer, and the vacuum compression evaporator) were in operation but were judged not to be impacting the monitor, and therefore, were not accounted for in the State's analysis.

According to the State's analysis, the cyclone boiler was responsible for 93.50 percent of the exceedance and each of the two stoker boilers operating were responsible for 3.25 percent of the ambient value. Due to the age and nature of the stoker boilers, a minimum emissions limit of 1.25 lbs. SO_2/mmBTU was set for the stoker boilers. The State's rollback then concluded that a cyclone boiler emission limit of 3.50 lbs. SO_2 /mmBTU would be necessary to attain the NAAQS. A more detailed account of the State's rollback analysis exists in the technical support document of this notice of proposed rulemaking.

The limitation in S. NR 418.07(1) (a) and (c), Wis. Adm. Code, rely upon this analysis. The major deficiency in the State's rollback is that it sets limits for sources (the other three stoker boilers and the surface condenser) that were not operating during the exceedance period. It is expected that if all the facility's potential SO_2 sources had been operating, the ambient value being scaled back would have been higher than 453 micrograms per cubic meter, and consequently, the emission limits would have to be more stringent. In effect, Wisconsin's analysis guarantees that the NAAQS will be attained when a cyclone boiler and two stoker boilers are operated at NR 418.07's limits at the Rhinelander Paper Company, but the proposed SIP revision allows the source to operate more SO_2 sources (all five stoker boilers) at the same limits. No acceptable demonstration of attainment was provided for this second scenario. WDNR's rollback analysis would be acceptable only if those sources that were not operating during the exceedance period were "zeroed out". A minor deficiency in the State's rollback, given their slight contribution to the exceedance, is not considering the other non-boiler sources that were operating during the exceedance.

USEPA believes an acceptable rollback analysis would involve accounting for the sources that were not operating on the rollback days by mandating in the rule that, along with the cyclone boiler, no more than two stoker boilers can be operated by any given time at the affected facility. This proposal makes two assumptions: (1) Emissions from one stoker boiler have the same impact as any other stoker boiler at the same limits and (2) that the surface condenser is a negligible contributor to the exceedance and need not be considered as a part of the rollback.

It should be noted that while USEPA is proposing to disapprove the limitation of 1.60 lbs. SO_2/mmBTU for the stoker boilers in s. NR 418.07(1)(a)(1), Wis. Adm. Code, because of the use of an inappropriate dispersion model analysis, the earlier stoker boiler limit of 1.25 lbs. SO_2/mmBTU in Wisconsin's 1986 administrative order would also be proposed for disapproval based on its inadequate rollback analysis.

III. Proposed Rulemaking Action

USEPA is proposing to disapprove NR 418.07: Rhinelander RACT Sulfur Limitations as a revision to Wisconsin's State Implementation Plan because the State rule cannot be shown to provide for attainment and maintenance of the

SO_2 NAAQS consistent with all applicable requirements of the Clean Air Act. This proposed disapproval affects the following source: Rhinelander Paper Company.

USEPA has provided WDNR with a potential solution to the deficiencies which currently exist in NR 418.07 and its associated technical support. It is USEPA's understanding that WDNR may submit a revised Rhinelander SIP before the Agency completes final rulemaking on this action. If USEPA receives a new Rhinelander SIP revision which conforms to the approach outlined in section II(b) of this notice and this notice's technical support document, the Agency is prepared to approve the Rhinelander SIP in the final rulemaking on this action.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table Two and Three SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110, and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements, but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds.

Public comments are solicited on the requested SIP revision and on USEPA's proposal to disapprove NR 418.07. Public comments received by (30 days from date of publication) will be considered in the development of USEPA's final rulemaking action.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments, enacted on November 15, 1990. The Agency has determined that this action does not conform with those requirements irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671(q).

Dated: December 22, 1992.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–75 Filed 1–4–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 63

[FRL–4552–6]

National Emission Standards for Hazardous Air Pollutants; Coke Oven Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: On December 4, 1992, EPA proposed national emission standards which would limit emissions from new and existing coke oven batteries (57 FR 57534). In response to requests by environmental and citizens groups, a public hearing to hear oral testimony concerning this standard will be held in Philadelphia, Pennsylvania.

DATES: Public Hearing. A public hearing will be held on January 15, 1993 beginning at 10 a.m.

Request to Speak at Hearing: Persons wishing to present oral testimony must contact Ms. Amada Agnew by January 11, 1993 at (919) 541–5268.

ADDRESSES: Public Hearing. A public hearing will be held at U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, 8th Floor, Conference Room 8A, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Dimmick or Ms. Amanda Agnew, Standards Development Branch Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5625 or (919) 541–5268.

Michael Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93–193 Filed 1–4–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–265; FCC 92–543]

Cable Act of 1992—Program Distribution and Carriage Agreements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In response to the Cable Television Consumer Protection and Competition Act of 1992, the Commission initiates this Notice of Proposed Rule Making ("Notice") seeking comment on the Commission's implementation of Sections 12 and 19 of the 1992 Cable Act governing access to multichannel video programming. The Notice addresses the provisions regarding unfair or discriminatory practices in the sale of cable programming. The Notice also addresses carriage agreements between cable systems and the programming services they distribute.

DATES: Comments are due on or before January 25, 1993 and reply comments are due on or before February 16, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Coltharp, Policy and Rules Division, Mass Media Bureau, (202) 632–6302; Diane Hofbauer, Office of the General Counsel (202) 632–6990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, in MM Docket No. 92–265 adopted December 10, 1992, and released December 24, 1992. The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contract, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Synopsis of Notice of Proposed Rule Making

1. On October 5, 1992, Congress enacted the Cable Television Consumer

Protection and Competition Act of 1992 ("1992 Cable Act"). This Notice of Proposed Rule Making seeks comment on the Commission's implementation of Sections 19 and 12 of the 1992 Cable Act, which amend the Communications Act of 1934 by adding new Sections 628 and 616, respectively. First, the Notice addresses the provisions of Section 628 regarding unfair or discriminatory practices in the sale of cable programming. Section 628 is intended to foster the development of competition to traditional cable systems by prescribing regulations that govern the access by competing multichannel systems to cable programming services. The Notice then addresses the provisions of Section 616 that require the Commission to adopt regulations that govern agreement between cable systems—or other multichannel video programming distributors—and the programming services they distribute. These regulations on programming carriage agreements are intended to prevent cable systems from taking undue advantage of programming vendors through various practices, including coercing the vendors to exchange ownership interests or exclusive distribution rights in exchange for carriage. In this proceeding, as the Commission develops regulations pertaining to program access and carriage agreements, the Commission seeks to serve the congressional intent to prohibit unfair or anticompetitive actions with restraining the amount of multichannel programming available by precluding legitimate business practices common to a competitive marketplace.

2. In drafting the 1992 Cable Act, Congress was concerned that increased horizontal concentration and vertical integration in the cable industry have created an imbalance of power, both between cable operators and program vendors and between cable operators and their multichannel competitors. Therefore, Congress has concluded that vertically integrated program suppliers have the incentive and ability to favor their affiliated cable operators over other multichannel programming distributors. Congress concluded that the programming provisions of the 1992 Act are necessary to prevent cable operators from abusing their market power to the detriment of programs and competitors. Congress has also concluded that vertically integrated cable operators have the incentive and ability to favor affiliated programmers over unaffiliated programmers with respect to granting carriage on their systems. Congress also has found that non-affiliated programmers are sometimes required to grant cable operators exclusive rights to programming, a financial interest in the programming, or some other additional consideration in return for carriage on the cable system.

3. Section 19 of the 1992 Cable Act amends Title VI of the Communications Act of 1934 by creating section 628, which was promulgated for the purpose of: (1) Promoting the public interest by increasing competition and diversity in the multichannel video programming market; (2) increasing the availability of satellite cable and broadcast programming to persons in rural and other areas that are not currently able to receive such programming; and (3) encouraging the development of communications technologies. To accomplish these purposes, Section 628(b) makes it unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices whose purpose or effect is to "hinder significantly" or to "prevent" delivery of programming by multichannel video programming distributors.[1] The law provides greater specificity in the subsections that follow and instructs the Commission to adopt implementing regulations "to specify particular conduct that is prohibited" under this section. At the outset, in developing a proper interpretation of this provision and in implementing the regulations required, the Commission emphasizes the importance of arriving at a correct understanding of the Congressional objectives. Accordingly, this is the first matter on which the Commission seeks comment.

4. From the structure of section 628 as well as the legislative history, it appears that Congress' concerns were particularly focused on vertical ownership relationships in the cable industry and the extent to which they may restrict the availability and increase the cost of programming. At the same time, Congress recognized that common ownership of cable systems and programming suppliers can benefit the public. In particular, the legislative history shows that substantial investment by cable operators "stimulated the development of programming that was necessary to flesh out the promise of cable." This Commission has also recognized that MSO investment has enabled certain programming services to remain in operation, while such investment and a ready subscriber base have also promoted the introduction of innovative programming services focused upon narrow audiences. Vertical integration also contributes to an enriched quality of existing programming services, given that a cable operator has a strong incentive to increase its penetration by making the programming that it offers more attractive to potential subscribers. Section 628, however, reflects a Congressional concern with the enhanced market power that emanates from the integration of large MSOs with programming vendors. Specifically, firms that are vertically integrated could have incentives to favor their own affiliates and to unfairly discriminate against alternative distributors, which could restrain competition in program distribution.

5. With respect to the intended objectives and scope of Section 628, the Commission believes that the proscriptions for program access pertaining to satellite cable programming vendors are apparently focused on practices that are pursued by vertically integrated entities. The Commission seeks comment on this interpretation, as well as on whether the section covers conduct beyond those actions that are related to discriminatory incentives caused by vertical integration. Also, given the section's emphasis on vertically integrated entities, the Commission asks whether Section 628 is intended to require vertically integrated firms to conduct themselves in a manner similar to nonintegrated firms, thereby minimizing the anticompetitive potential of integration. Alternatively, the Commission asks whether the regulations should cause vertically integrated firms to function differently than nonintegrated firms. In contrast to satellite cable programming vendors, the 1992 Cable Act appears to require that the Commission's implementing regulations should prevent all "satellite broadcast programming vendors,"

[1] Section 2 of the 1992 Cable Act amends section 602 of the Communications Act to define "multichannel video programming distributor" as a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming. The Commission notes that the scope of this definition is unclear, and that this issue was raised in the Notice implementing the must-carry and retransmission consent provisions of the 1992 Cable Act. See Notice of Proposed Rulemaking in MM Docket No. 92-259, FCC 92-499, released November 19, 1992. Given that the current proceeding raises similar concerns, we seek comment similar to those solicited in the must-carry proceeding on the scope of the definition of a "multichannel video programming distributor."

regardless of vertical relationships, from pursuing unfair or deceptive actions that would unduly favor cable television systems as compared to other multichannel program outlets. Therefore, the Commission seeks comment on appropriate implementing regulations pertaining to satellite broadcast programming vendors.

6. In order to determine whether a cable operation is vertically integrated under the 1992 Cable Act, the Commission must establish a threshold at which an ownership interest will be considered attributable. The Senate Report states that "[i]n determining what is an attributable interest, it is the intent of the Committee that the FCC use the attribution criteria set forth in 47 CFR 73.3555 (notes) or other criteria the FCC may deem appropriate." The Senate version of the programming access provisions was not adopted. The House version, which was adopted with amendments, uses the term "attributable interest" but does not define an attributable benchmark. Therefore, the Commission seeks comment on whether it should define "attributable interest" with reference to the attribution threshold generally applicable to the broadcasting industry. The Commission notes that the five-percent threshold for outstanding voting stock from the broadcast attribution standard has been followed in the cable-telco cross-ownership proceeding. If the basic broadcast standard is used, should the single majority shareholder rule and the other provisions of the broadcast attribution rules also apply? As an alternative, the Commission asks whether it should use some other attribution standard.

7. Commenters should address the rationale underlying the attribution benchmarks adopted for broadcast ownership rules, and discuss the level of influence and control that need to be attributed in order to effectuate any rules adopted in this proceeding. Moreover, the Commission asks whether an attribution benchmark by itself is sufficient to determine whether an entity actually controls another entity, or whether it should establish behavioral guidelines to determine control irrespective of the attribution threshold? If so, what guidelines should be developed? In addition, should the Commission use the broadcast reporting requirement or some other standard to keep track of transfers of control of cable distributors and programmers over time?

8. Section 628 is limited to conduct for which the purpose or effect is to hinder significantly or prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers. The Commission seeks comment on how this component of the conduct that section 628 would address, which is a critical threshold requirement under the statute, interacts with the remainder of section 628 in proscribing specific practices or conduct. The plain language of section 628(b) suggests that the Commission's regulation should only implicate practices that are both (i) "unfair," "deceptive," or "discriminatory," and (ii) could significantly hinder multichannel video programming distributors from providing satellite programming. This analysis is particularly significant to the extent that conduct might be considered unfair or discriminatory from the vantage point of a particular competitor, yet does not significantly harm competition in multichannel video programming distribution. As a result, the precise showing of harm that the Commission should require to meet the statute's threshold requirement is a critical issue. Thus, the Commission seeks comment on whether, when adjudicating complaints filed pursuant to the implementing regulations for section 628, its analysis should consider harm to (i) consumers, as measured by the availability of, or quantity of, programming to consumers in the relevant market; or (ii) to other multichannel video distributors in the relevant market; or (iii) to both consumers and other multichannel competitors. The Commission seeks comment on this interpretation of the statute and approach to implementing section 628.

9. Regarding issues related to establishing the existence of "harm" under section 628, the Commission questions what geographic market would be relevant to determining whether a proscribed behavior, such as an unjustified price differential by one program vendor between two programming distributors, causes anticompetitive harm in the market. As a general matter, the Commission seeks comment on how to define the relevant market to the extent that the purposes of the prohibitions are intended to address conduct associated with vertical integration. The Commission further questions whether "harm" should be measured within a local market or across different local markets, and whether any prohibitions should apply only in local markets where an entity is, in fact, vertically integrated. The Commission also seeks comment on whether its standard for establishing "harm" should exclude certain entities that lack significant anticompetitive potential due to their limited size or negligible market share as programming vendors or cable operators, such that the degree of vertical integration might be deemed *de minimis*.

10. The Commission also asks commenters to address how it can best accomplish section 628's objectives in a manner that is faithful to the policy of Congress in the 1992 Cable Act to rely on the marketplace, to the maximum extent feasible in promoting the availability of programming to the public through cable television and other video distribution media. Furthermore, the Commission seeks comment on whether its proposals on enhancing programming access—including the proposed standards for determining discriminatory behavior as detailed below—fulfill the Congressional intent as expressed in the 1992 Cable Act and the legislative history. The Commission also solicits detailed allegations or evidence regarding unfair practices for distributing cable programming, as well as analysis of the potential consequences, to assist the Commission in prescribing regulations governing particular conduct by cable operators and programming vendors.

11. Section 628 directs the Commission to prescribe specific regulations related to: (1) Undue or improper influence by a cable operator on an affiliated satellite programming service in selling programming to unaffiliated multichannel video programming distribution services; (2) discrimination in the prices, terms, and conditions of sale or delivery of satellite programming among or between cable systems, other multichannel video distributors, or their agents; and (3) contractual exclusivity between cable operators and programming vendors in the sale of satellite programming.[2] In addition, the Commission is directed to establish an adjudicatory process for resolving disputes under section 628, to report annually to Congress on the state of competition in the delivery of video programming, and to provide penalties for the filing of frivolous complaints. The following discussion focuses on issues for comment and proposed

[2] The Commission seeks comment on whether Congress intended for the Commission to regulate any additional unfair methods of competition or unfair or deceptive acts or practices beyond those specified in section 628(c). In particular, it asks whether other practices that are precluded by the various antitrust laws—such as refusals to deal or "tying" arrangements—are encompassed within the terms of section 628 and warrant regulation.

standards relating to specific concerns, such as "undue influence," price discrimination, and exclusive agreements.

12. Section 628(c)(2)(A) specifically directs the Commission to prohibit a cable operator that is vertically integrated with a satellite cable a satellite broadcast programming vendor from unduly or improperly influencing the vendor's decision to sell programming, or the prices or terms of sale of that programming, to an unaffiliated multichannel programming distributor. The Commission seeks comment on the scope of activities or practices that should be considered "undue influence" by a cable operator upon such a programming vendor's decisions in selling programming. The Commission also requests comment on standards to apply in distinguished practices that would constitute "undue influence" from other actions that may occur during the normal course of negotiations over the prices and conditions of programming sales. In addition, the Commission asks how to distinguish a cable operator's influence from a program vendor's independent conduct.

13. Section 628(c)(2)(B) requires the Commission to prohibit a programming vendor that is vertically integrated with a cable operator from discriminating in the prices, terms, and conditions of sale or delivery of satellite programming among or between cabled systems, other multichannel video distributors, or their agents or buying groups. The Commission asks commenters to identify such practices that should be considered "discriminatory." The Commission asks for specific evidence of discriminatory practices. The Commission seeks comment on objective standards that may be applied to distinguished discriminatory behavior—with respect to pricing or other practices—from legitimate business behavior that may occur in the video program distribution marketplace. The Commission notes interest in examples of pricing practices for certain types of programming that may employ a graduated pricing structure in order to facilitate broad program distribution. Moreover, it seeks comment on specific situations in which a "uniform" pricing requirement could reduce the amount of programming available to subscribers.

14. The Commission proposes to determine whether certain programming vendors have pursued discriminatory actions against unaffiliated multichannel video distributors through the enforcement process for resolving complaints. This process requires a compliant to establish a *prima facie* case. The Commission proposes a resolve complaints of alleged instances of discrimination by using a system of presumptions that will be developed in this proceeding. The Commission seeks comment on whether it should utilize a two step approach for evaluating allegations of discriminatory behavior that determines (i) whether price differentials are justifiable or "discriminatory" and (ii) if "discriminatory," whether the discriminatory practice has prevented or hindered significantly any multichannel video programming distributor from providing satellite programming to subscribers or consumers. In this regard the Commission observes that the 1992 Cable Act appears to mandate that it consider second component of this approach regarding the harm or hindrance resulting from an alleged discriminatory practice. The Commission requests that commenters address the merits of this approach as well as any system of presumptions it could incorporate.

15. Section 628 of the 1992 Cable Act states that programming vendors are not prohibited from (1) imposing reasonable requirements to account for differences in (a) creditworthiness, (b) offering of service, (c) financial stability, (d) character, and (e) technical quality; (2) accounting for actual and reasonable differences in the cost of creation, sale, or delivery of programming; and (3) accounting for economies of scale, cost savings, or other direct and legitimate economic benefits that are reasonably attributable to the number of subscribers served by the distributor. The Commission seeks comment on an appropriate means of defining and measuring each of these factors, as well as on the types of data that vendors should be required to submit when relying on one or more of the factors to explain a price differential.[3] In particular, the Commission asks commenters to suggest how to distinguish and measure considerations of "creditworthiness," "financial stability," or other factors. For instance, the Commission notes that substantial cash flow may enable highly leveraged cable operators or other multichannel video distributions that are not otherwise considered "creditworthy," to become "financially stable." With respect to costs, the Commission recognizes that delivery of an encrypted signal to individual home satellite dish (HSD) subscribers may be more expensive—and less secure from piracy—than delivery to the head end of a cable system. The Commission seeks information on the actual expense differentials of these two delivery modes. With respect to accounting for economies of scale and economic benefits reasonably attributable to size, the Commission asks commenters to address the extend to which it should consider such factors beyond volume discounts for distributing programming. It also seeks comment on how to allow for differences in negotiations between a programming vendor and various multichannel vido programming distributions, particularly as individual distributions might be willing to exchange particular terms for pricing changes. The Commission seeks comment on an appropriate method of comparing the "technical quality" of envolving multichannel video services, particularly in instances where only prototype models are available for a prospective service. In such cases, can program vendors be expected to enter distribution contracts, subject to conditions of a pre-determined level of objective technical quality in actual operation? In addition, the Commission asks commenters to recommend any measures that could be employed as proxies for the various permissible causes of pricing differentials.

16. The Commission also asks whether the statute permits it to consider other factors that could cause price differences, including certain factors that are related to costs such as the volume of subscribers served or the direct costs of delivery, particularly if these aspects would increase the availability of programming. If so, it asks commenters to discuss any other legitimate factors that are relevant and permissible under the statute. For instance, the Commission seeks comment on whether it should consider the extent that a programming service is sold with certain conditions or arrangements—such as discounts for prepayment or for performance in marketing a service to subscribers, or an allowance for serving as a marketing agent—for particular purchasers. The Commission asks commenters to address the question of whether it can assign an appropriate magnitude of price differential that we could attribute to each factor to avoid resorting to an *ad hoc* justification in every case based on demonstrations of specific costs and circumstances. The Commission seeks to develop standards that it could apply

[3] With respect to the factor that specifies the cost of "creation, sale, delivery or transmission" of programming, the Commission seeks comment on the appropriate definition or type of costs that it should consider in evaluating a given price differential. See colloquy between Senators Kerry and Inouye found in Congressional Record, United States Senate, October 5, 1992, at S16671.

to distinguish between justifiable and discriminatory price differences, and proposes four options below for developing such objective standards. In addition to the issues and questions for comment that are presented with each option, the Commission seeks comment on any other standards that parties consider appropriate, including combinatons of the following options.

17. An initial standard for determining price discrimination could be derived from information gathered in this proceeding that would allow for a "reasonable region" of price differentials, depending upon the factors involved, within which the Commission would rebuttably presume that a disparity in price is not discriminatory, although that presumption could be rebutted. Conversely, it would presume that a price differential of a magnitude that exceeds the established "reasonable region" is due to a discriminatory practice, but a showing of significant legitimate factors could rebut the presumption and cause the Commission to consider the price difference acceptable. The Commission believes that this approach is appropriate because of section 628's explicit allowance for permissible factors for price differentials. Furthermore, to the extent that adequate data on the magnitude—and the contributing factors—of current differentials is available through the record and enforcement process, the Commission believes that a sufficiently broad region or allowance might reduce the administrative burden in resolving complaints. The Commission seeks comment both on the merits of such an approach relative to its potential burden for the Commission and the industry, as well as on the appropriate method for determining the parameters for the "reasonable region." Similarly, it asks commenters to address whether different thresholds are necessary for different technologies. Finally, in order to apply this approach, the Commission seeks comment on the nature of appropriate evidence and sufficient showings required to rebut the proposed presumptions related to price discrimination complaints.

18. Another option for defining "discrimination" as prohibited by section 628 of the 1992 Cable Act is to use a standard similar to that developed to implement section 202(a) of the Communications Act. Under section 202's standard, it is unlawful for a common carrier to engage in "unjust or unreasonable discrimination" in the provision of "like" communications services or to give any "unreasonable preference or advantage" to any person. In order to prove a violation of section 202(a), a complainant must show that (1) the services in question are "like," (2) discrimination has occurred, and (3) such discrimination is not just or reasonable. Although the Commission recognizes that the entities that Congress intended to regulate in section 628 of the 1992 Cable Act would not be subject to the current provisions of section 202 if they are not providing common carrier services, it could adopt a standard similar to section 202 as a basis of a definition of discrimination in these new regulations. The Commission notes that it has used this standard in another proceeding to evaluate the existence and extent of discrimination in some aspects of the video programming distribution market. Section 202 could offer the most appropriate standard because it addresses the term "unlawful discrimination" in providing communications services, and therefore, may be more relevant than other laws that do not specifically regulate telecommunications entities. The Commission requests comment on whether a standard similar to section 202 of the Communications Act is an appropriate basis for judging discriminatory practices by vertically integrated cable operators and programming distributors in violation of section 628. It also seeks comment on suggested modifications to the standards used to enforce section 202 that could facilitate its use as a discrimination standard in the context of the cable industry.

19. Section 2 of the Clayton Act as amended by the Robinson-Patman Act prohibits any person engaged in commerce from discriminating in price between different purchasers of commodities of like grade or quality where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce. Under the Robinson-Patman Act, price differences may reflect either cost differences or changes in market conditions, thus allowing price differences by a firm where the lower price is intended to meet the equally low price of a competitor. In addition, under this analysis, price discrimination is prohibited only where the effect may be to substantially lessen competition, and thus price differences that do not harm competition are permissible. Although the Robinson-Patman Act is generally applied to the pricing of goods or commodities rather than services, the Commission believes that the 1992 Cable Act and the price discrimination provisions in section 628 provide ample authority for it to apply appropriate standards to program pricing for the cable industry and other multichannel competitors. It also recognizes that questions have been raised regarding the Robinson-Patman Act's treatment of price discrimination cases and whether the standard may conflict with particular aspects of economic theory. Accordingly, the Commission seeks comment on the extent that it may apply any of the related antitrust standards for price discrimination, or at least certain useful principles from the legislation. The Commission also asks comments to consider whether an anticompetitive or "predatory" harm to competition in distributing programming is necessary to find discrimination. Also, given that the Robinson-Patman Act governs price differences for "goods of like grade or quality," the Commission asks parties to comment on how this standard might apply to cable programming. Similarly, if a particular programming service is sold under different conditions or arrangements for various customers, should sufficiently dissimilar conditions cause us to consider the services "distinct in grade or quality?"

20. The Commission also asks commenters to consider the applicability of principles for price comparison from other areas of federal regulation. For example, the Commission questions whether principles underlying the regulations and policies utilized by the International Trade Administration of the Commerce Department ("ITA") in anti-dumping analysis can be used to develop FCC regulations to implement section 628 of the 1992 Cable Act. In anti-dumping cases, U.S. product manufacturers challenge the pricing policies of foreign competitors, alleging that such foreign competitors charge prices that are below the market level in the U.S. in order to gain unfair competitive advantages over U.S. manufacturers. When evaluating such challenges, the ITA must compare the prices charged by the foreign manufacturer or distributor in the U.S. with the price charged in the manufacturer's home market, or a third country market if there are no home market sales, to determine whether the foreign company is engaging in unfair sales practices in the U.S. The ITA has developed detailed regulations that govern the price comparison process.

21. The Commission recognizes that price discrimination complaints concerning video programming filed pursuant to section 628 raise allegations of unfair overpricing. The Commission

also recognizes that dumping cases involve pricing comparisons for manufactured goods, rather than services, which could thus involve costs relevant only to manufactured goods. However, the Commission suggests that the underlying principles used for ITA's price comparisons may remain applicable. For example, the ITA recognizes the need for various types of adjustments to the actual prices charged to allow fair comparisons between the pricing practices used by the foreign manufacturer in different markets. Thus, the ITA has established specific classes of pricing adjustments. These include adjustments for circumstances of sale (related to costs associated with differing credit terms, guarantees, warranties, commissions, and product-specific advertising directed at the purchasers of the product), differences in quantities (volume discounts), and level of trade (sales to wholesalers vs. sales to retailers). The Commission seeks comment on how to apply any, or some combination, of the above options to develop regulations that (i) take into account relevant differences between the programming distributor's customers that are necessary to make fair pricing comparisons, and (ii) will enable the Commission to determine whether price differentials are legitimate or are the result of unfair practices. Furthermore, the Commission asks whether to permit certain practices that cause price differentials upon a showing that non-vertically integrated programming vendors also employ such a practice. The Commission also seeks comment on how to easily identify the appropriate video programming sales agreements that should be used to make the price comparisons necessary to resolve particular discrimination complaints. The Commission also seeks comment on how, to the extent possible, it can expedite the complaint process by developing standardized formulas, possibly utilizing objective values for the types of price adjustments contemplated above, to minimize disputes between the parties relating to specific computations. Finally, in addition to distinguishing between reasonable price differentials and those that are discriminatory, the Commission seeks comment on what factors should be considered in the second component of any analysis that would consider whether a discriminatory price differential causes anticompetitive "harm" to multichannel programming distributors or consumers.

22. Section 628(c)(2)(B) states that the 1992 Cable Act's protections against price discrimination apply to "agents" and "buying groups" of cable systems and other multichannel video distributors. The Commission seeks comment on issues relevant to defining the class of "agents'" or "buying groups" covered by this provision. Are there any circumstances under which it would be appropriate to establish parameters for such protected "agents" or "groups"? For example, would it ever be appropriate to establish limits concerning the size of individual entities permitted to aggregate for purposes of purchasing programming under regulated pricing policies?

23. The Commission notes that the statute is silent concerning enforcement of antidiscrimination rules with respect to existing contracts. Its initial view is that any pricing policies or restrictions developed to implement section 628 should not be applied retroactively against existing contracts. The Commission requests comment on this interpretation, and asks commenters how to implement section 628 with respect to exiting contracts. For example, if the policies are applied prospecively only, waiting for existing contracts to expire, the results Congress envisioned from the requirements of section 628 may not be achieved in a timely fashion, given the long term nature of many programming agreements. The Commission seeks comment on whether to establish a prospective deadline for compliance that will give parties to long term programming contracts sufficient notice and time for renegotiation, and if so, what appropriate compliance deadline would be for existing contracts. The Commission seeks further comment on the current duration of existing programming contracts to gauge the practical effects of any proposed deadlines. In addition, it seeks comment on whether to require that any renewals of existing contracts subsequent to the adoption of this Notice comply with the new rules, or whether to require compliance only in contracts signed after the effective date of any rules adopted.

24. Another statutory provision aimed at promoting competition and increased access to video programming is the requirement contained in section 628(c)(2)(C) that the Commission develop rules that prohibit practices, understandings, arrangements, and activities, including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or a satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest or any satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of the date of enactment of this section.

Similarly, section 628(c)(2)(D) requires the Commission to prohibit exclusive contracts in areas "served by a cable operator" unless it determines that the exclusive contract is in the public interest pursuant to section 628(c)(4). The Commission seeks comment on whether the lack of reference to the public interest finding of section 628(c)(4) for contracts in areas "not served by a cable operator" means that section 628(c)(2)(C) makes exclusive contract in such areas a *per se* violation.

25. In implementing these provisions, the Commission first seeks comment on the appropriate determination of whether an area is served by a cable operator. The Conference Report states, "[f]or purposes of this section,the conferees intend that an area 'served' by a cable system be defined as an area actually passed by a cable system and which can be connected for standard connection fee." How should the Commission define "area"? The language in the Conference Report suggests that this should be a local market determination related to a particular cable system. Alternative multichannel video program distributors, however, may serve a somewhat different market than an individual cable operator. Thus, the Commission seeks comment on the appropriate definition of "area" for purposes of this provision.

26. The Commission notes that section 628(c)(2)(C) prohibits "practices, understandings, arrangements and activities, *including exclusive contracts*" (emphasis added) in areas not served by a cable operator, while section 628(c)(2)(D) only prohibits "exclusive contracts" (unless deemed to be in the public interest) in areas served by a cable operator. The Commission asks commenters to consider the significance of this distinction, as well as how it might identify other "practices, understandings, arrangements and activities" that should be prohibited pursuant to section 628(c)(2)(C).

27. In the Commission's 1990 Cable Report, it noted various types of apparent contractual restrictions on program access, such as (i) prohibitions against or restrictions on a multichannel video programming vendor's

distribution into areas served by a wired cable operator; (ii) requirements to renegotiate agreements once the multichannel distributor reached a stated penetration level; and (iii) time-delay requirements. Did Congress intend that such practices be prohibited? Are there other similar practices that restrict access to programming that should be prohibited pursuant to this section?

28. In the Commission's 1990 Cable Report, it also noted that programming vendors sometimes required that a multichannel competitor purchase programming from a local cable operator to whom the programming vendor had given subdistribution rights for its franchise area. While such agreements do not necessarily "prevent" another multichannel video programming distributor from obtaining programming, they create the potential for disparate, and perhaps unfair, access treatment. What limits, if any, should be imposed on such subdistribution arrangements? The Commission also seeks comment on what data should be required to demonstrate that an exclusive contract in violation of these provisions has been made. For administrative reasons, the Commission does not believe it practical to require prior approval of exclusive arrangements. Thus, it proposes to enforce regulations adopted pursuant to this section through the complaint process, and seeks comment on this approach. If it is nonetheless urged to require prior approval of exclusive agreements, the Commission seeks comment on how to develop practical, expeditious procedures to evaluate requests for approval of exclusive agreements. For example, how will a multichannel competitor establish the existence of an "exclusive" contract if it does not have access to the contract? What if the contract is not written? What will be required to establish a *prima facie* case that any exclusivity "practice, understanding, arrangements" exists? How can a program distributor likely to be aggrieved by such practices obtain the evidence necessary to substantiate a complaint to the Commission?

29. The Commission further notes that section 628(c)(2)(C) specifically prohibits actions that prevent a multichannel video programming distributor from obtaining programming. Thus, it appears that an analysis of anticompetitive harm, such as restricted or inhibited access to programming, is required to find violations of this provision. What evidence should the Commission consider when determining whether specific practices, understandings, arrangements, or activities restrict, inhibit or otherwise limit access to programming? The Commission also asks whether this provision imposes any duty on a programmer to deal with non-affiliated programming distributors. With respect to exclusive contracts, section 628(c)(4) sets forth the criteria to be considered by the Commission when determining whether an exclusive contract is in the public interest, and thus not prohibited by section 628(c)(2)(D). In addition, the Commission is to consider the duration of the exclusive contract and seeks comment on objective standards or benchmarks that can be developed as consulted to assess each of the criteria set forth in the statute. Moreover, are these the only factors that the Commission is permitted to consider? If not, what other factors are relevant to such a determination? Are there benefits to exclusivity that should be considered?

30. The Commission also asks commenters to identify, where possible, specific instances where it could establish in advance by rule that limited exclusive distribution agreements are permitted under section 628(c)(4). For example, the Commission recognizes that exclusive distribution rights are often given to encourage distributors to carry new program services. Such exclusive rights may well be essential to the introduction of new services, and thus should be permitted to the extent necessary to ensure continued program diversity. Therefore, it may be in the public interest to define, at the outset, a rule that would permit exclusive distribution contracts for new program services. Such contracts would be deemed to meet the public interest test of section 628(c)(4) if they were limited to a specific duration, such as two years, that would facilitate the launch of the new service. The Commission seeks comment on this proposal and the appropriate limitations on such contracts. Commenters are also asked to provide other examples of contracts that could be presumed to serve the public interest. Finally, the Commission notes that section 628(c)(4)(D) refers to the effect on diversity of an exclusive contract on the "multichannel video programming distribution market." Given section 628(c)(4)(B)'s reference to "local and national" markets, should it infer a similar local and national market focus to interpret section 628(c)(4)(D), or should it employ some other type of market analysis?

31. Section 628(d) of the 1992 Cable Act provides that any multichannel video programming distributor aggrieved by conduct that it alleges to violate section 628(b) or (c) may commence an adjudicatory proceeding at the Commission. Section 628(f) requires the Commission to prescribe regulations to implement this section, including provisions for expedited review by the Commission, procedures for data collection, and provision for penalties against any person filing a frivolous complaint. The Commission proposes to adopt rules governing a formal complaint process that would resolve disputes without a hearing unless there are substantial and material issues of fact that cannot be resolved by the staff or through stipulation by the parties. The Commission proposes to develop a complaint process based on certain procedures used in complaint cases regarding the lowest unit charges filed under section 315(b) of the Communications Act and those used in processing common carrier complaints under section 208 of the Communications Act. In developing this process, it proposes to limit the pleading cycle to encourage substantive discussions of the issues in dispute, and to expedite complaint resolution by eliminating unnecessary pleadings. The Commission proposes to permit a complaint and response. Replies would not be permitted, and parties against whom a complaint is filed would not be permitted to file separate motions to dismiss or motions for summary judgment—any such requests should be included in the answer. The Commission seeks comment on these proposals.

32. The Commission proposes to require that complaints set forth specific allegations of misconduct and include affidavits by knowledgeable persons, or other tangible evidence, to support each allegation made in the complaint. Failure to plead each claim with specificity or to include supporting factual evidence for each allegation will result in dismissal of that portion of the complaint. The Commission proposes to require defendants to respond in 20 days, noting that answers should provide substantive support of all factual allegations or denials, and seeks comment on these proposals. After the staff has reviewed the pleadings, it would determine whether the complainant has established a *prima facie* case. At this point, if a *prima facie* case has been made, the Commission tentatively believes that the staff should hold a status conference to attempt to resolve any factual disputes and to determine whether early resolution is possible based on the staff's preliminary determinations. Given the statutory directive for expeditious resolution of section 628 complaints, the Commission

proposes to allow the parties to elect to utilize our Alternative Dispute Resolution ("ADR") process. The Commission seeks comment on whether it would be required to implement specific procedures for ADR in this area, and if so, what those procedures should encompass. It also seeks comment on ways to encourage parties to elect to resolve disputes through ADR. For example, should ADR for program access disputes include specific provisions for discovery, when appropriate, to provide an incentive for complainants to agree to ADR?

33. The Commission also seeks comment on what standard it should employ to determine whether a *prima facie* case has been made, and whether a single standard can be used for all complaints brought under section 628, or whether different standards must be developed for different types of claims, *e.g.*, a price discrimination claim as opposed to another type of unfair practices claim. In addition, it questions whether the information necessary to establish a *prima facie* case is readily available to potential complainants aggrieved by violations of regulations adopted to implement section 628. If not, what minimum threshold showing can be made with available information that would be appropriately required to establish a *prima facie* case? The Commission also seeks comment on what sorts of presumptions could be established for evaluating whether a complainant has made a *prima facie* case. Could objective criteria be developed? Could specific benchmarks be used as an evidentiary factor in complaint cases, such as specified program penetration levels that shift the burdens of proof for the complaint proceedings prescribed by section 628? The Commission asks whether penetration benchmarks could provide a useful tool for measuring the availability of programming, and thus ascertaining whether the behavior complained of violates section 628. For example, if a specific MMDS operator files a complaint against a program service alleging unfair behavior that impedes its access to programming, it may be relevant to consider whether other MMDS operators are, in fact, distributing the same programming. If so, and the penetration level of the programming on MMDS systems meets the designated benchmark, would this be relevant evidence that the programmer is not engaging in behavior in violation of section 628? Are these circumstances under which such evidence could reach a level to warrant a presumption that would require the complainant to meet a higher burden of proof to establish a *prima facie* case? Or, are there too many other factors affecting such penetration levels to permit a fair inference of discrimination based on any such disparity?

34. Similarly, the Commission asks whether there are any circumstances under which it would be appropriate to consider the relationship between the volume of programming sold by a vertically integrated program supplier to alternative delivery media, such as MMDS or TVROs, and the volume of programming sold by that program supplier to its affiliated cable systems. For example, what would be the relevance, if any, of a showing by a vertically integrated programming supplier that it sold the majority of its programming, or some substantial volume of sales, to such alternative delivery media, but sold a comparatively small volume of programming to its affiliated cable systems, in a complaint case alleging that the programmer is engaging in anticompetitive behavior? What sales volumes or comparative relationship between the sales volumes could be relevant? Again, the Commission asks whether there are too many other factors affecting such sales volumes to permit a fair inference of discrimination based on any disparity. The Commission seeks comment on, and encourages commenters to propose, other benchmarks or objective criteria relevant to determining whether a *prima facie* case has been made.

35. After the status conference with the Commission staff, if the parties elected to continue to pursue a formal proceeding, and if discovery were required, the Commission proposes that the staff issue a discovery order setting forth the procedures for, and limitations on, discovery. Should a complainant routinely be entitled to a specified number of interrogatories and document production requests as a matter of right, with depositions permitted only upon a special showing, or should the staff determine the parameters of discovery on a case by case basis? The Commission seeks comment on what, if any, self-executing discovery could be adopted. For example, could particular documents be identified in this proceeding, in addition to those set forth in section 628(f)(2), that would be clearly relevant to resolving the various kinds of complaints that could arise under section 628? The Commission seeks comment on practical, expeditious ways for the staff to resolve discovery disputes. In addition, it seeks comment on what period of time, such as 60 days, would be appropriate within which to require completion of discovery.

36. The Commission also proposes that the staff discovery order include a protective order with respect to document production that limits examination of the documents produced to parties designated in the order (and the Commission), and prohibits further dissemination of the information revealed therein. The Commission further proposes to permit defendants to redact proprietary information not relevant to the resolution of the complaint, such as the specific identity of a customer (but not the type of multichannel video programming distributor involved), so long as the defendant provided a general description of the nature of the redacted information. The Commission invites other suggestions for protecting proprietary information without undermining legitimate discovery. The Commission proposes to adopt a specific rule that requires the parties to abide by the terms of the staff protective order. Within 30 days after completion of discovery, the complainant would be required to file an amended complaint based on the information discovered. The defendant would have 15 days to respond. The parties would again be given the opportunity to elect ADR. If ADR is not selected, the staff would impose an appropriate sanction where it finds that our rules have been violated, or it would dismiss the complaint. In appropriate circumstances, the dispute may be referred to an administrative law judge ("ALJ") for resolution. Any decision rendered by the staff or an ALJ may be appealed directly to the full Commission.

37. Section 628(e)(1) provides that the Commission has the power to order appropriate remedies, including, if necessary, the power to establish prices, terms and conditions of sale of programming to an aggrieved multichannel video programming distributor. The Commission seeks comment on what additional remedies would be deemed "appropriate" for section 628 violations. In addition, section 628(e)(2) specifically states that any such remedies are in addition to and not in lieu of the Commission's authority to impose forfeitures pursuant to title V of the Communications Act for violations of its regulations. The Commission seeks comment on the appropriate application of our forfeiture guidelines to section 628 violations.

38. Section 628(c)(3)(A) of the 1992 Cable Act specifies that the program distribution rules do not require a national or regional distributor of video programming to make that programming

available outside of the geographic area in which it is authorized or licensed to distribute such programming. The Commission seeks comment on implementation of this provision. What parameters should be established for determining whether a change in the geographic area in which an operator is authorized or licensed has occurred? In addition, section 628(c)(3)(B)(i) provides that these carriage rules do not apply to the signal of a television network affiliate or other television signal that is retransmitted by satellite but that does not constitute "satellite broadcast programming" because it is retransmitted by the broadcaster or someone authorized by the broadcaster. Similarly, section 628(c)(3)(B)(ii) provides that these carriage rules do not apply to internal satellite communications of broadcast or cable networks that would not be considered "satellite broadcast programming." The Commission seeks comment on the appropriate interpretation of these provisions.

39. Section 628(f)(2) directs the Commission to prescribe regulations to establish procedures for collecting necessary data, including the right to obtain copies of all contracts and documents reflecting arrangements and understandings that allegedly violate the provisions of Section 628. The Commission believes that necessary data will include contracts or other documents that offer information on past practices, prices and conditions for program sales, levels of programming penetration, as well as evidence to justify permissible cause for price differentials. Accordingly, the Commission seeks comment on the type of data that may become necessary during the course of a section 628 proceeding, and how it may obtain such information. Also, what if any additional procedures must be developed to protect proprietary information?

40. Section 628(g) directs the Commission, beginning no later than 18 months after promulgating the regulations, to annually report to Congress on the state of competition for the delivery of video programming. It is the Commission's tentative view that the annual report should consist of an analysis of section 628 complaints filed at the Commission and generally available industry information relating to the status of competition in the satellite cable and broadcast programming marketplace. The Commission seeks comment on this approach and the nature of any additional information that the Commission could obtain to contribute to its report. The Commission emphasizes that detailed information on pricing and sales of programming would enhance its ability to monitor changes in the programming marketplace. For example, the Commission could survey the industry or require that parties submit information about (1) the number of independently owned cable operators and programming distributors; (2) the degree of vertical integration between cable operators and programming distributors; (3) the penetration or availability of programming to competing multichannel services; and (4) the levels of pricing differentials for programming, including the range and average of volume-related discounts and other permissible factors for price differentials. The Commission asks commenters to consider the extent to which any information in the Report to Congress may be similar to information collected for other proceedings related to the 1992 Cable Act to avoid duplication. The Commission also requests comment on the level of detailed information required to serve the Commission's interest without overburdening its resources, as well as those required to provide such information.

41. Section 628(f)(3) requires the Commission to provide for penalties to be assessed against any person filing a frivolous complaint regarding programming practices. The Commission seeks comment on implementation of this provision. It also proposes to assess monetary forfeitures for frivolous complaints, and seeks comment on the relationship between the penalties that Congress has indicated that the Commission may assess under section 628 as well as the more general monetary forfeiture provisions of section 503 of the Communications Act. Also, what factors should determine whether a complaint is frivolous? What guidelines should determine forfeiture amounts? Should the forfeiture amount be based on the resources expended by the Commission in considering the claim as well as by the party in defending against the claim?

42. The provisions of the 1992 Cable Act discussed above primarily restrict the activities of programming vendors with respect to cable operators and other multichannel programming distributors. Section 12 of the 1992 Cable Act restricts the activities of cable operators and other multichannel programming distributors with respect to programming vendors. Section 12 amends the Communications Act by adding new section 616, which addresses regulation of carriage agreements between multichannel video programming distributors and video program vendors.

43. Section 616(a) directs the Commission to establish regulations that prevent multichannel programming distributors from entering into carriage agreements that condition carriage of a vendor's programming on particular consessions. Specifically, the Commission must adopt regulations that prevent a multichannel distributor from requiring a programming vendor to provide it with a financial interest in the programming service in return for carrying the program service on its system. The new rules must also prohibit a multichannel distributor from coercing a programming vendor to provide it with exclusive rights as a condition of carriage, from retaliating against such a vendor for failing to provide exclusive rights, or from otherwise engaging in conduct that discriminates on the basis of affiliation of vendors in the selection, terms or conditions for carriage of video programming. In addition, the statute specifies procedures the Commission must adopt for implementation of the above provisions, including expedited review of compaints made by a programming vendor and assessment of appropriate penalties for violation of the carriage agreement rules as well as for the filing of frivolous claims.

44. The Commission seeks comment on how best to implement these provisions. First, section 616(a)(1) of the 1992 Cable Act provides that the Commission must adopt rules to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on the operator's systems. Because the statute does not prohibit multichannel distributors from holding a financial interest in a programming service, the Commission anticipates that it will not always be clear whether an operator has "required" the programming vendor to provide it with a financial interest in return for carriage of a particular programming service. What factors should determine whether such is the case? Second, section 616(a)(2) directs the Commission to adopt rules that prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage. What types of activities would constitute indicia of coercion?

Also, the Commission asks how it can clearly distinguish between "coercion" and "negotiation" and whether it could conceivably construe certain mutually acceptable arrangements that would otherwise comply with section 628 as "coercion." Further, the above provision makes clear that exclusive arrangements may exist other than as a condition of carriage. Section 616 thus does not specifically prohibit exclusive arrangements, but the Commission believes that section 616 must be read together with section 628(c), which limits certain exclusive arrangements and establishes standards for determining whether exclusive contracts are in the public interest, and seeks comment on this interpretation.

45. Third, section 616(a)(3) provides that the new rules must prevent a multichannel video programming distributor from engaging in conduct that unreasonably restrains the ability of an unaffiliated video programming vendor to compete fairly, by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms or conditions for carriage of video programming. What specific conduct should be considered a violation of this section? The Commission proposes that an "unaffiliated programming vendor" is a video programming vendor or service in which the multichannel distributor does not have an attributable interest, as defined by the broadcast attribution criteria of § 73.3555 of the Commission's Rules. In addition, section 616(a)(3) prohibits multichannel video programming distributors from discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors. The Commission believes that a practice of discriminating in the context of carriage agreements involves different activities than those discussed with respect to section 628 regarding programming access, and thus seeks comment on how to define "discrimination" in the context of section 616. Additionally, the Commission also believes section 628(h) is clear with respect to exclusive distribution arrangements, i.e., such agreements in areas served by cable are grandfathered if they were entered into on or before June 1, 1990; if the area is not served by cable, exclusive programming agreements are nullified. With respect to matters other than exclusive programming arrangements, it proposes to afford distributors and vendors six months from the date of adoption of these carriage agreement rules to bring their agreements into compliance. The Commission seeks comment on these proposals and on any other issues regarding implementation of this provision that commenters may deem relevant.

46. The Commission also seeks comment on the procedures to be established for review of complaints, and on the appropriate penalties and remedies to be ordered. Section 616(a)(4) provides for expedited review of any complaints made by a video programming vendor pursuant to this section. Should the Commission follow the same review process as was discussed above with respect to Section 628(d), or should different complaint procedures be adopted? Should carriage agreements be afforded confidential treatment in full, or rather, should the Commission permit only confidential or proprietary information to be redacted? Section 616(a)(5) provides that the Commission must adopt appropriate penalties and remedies for violations of this subsection, including requiring the multichannel video programming distributor to carry the unaffiliated program vendor. What procedures should be established for mandatory carriage? The Commission does not intend to require the multichannel distributor to carry the programming service indefinitely. How long should mandatory carriage last? The Commission also intends to assess forfeitures against violators. What guidelines should determine forfeiture amounts? Should the Commission also consider remedies other than forfeiture or mandatory carriage, such as establishment of prices, terms and conditions of sale, similar to the remedies specified in section 628(e)(1), as discussed above? In addition, section 616(a)(6) provides that the Commission must delineate penalties to be assessed against any person filing a frivolous complaint pursuant to this section. The Commission proposes to assess monetary forfeitures for frivolous complaints and it asks for comment on the factors that should determine whether a compliant is frivolous. Likewise, what guidelines should determine forfeiture amounts? Should the Commission base the forfeiture amount on the resources it expends in considering the claim and by the party defending against the claim?

Initial Regulatory Flexibility Analysis

47. Pursuant to the Regulatory Flexibility Act of 2980, the Commission finds:

I. Reason for Action

This action is taken to implement certain provisions of the Cable Television Consumer Protection and Competition Act of 1992.

II. Objectives

The Cable Act of 1992 and the subsequent Commission actions to implement it are intended to set forth a regulatory scheme for cable systems in the area of programming distribution and carriage agreements. Congress adopted the statute to address its concerns regarding the performance of the cable industry in these areas since the 1984 Cable Act was enacted. The program access provisions of this act are intended to (i) promote the public interest by increasing competition and diversity in the multichannel video programming market, (ii) increase the availability of satellite cable and broadcast programming, and (iii) encourage the development of communications technologies. The carriage agreements provisions restricts the activities of cable operators and other multichannel programming distributors with respect programming vendors.

III. Legal Basis

Action as proposed for this rule making is contained in sections 4 (i) and (j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992.

IV. Reporting, Recordkeeping and Other Compliance Requirements

In order to implement the 1992 Cable Act, the Commission might require that multichannel video distributors and cable operators submit data regarding the prices, conditions, and level of program sales.

V. Federal Rules which Overlap, Duplicate or Conflict with this rule

Sherman Act, Clayton, Act, and Robinson-Patman Act.

VI. Description, Potential Impact and Number of Small Entities Affected

In order to implement the Cable Television Consumer Protection and Competition Act of 1992, the Commission has proposed to add new rules and modify others. Depending on the extent of such actions, different cable systems may be affected in different ways. For example, certain cable operators or programming distributors may find it necessary to alter pricing or contracting practices as related to programming distribution, while other cable operators or other muiltichannel video distributors may enjoy increased access to programming.

VII. Any significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objective

None.

48. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause of a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

Ex Parte

49. This is a non-restricted notice and comment rule-making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rule. See generally, 47 CFR 1.1202, 1.203, and 1.206(a).

Comment Dates

50. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.149, interested parties may file comments on or before January 25, 1993, and reply comments on or before February 16, 1993. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

51. Authority for this proposed Rule Making is contained in Sections 4(i) and (j), and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 76

Cable Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–5 Filed 1–4–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[FRA Docket No. RST–90–1, Notice No. 2]

RIN 2130–AA75

Track Safety Standards; Public Workshops on Miscellaneous Proposed Revisions

AGENCY: Federal Railroad Administration.

ACTION: Notice of public workshops.

SUMMARY: This document contains information supplementing that of Notice No. 1 (November 16, 1992 (57 FR 54038)) which proposed to identify those sections of the present Track Safety Standards that FRA is considering for amendment, including the introduction of performance-based standards in two significant areas. This action is being undertaken by FRA in an effort to improve its safety regulatory program by ensuring that provisions governing track safety are necessary, effective, and suitably flexible. The information contained in this document covers:

Date changes;

Identification of city-specific public workshop locations (including one city change) and times;

A description of the format within which the public workshops will be conducted.

DATES: New workshop dates are:

Denver (Lakewood) on February 23, 1993; Chicago on February 25, 1993.

Any person desiring to participate in one or more of the workshops will now have until January 15, 1993 to notify the Docket Clerk. FRA will accept written comments from February 26, 1993 through April 1, 1993.

ADDRESSES:

(*1*) *Written comments:* Comments should identify the docket number and the notice number and should be submitted in triplicate to: Docket clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should include a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination during regular business hours in room 8201 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

(*2*) *Public workshops:* One-day workshops to discuss particular issues will be held at these locations:

January 26, 1993—Newark, New Jersey.
Radisson Hotel Newark Airport, 128 Frontage Road, Newark, New Jersey, (201) 690–5500.

Topics: Responsibility of track owners; Inspector qualifications; Restoration/Renewal of track; and 30-day period under § 213.9.

January 28, 1993—Atlanta, Georgia.
Peachtree Summit Building—Rooms 10A and 10B, 401 West Peachtree Street, NW., Atlanta, Georgia 30365.

Topics: Continuous welded rail/ Lateral track resistance; Gage restraint measurement; and Vehicle track interaction.

February 23, 1993—Denver (Lakewood), Colorado.
Lehigh Building, Third Floor Conference Room, 555 Zang Street, Lakewood, Colorado 80228.

Topics: Defective rails/remedial action; Internal rail inspection frequency; System tolerances and reliability; and Torch cut rail.

February 25, 1993—Chicago, Illinois.
12th Floor Conference Room, U.S. Army Corps of Engineers, 1111 North Canal Street, Chicago, Illinois 60606.

Topics: Excepted track; Inspection requirements; Definitions; and Other issues significantly affecting track or related structures.

Each of the four workshops will start at 8 a.m.

Persons desiring to participate in any of the workshops should notify the Docket Clerk by writing to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Principal program person: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–6081.

Principal attorney: Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–0635.

SUPPLEMENTARY INFORMATION: Notice No. 1 states that "* * * workshops are designed so that technically experienced persons may express their views about the track safety standards and those related issues in which they have a personal interest." FRA intends to follow that format. These discussions, associated as they are with an advance notice of proposed rulemaking, are intended to be fact finding sessions involving informal give-and-take exchanges between industry and government professionals who are charged with the administration of the track safety standards on a day-to-day basis. The discussion at each workshop will be focused on the specific topics to which the particular workshop has been dedicated. However, should time remain following conclusion of the workshop discussion, any party wishing to read a prepared statement into the record will be permitted to do so. Parties wishing to provide formal comments on any matter within the scope of this rulemaking are encouraged to do so in writing, not later than the comment closing date announced in this notice.

Issued in Washington, DC on December 29, 1992.

S. Mark Lindsey,

Acting Administrator, Federal Railroad Administration.

[FR Doc. 93-37 Filed 1-4-93; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB 83

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for "Myrcia paganii" and "Calyptranthes thomasiana"

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Myrcia paganii* (no common name) and *Calyptranthes thomasiana* (no common name) to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Myrcia paganii*, a small tree, is endemic to Puerto Rico and known from only three locations in the limestone hills of the northwestern part of the island. *Calyptranthes thomasiana*, a small tree, is only known from one area on the island of Vieques in Puerto Rico, one area in St. John, U.S. Virgin Islands, and from Gorda Peak, Virgin Gorda, British Virgin Islands. Habitat loss and modification are the primary threats to these species. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Myrcia paganii* and *Calyptranthes thomasiana*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by March 8, 1993. Public hearing requests must be received by February 19, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquero, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this office, and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851-7297).

SUPPLEMENTARY INFORMATION:

Background

Myrcia paganii, a small evergreen tree, was first collected by Paul Sintenis during the last part of the nineteenth century. The species was named for Juan Bianchi Pagán, who collected the species with Krug. However, the type specimen was destroyed during World War II and no duplicates are known to exist. *Myrcia paganii* was not collected again until Roy Woodbury rediscovered the species in 1959 in the Biafara-Arrozal area to the south of the city of Arecibo, located in northern Puerto Rico. Six individuals are known from this privately owned site (Vivaldi and Woodbury 1981). The species has been reported more recently from two locations, one individual at each, in the Quebradillas area of northwestern Puerto Rico (Department of Natural Resources 1992).

Myrcia paganii is an evergreen tree which may reach 9 meters (30 feet) and 13 centimeters (5 inches) in diameter. The bark is mottled and flaky and the inner bark is orange-brown. Young twigs are flattened and have numerous soft brownish hairs. The leaves are opposite, simple, entire, coriaceous, aromatic, and glandular punctate below. The leaf blade is elliptic to elliptic-oblong, villous when young but glabrescent, 10 to 16 centimeters (4 to 6¼ inches) long, and 4 to 9 centimeters (1½ to 3½ inches) wide. The leaf base is acute, the apex obtuse, and the midvein is clearly impressed above. Petioles are 4 to 5 millimeters long. The flowers and fruit have not been described.

Calyptranthes thomasiana was described in 1855 from specimens collected from St. Thomas, U.S. Virgin Islands. Although collected from St. Thomas, it has not been reported from the island in recent years. It was previously thought to be endemic to Puerto Rico and the U.S. Virgin Islands, but was recently reported from Virgin Gorda, British Virgin Islands, where it occurs within the National Park (Center for Plant Conservation 1992; G. Proctor, pers. comm.). It is currently known from only three locations: Monte Pirata on the island of Vieques in Puerto Rico; Bordeaux Mountain on the island of St. John, U.S. Virgin Islands; and Gorda Peak in Virgin Gorda, British Virgin Islands.

Calyptranthes thomasiana is an evergreen shrub or small tree which may reach 9 meters (30 feet) in height and 13 centimeters (5 inches) in diameter. Leaves are opposite, obovate to oblong, 2 to 4 centimeters (¾ to 1¾ inches) long, blunt at the apex, and short pointed at the base. The leaves are coriaceous, with gland dots, shiny on the upper surface, and dull on the lower surface. Flowers and fruit have not been described.

Calyptranthes thomasiana is found only at three localities. Only 10 to 12 individuals are now known from Monte Pirata, where it is located on U.S. Navy property. However, additional individuals may have been eliminated by the construction of Navy facilities on this peak (Department of Natural Resources 1992). This area was severely affected by Hurricane Hugo in 1989. As many as 100 mature individuals are known from a small area on Bordeaux Mountain of St. John, part of the National Park and managed by the National Park Service, U.S. Department of the Interior (G. Ray, pers. comm.; Woodbury and Weaver 1987). Although on Virgin Gorda the species is found within the National Park of the British Virgin Islands Government, it is rare and localized and may be impacted by park management practices (Center for Plant Conservation 1992; G. Proctor, pers. comm.).

Myrcia paganii and *Calyptranthes thomasiana* were recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species were included among the plants being considered as endangered or threatened by the Service, as published in the **Federal Register** notice of review dated December 15, 1980 (45 FR 82480); the November 28, 1983 update (48 FR

53680), the revised notice of September 27, 1985 (50 FR 39526), and the February 21, 1990 (55 FR 6184) notice of review. Both species were designated as category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notice of review published on February 21, 1990.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. Beginning in October 1983, and in each October thereafter, the Service found that listing *Myrcia paganii* and *Calyptranthes thomasiana* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final 1-year finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Myrcia paganii* Krug & Urban and *Calyptranthes thomasiana* Berg. are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Two populations of *Myrcia paganii* are found on privately owned land currently subject to intense pressure for agricultural, rural and tourist development. Adjacent land is currently being cleared for grazing by cattle and goats. One individual has been reported from the Guajataca Commonwealth Forest, where it may be affected by forest management practices. Although on Vieques Island *Calyptranthes thomasiana* is found on U.S. Navy property, this area has been severely modified for the construction of Navy facilities. Expansion of the facilities may result in the elimination of individual plants. Although known individuals on St. John are found within the National Park, these may be affected by park management practices and the presence of feral pigs and donkeys.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these species.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Myrcia paganii* and *Calyptranthes thomasiana* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting its Continued Existence

One of the most important factors affecting the continued survival of these species is their limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Hurricane Hugo in 1989 dramatically affected the Monte Pirata area of Vieques, felling large trees and creating numerous canopy gaps.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Myrcia paganii* and *Calyptranthes thomasiana* as endangered. Both *Myrcia paganii* and *Calyptranthes thomasiana* are each known from only three locations. Deforestation for rural, agricultural, residential, and tourist development are imminent threats to the survival of the species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for these species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Myrcia paganii* and *Calyptranthes thomasiana* is so sufficiently small that vandalism and collection could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitats.

Protection of these species' habitats will also be addressed through the recovery process and through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or

to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat is being proposed for these two species, as discussed above. Federal involvement is anticipated for the population of *Calyptranthes thomasiana* located on Monte Pirata in Vieques, U.S. Navy property, and for the population located in the Virgin Island National Park in St. John.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these three species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Myrcia paganii* and *Calyptranthes thomasiana;*

(2) The location of any additional populations of these three species, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on these three species.

Final promulgation of the regulation on *Myrcia paganii* and *Calyptranthes thomasiana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S. and R.A Defilipps. 1978. Endangered and threatened plant of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.

Center for Plant Conservation. 1992. Report on the rare plants of Puerto Rico. Missouri Botanical Garden, St. Louis, Missouri.

Department of Natural Resources. 1992. Natural Heritage Program status information of *Myrcia paganii* and *Calyptranthes thomasiana*, San Juan, Puerto Rico.

Vivaldi, J.L. and R.O. Woodbury. 1981. Status report on *Myrcia paganii* Krug & Urban. Unpublished report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 24 pp.

Woodbury, R.O., and P.L. Weaver. 1987. The vegetation of St. John and Hassel Island, U.S. Virgin Islands. U.S. Department of the Interior, National Park Service, Southeast Regional Office, Research/Resources Management Report SER–83. 103 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/8512–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and Threatened Plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *		* * *			*	
Myrtaceae—Myrtle family:						
Calyptranthes thomasiana	None	U.S.A. (PR,VI),	E		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
		British VI				
Myrcia paganii	None	U.S.A. (PR)	E		NA	NA
* *	*	*	*	*	*	

Dated: December 15, 1992.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 93–80 Filed 1–4–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 2
Tuesday, January 5, 1993

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

Office of the Secretary

Types and Quantities of Agricultural Commodities Available for Donation Overseas

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the determination that an additional quantity of corn, sorghum and butter/butteroil may be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1993.

FOR FURTHER INFORMATION CONTACT: Charles T. Delaplane, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 720–3573.

SUPPLEMENTARY INFORMATION: It has previously been determined that a total of 2,181,000 metric tons of grains and 80,000 metric tons of dairy products may be made available for donation under section 416(b) during fiscal year 1993. This determination was published in the **Federal Register** on October 2, 1992. The purpose of this Notice is to inform the public that such previous determination is revised by adding 600,000 metric tons of corn, 70,000 metric tons of sorghum, and 20,000 metric tons of butter/butteroil.

Determination

Accordingly, a total of 2,851,000 metric tons of grains and 100,000 metric tons of dairy products may be made available for donation overseas pursuant to section 416(b) during fiscal year 1993.

The total kinds and quantities of commodities that may be made available for donation are as follows:

	Commodity	Quantity (Metric Tons)
Grains	Corn	981,000
	Wheat (feed quality).	1,800,000
	Sorghum	70,000
Total		2,851,000
Dairy products	Butter/Butteroil*	100,000
Total		100,000

*At least 40,000 metric tons must be butter.

Done at Washington, DC, this 29th day of December 1992.

Ann M. Veneman,

Acting Secretary of Agriculture.

[FR Doc. 93–55 Filed 1–4–93; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Subcommittee on Export Administration of the President's Export Council; Closed Meeting

A meeting of the President's Export Council Subcommittee on Export Administration will be held January 11, 1993, 2:30 p.m., in the Herbert C. Hoover Building, room 3407, 14th Streets & 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. This meeting is called on short notice because of difficulty in coordinating schedules of PECSEA members and meeting participants.

The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12610, 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 September 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) 482–2583.

Dated: December 29, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–35 Filed 1–4–93; 8:45 a.m.]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

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

ACTION: Notice of extension of deadline for submitting written comments on the preparation of an Environmental Impact Statement (EIS) for western Atlantic bluefin tuna.

SUMMARY: A previous **Federal Register** notice (Volume 57, No. 214) announced NMFS's intent to prepare an EIS for western Atlantic bluefin tuna and requested written comments on or before January 15, 1993. NMFS received a request from a Fishery Management Council to extend the comment period beyond January 21, 1993 in order to allow its pelagic species committee to make comments and the full Council (during its January 19–21 meeting) to adopt recommendations and submit them to the Agency. Since this would not delay any action planned, NMFS announces an extension of the deadline for submitting written comments on the preparation of the EIS for bluefin tuna. The new deadline is January 31, 1993.

ADDRESSES: Comments on the proposal to prepare an EIS must be sent to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone at 310–713–2347.

SUPPLEMENTARY INFORMATION: NMFS is responsible for managing the Atlantic bluefin tuna fishery and implementing recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Further

background information, including management rules and scheduled public hearings, are published in the November 4, 1992, **Federal Register** notice (Vol. 57, No. 214), as well as the December 11, 1992, **Federal Register** notice (Vol. 57, No. 239).

Dated: December 29, 1992.

Richard H. Schaefer,

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

[FR Doc. 93-31 Filed 1-4-93; 8:45 am]

BILLING CODE 3510-22-M

National Weather Service; Proposed Modernization

AGENCY: National Weather Service, NOAA, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Weather Service (NWS) must prepare a report on the proposed modernization of the Weather Service as required by section 708 of the Weather Service Modernization Act. In doing so the NWS must consult with local aviation groups in areas uniquely dependent on aviation. The NWS is requesting comments from any groups in areas of the Country other than Alaska who believe they should be consulted.

DATES: Comments should be received by March 8, 1993.

ADDRESSES: Send comments to: Dr. Ronald Lavoie, 1325 East-West Highway, 14348, Silver Spring, MD 20910, (301) 713-0700.

SUPPLEMENTARY INFORMATION: Section 708 of Public Law 102-567 requires the Secretary of Commerce to prepare a report on the proposed modernization of the NWS within 6 months of enactment of the Act (by April 29, 1993). This report must identify the geographic area of responsibility of each proposed Weather Forecast Office, describe the number and type of personnel involved, and explain the reasons for assigning a geographic area of responsibility to any office that exceeds twice the national average and the reasons for assigning responsibility for more than one next generation radar to an office.

That section also requires the Secretary to consult with local aviation groups "in areas of the Nation that are uniquely dependent on general aviation as a means of transportation."

The NWS believes that all such areas are located in the State of Alaska. However, persons who believe that such areas exist outside Alaska, particularly local aviation groups who wish to be consulted, are requested to identify these areas.

Dated: December 23, 1992.

Louis J. Boezi,

Deputy Assistant Administrator for Modernization.

[FR Doc. 93-30 Filed 1-4-93; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

December 29, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 6, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not yet been held on a mutually satisfactory solution on Categories 326, 335/635 and 369-S, the United States Government has decided to control imports in these categories for the twelve-month period beginning on October 28, 1992 and extending through October 27, 1993.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991; and 57 FR 54976, published on November 23, 1992). Also see 57 FR 54061, published on November 16, 1992.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 29, 1992

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 30, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on October 28, 1992 and extending through October 27, 1993, in excess of the following limits:

Category	Restraint limit [1]
326	980,188 square meters.
335/635	82,745 dozen.
369-S [2]	131,323 kilograms.

[1] The limits have not been adjusted to account for any imports exported after October 27, 1992.

[2] Category 369-S: only HTS number 6307.10.2005.

Textile products in Categories 326, 335/635 and 369-S which have been exported to the United States prior to October 28, 1992 shall not be subject to the limits established in this directive.

Textile products in Categories 326, 335/635 and 369-S which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-36 Filed 1-4-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Energy conservation Program for Consumer Products Representative Average Unit Costs of Energy

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE) is forecasting the representative average unit costs of five residential energy sources for the year 1993. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit cost of these energy sources is used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act (EPCA), Public Law No. 94–163, 89 Stat. 871 (1975), as amended.

EFFECTIVE DATE: The representative average unit cost of energy contained in this notice will become effective February 4, 1993, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–43, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: Section 323 of the EPCA (Act)[1], as amended, requires that the DOE prescribe test procedures for the determination of the estimated annual operating costs and other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR part 430, subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by section 323(c) of the Act.

DOE last published representative average unit costs of residential energy for use in the Conservation Program for Consumer Products on January 30, 1991. (56 FR 3455). Effective February 4, 1993, the cost figures published on January 30, 1991, will be superseded by the cost figures set forth in this notice.

The DOE Energy Information Administration (EIA) has developed the 1992 representative average unit costs of electricity, natural gas, and No. 2 heating oil found in this notice. These costs were taken from the EIA fourth quarter 1991 Short-Term Energy Outlook (Outlook), DOE/EIA–0202 (91/4Q), which forecasts the retail cost of selected energy products based on changes in world oil prices, natural gas wellhead prices, seasonal patterns in retail prices, and established trends in margins and operating expenses. The development of these costs is discussed in detail in the fourth quarter 1992 issue of this report which is the EIA quarterly publication of historical and forecasted energy consumption and prices. The kerosene and propane prices developed here were generated by the computer models used by Outlook but were not published in that specific report. Table 5 of the EIA Outlook contains forecasts for residential electricity, natural gas, and heating oil prices. Copies of this report are available at the National Energy Information Center, Forrestal Building, room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

The 1993 representative average unit costs stated in Table 1 are provided pursuant to Section 323(b)(4) of the Act and will become effective February 4, 1993. They will remain in effect until further notice.

Issued in Washington, DC, December 29, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[1993]

Type of energy	In common terms	As required by test procedure	Dollars per million Btu[1]
Electricity	8.30 ¢/kWh[2,3]	$0.0830/kWh	$24.33
Natural gas	59.46 ¢/therm[4] or $6.13/MCF[5,6]	0.00000595/Btu	5.95
No. 2 Heating Oil	$1.00/gallon[7]	0.00000721/Btu	7.21
Propane	$0.73/gallon[8]	0.00000799/Btu	7.99
Kerosene	$0.82/gallon[9]	0.00000607/Btu	6.07

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] 1kWh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,031 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 93–81 Filed 1–4–93; 8:45 am]

BILLING CODE 7450–01–1–M

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, by the National Appliance Energy Conservation Act of 1987, and by the National Appliance Energy Conservation Amendments of 1988.

Federal Energy Regulatory Commission

[Docket No. TQ93-3-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 28, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on December 22, 1992 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective February 1, 1993.

ESNG notes that the above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.5908 per dt in the Commodity Charge and a decrease of $0.1352 per dt in the Demand Charge, all as measured against ESNG's Out-Of-Cycle Purchased Gas Adjustment in Doc. No. TQ93-2-23-000, as filed on October 30, 1992 and requested to be effective November 1, 1992.

ESNG states that copies of the filing have been served upon its jurisdictional customers 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 Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25 Filed 1-4-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-48-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 28, 1992.

Take notice that on December 15, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance Second Revised Fourteenth Revised Sheet No. 13 to become a part of its FERC Gas Tariff, Second Revised Volume No. 1.

Northwest states that the purpose of this filing is to file its Annual Report and Cost-of-Service Study to establish a revised Facility Charge and an Amortizing Adjustment relating to Rate Schedule T-1.

Northwest requests an effective date of February 1, 1993.

Northwest states that copies of the filing is being served upon PITCO and upon all jurisdictional sales customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 4, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24 Filed 1-4-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2984-022]

S.D. Warren Co.; Complaints

(December 28, 1992)

Take notice that on September 3, 1992, Friends of Sebago Lake filed a complaint in which it contends that S.D. Warren Company has violated and continues to violate certain terms of the license for the Eel Weir Hydroelectric Project No. 2984, located in Cumberland County, Maine, at the outlet of Sebago Lake into the Presumpscot River. Additional complaints contending similar license violations were filed on September 22, 1992, by Charles Tranter and Rita M. Tranter; on October 15, 1992, by Anthony DeSalvo, Gerald A. Cole and Kevin T. Cole; on October 27, 1992, by Roger D. Wheeler; and on December 14, 1992, by Frank St. Pierre and Pauline St. Pierre.

The complaints concern S.D. Warren Company's practice, since 1987, of reducing outflows from Sebago Lake during the summer and fall months in order to increase outflows, and thereby electric generation, during the winter. The complainants contend that the reduced seasonal outflows have raised Sebago Lake's level annually above normal historical lake levels, which has caused previously stable beach and shoreline soils to erode severely. The erosion, complainants allege, has damaged the beaches and the trees and bushes around Sebago Lake, and has produced algae and macrophytes that detrimentally affect the lake waters. The complainants maintain that the licensee's actions violate Articles 3 and 19 of the license for the Eel Weir Project.[1]

Any person may submit comments regarding these complaints 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. The respondent, S.D. Warren Company, shall file an answer to these complaints pursuant to Rules 206 and 213, 18 CFR 385.206 and 385.213. No replies to respondent's answer will be accepted. In determining the appropriate action to take, the Commission will consider all comments filed. Copies of the complaints are on file with the Commission and are available for public inspection.

Comments and the answer to the complaints are due on or before March 1, 1993.

For further information, contact Rachel Hecht at (202) 208-2138.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27 Filed 1-4-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-6-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 28, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on December 22, 1992 certain revised tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff included in appendix A attached to the filing.

TGPL states that the purpose of the filing is to track rate changes

[1] Article 3 requires the licensee to obtain prior Commission approval for substantial alterations to its use of project lands and waters. Article 19 makes the licensee responsible for, and requires the taking of reasonable measures to prevent, soil erosion due to project operation on lands adjacent to streams or other waters.

attributable to storage services purchased from North Penn Gas Company (North Penn) under its Rate Schedule SS the costs of which are included in the rates and charges payable under TGPL's Rate Schedule SS–1 and storage services purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S–2. The tracking filing is being made pursuant to section 5 of TGPL's Rate Schedule SS–1 and section 26 of the General Terms and Conditions of Volume No. 1 of TGPL's FERC Gas Tariff.

Included in the appendices B and C attached to the filing are explanations of each of the tracking rate changes, the proposed effective date of such changes and details regarding the computation of the revised rates under Rate Schedules SS–1 and S–2.

Also included therein for filing are revised tariff sheets which incorporate the Rate Schedule SS–1 and S–2 rate changes proposed therein into subsequent intervening rate filings which have been accepted by the Commission to be effective on the dates reflected thereon.

TGPL states that copies of the filing are being mailed to each of its SS–1 and S–2 customers and interested State Commissions.

Any person desiring to be heard or to protests 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 January 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–26 Filed 1–4–93; 8:45 am]

BILLING CODE 6717–01–M

Post-Licensing Filing With the Commission; Turlock and Modesto Irrigation Districts

December 29, 1992.

Take notice that the following material has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of action: Notice of Proceeding.

b. Project number: 2299–024.

c. License issued: March 10, 1964.

d. Licensees: Turlock and Modesto Irrigation Districts.

e. Name of project: New Don Pedro Project.

f. Location: Tuolumne County, California.

g. Authorization: Article 37 of the project license.

h. Licensee contact: Mr. Ernest Geddes, P.O. Box 949, Turlock, CA 95380.

i. FERC contact: John A. Schnagl (202) 219–2661.

j. Comment date: February 10, 1993.

k. Description of proceeding: On March 9, 1992, Turlock and Modesto Irrigation Districts (licensees) filed and supplemented on March 19 the results of studies required by article 39 of the license for the New Don Pedro Project. The filing includes a memorandum of agreement with the California Department of Fish and Game whereby the licensees agree to a modified minimum flow schedule that would generally increase the amount of water released from the project for fish protection. The City and County of San Francisco (City) and San Francisco Bay Area Water Users Association object to the proposed agreement, citing the effect of the agreement on their principal water supply. In addition, the City recommended alternative flows for the protection of the fishery resources in the Tuolumne River. The Commission will conduct an independent evaluation to determine what change of flows, if any, is necessary to proctect the fishery resources in the Tuolumne River. The results of the evaluation will be presented in an environmental assessment that will also discuss the environmental impacts of any proposed changes.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: The Director, Office of Hydropower Licensing, Division of Project Compliance and Administration, Federal Energy Regulatory Commission, ATTN: HL–21, room 1148 UCP, at the above address. A notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22 Filed 1–4–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–154–NG]

Gas Company of New Mexico, a Division of Public Service Company of New Mexico; Application for Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 7, 1992, of an application filed by Gas Company of New Mexico (GCNM), a division of Public Service Company of New Mexico, to export up to 8 Bcf of natural gas from the United States to Mexico over a two-year period commencing on the date of first delivery. The proposed exports would take place at a border crossing to be constructed at or near Santa Teresa, New Mexico.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited. A copy of GCNM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, February 4, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: GCNM is a division of the Public Service Company of New Mexico, a corporation organized and existing under the laws of the State of New Mexico with its principal place of business in Albuquerque. The exported gas would come from production areas in the United States with surplus supplies of natural gas and will be sold in Mexico to residential and industrial users in and around the Santa Teresa International Industrial Park being developed on both sides of the U.S.-Mexico border near Santa Teresa, New Mexico. GCNM has advised DOE that all sales of exported gas would result from arms-length negotiations and the prices would be determined by market conditions. The exported gas will be transported to the industrial park through existing pipeline facilities and twenty-two miles of natural gas pipeline to be constructed between the park and the El Paso Natural Gas California main line. GCNM will also construct, connect, operate, and maintain export facilities at the U.S.-Mexico border and has applied to the Federal Energy Regulatory Commission (FERC) for a Presidential Permit authorizing the construction of these facilities.

The decision on the application for export authority will be made consistent with DOE's gas export policy guidelines, under which DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose the application, should comment on these issues as they relate to the requested export authority.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Issued in Washington, DC, on December 29, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–83 Filed 1–4–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–04–NG]

Kamine/Besicorp Natural Dam L.P.; Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting authorization to Kamine/Besicorp Natural Dam L.P. to import up to 12,500 Mcf per day of Canadian natural gas and up to a total of 114.1 Bcf over a period of 15 years. the gas will be used as fuel in a new 58-megawatt cogeneration facility under construction near

Gouverneur, New York. The term of the authorization begins at the time of the first import delivery or June 1993, whichever is earlier.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on December 18, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs; Office of Fossil Energy.

[FR Doc. 93–84 Filed 1–4–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4551–5]

Revised Hours for Public Access to the Headquarters Library and INFOTERRA

AGENCY: U.S. Environmental Protection Agency.

SUMMARY: Notice is hereby given that beginning January 4, 1993, the Headquarters Library and INFOTERRA will be open to the public from 10 a.m. to 4 p.m. This constitutes a reduction in hours.

FOR FURTHER INFORMATION CONTACT: Jonda Byrd, National Library Network Program Manager at 513/569–7183 or Emma McNamara, INFOTERRA Manager at 202/260–1522.

Mike Miller,

Acting Chief, Information Access Branch.

[FR Doc. 93–62 Filed 1–4–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4551–7]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a meeting of the Ozone Transport Commission to be held on Friday, January 8, 1993.

The Commission will deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on January 8, 1993.

ADDRESSES: The meeting will be held at: Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, VA 22204, (202) 508–3840.

FOR FURTHER INFORMATION OR PRESS INQUIRIES CONTACT: Bruce Carhart, Executive Director, Ozone Transport Commission, 444 North Capitol Street NW., Suite 604, Washington, DC 20001, (202) 508–3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 new provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Transport Commission is to deal with appropriate matters within the ozone transport region.

The purpose of this notice is to announce that this Commission will meet on January 8, 1993. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: The meeting begins at 9 a.m. and is expected to last until 4:30 p.m. The Commission will review the 1993 work plan, and receive reports from its committees, particularly on (1) Rules and plans for Inspection and Maintenance (I/M) programs, (2) Results of Regional Oxidant Model (ROM) simulations, (3) Design of an Ozone Transport Commission logo, and (4) Discussion of Emissions Offset Programs.

A complete agenda is available from the Ozone Transport Commission at the address given for the information contact person.

Dated: December 21, 1992.

Julie Belaga,

Regional Administrator, EPA Region I.

[FR Doc. 93–76 Filed 1–4–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4552–8]

Meeting of the Grand Canyon Visibility Transport Commission Work Plan Committees

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) is announcing meetings of the Operations, Technical, Alternatives Assessment, and Communications Committees of the Grand Canyon Visibility Transport Commission (Commission) on January 12, 13, and 14, 1993, in San Diego, California. The meetings will be held at the Pan Pacific Hotel, 400 West Broadway, San Diego, California, beginning at 1:30 p.m. (p.s.t.) on January 12. The committees were established by the Commission by approval of work plan at its June 21, 1992 meeting (see 56 FR 24790, June 11, 1992, and 56 FR 38633, August 26, 1992). The Commission was established by the EPA on November 13, 1991 (see 56 FR 57522, November 12, 1991).

This will be the first meeting for the Public Advisory Committee which was recently appointed by the Commission. The Public Advisory Committee membership represents a broad range of interests in addressing the issue of regional haze and was established to advise the Commission and Operations Committee on technical and policy matters.

Central to these meetings will be presentations by the National Academy of Sciences (NAS) and the Environmental Protection Agency (EPA). The NAS will be reporting on its recent study on haze in national parks. The EPA will be giving a preliminary report on future impacts of the Clear Air Act Amendments of 1990 on regional haze in the southwest. In addition, the committees will review tasks in progress and will assign additional work plan tasks to participating State, Federal, private and nongovernmental organizations. All meetings are open to the public. These meetings are not subject to provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meetings will be held as follows (all times p.s.t.):

Public Advisory Steering Committee:

Tuesday, January 12, 4 p.m.–5:30 p.m.

Public Advisory Committee:

Wednesday, January 13, 2:30 p.m.–4:30 p.m.

All Committees (NAS and EPA Presentations):

Wednesday, January 13, 8:30 a.m.–2 p.m.

Operations Committee:

Tuesday, January 12, 1:30 p.m.–3:30 p.m.

Wednesday, January 13, 4:30 p.m.–5:30 p.m.

Thursday, January 14, 8:30 a.m.–noon.

Technical Committee (Aerosol Subcommittee only):

Tuesday, January 12, 9 a.m.–noon.

Technical Committee (Joint Subcommittees):

Wednesday, January 13, 7:30 p.m.–9:30 p.m.

Technical Committee (Concurrent Subcommittees):

Thursday, January 14, 12:30 p.m.–2:30 p.m.

Alternatives Assessment Committee:

Thursday, January 14, 2:30 p.m.–4:30 p.m.

Communications Committee:

Tuesday, January 12, 9 a.m.–noon.

Wednesday, January 13, 4:45 p.m.–6 p.m.

ADDRESSES: The meetings will be held in San Diego, California, at the Pan Pacific Hotel, 400 West Broadway, San Diego, California, 92101.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Leary, Project Manager for the Grand Canyon Visibility Transport Commission, Western Governors' Association, 600 17th Street, Suite 1705, South Tower, Denver, Colorado 80202. Telephone number (303) 623–9378. Facsimile machine number (303) 534–7309.

Dated: December 30, 1992

Michael Shapiro,

Assistant Administrator for Air and Radiation.

[FR Doc. 93–194 Filed 1–4–93; 8:45 am]

BILLING CODE 6560–01–M

[FRL–4552–4]

Proposed Settlement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), notice is hereby given of a proposed consent order in the following case:

Nelson v. *Reilly*, No. 92–6260–HO (D. Ore.). This citizen suit was filed under section 304(a) of the Act, 42 U.S.C. 7604, and alleges that EPA failed to meet a mandatory deadline for revision of the regulations promulgated under section 206(a)(4)(A) of the Act with regard to certain certification test procedures for light-duty vehicles and trucks. The proposd consent order would require EPA to propose such regulations by December 15, 1992, and to promulgate final regulations by 10 months thereafter.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent order from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed order if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with requirements of the Act.

A copy of the proposed order has been lodged with the clerk of the United States District Court for the District of Oregon. Copies are also available from Betty S. Mobley, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Steven E. Silverman, Esq. at the above address and must be submitted on or before February 4, 1993.

Dated: December 9, 1992.

Raymond B. Ludwiszewski,

Acting General Counsel.

[FR Doc. 93–78 Filed 1–4–93; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–44594; FRL–4181–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on crotonaldehyde (CAS No. 4170–30–3), submitted pursuant to a testing consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for crotonaldehyde were submitted by Eastman Chemical Company pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on December 1, 1992. The submissions describe the chronic toxicity to *daphnia magna* under flow-through conditions and the toxicity to fathead minnow (Pimephales promelas) during an early life-stage exposure. Environmental effects testing is required by this testing consent order. This chemical is used as an intermediate to produce crotonic acid, sorbic acid, 3-methoxybutanol and *n*-butanol.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44594). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: December 16, 1992.

Charles M. Auer,

Director, Chemical Control Division, Office Pollution Prevention and Toxics.

[FR Doc. 93–77 Filed 1–4–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed: Ecuador Discussion Agreements et al.

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, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–010999–012.

Title: Ecuador Discussion Agreement.

Parties: United States Atlantic and Gulf/Ecuador Freight Conference, Naviera Consolidada S.A., Empresa Naviera Santa, S.A., Transportes Navieros Ecuatorianos, Empremar/MSC.

Synopsis: The proposed agreement will permit the parties to agree on the sharing of expenses and the conduct of any collective administrative matters.

Agreement No.: 224–200690–001.

Title: Port of Oakland and Stevedoring Services of America Marine Terminal Agreement.

Parties: The Port of Oakland ("Port"), Stevedoring Services of America ("SSA").

Synopsis: The modification amends the basic Agreement by identifying certain reimbursement obligations of the Port to SSA for certain extraordinary labor costs incurred during the repairs by the Port to the Charles P. Howard Terminal as a result of earthquake damage.

Agreement No.: 224–200709.

Title: Port of Galveston/SeaTruck Texas, Incorporated Terminal Agreement.

Parties: The Board of Trustees of the Galveston Wharves SeaTruck Texas, Incorporated ("SeaTruck").

Synopsis: The Agreement provides for SeaTruck to have exclusive use of the leased premises, and preferential berthing at adjacent pier 34, for the development and operation of a truck-trailer Ro-Ro terminal. The Agreement's term is 25 years.

Agreement No.: 224–200710.

Title: Port of Oakland and Canadian Transport Co., Ltd., Marine Terminal Agreement.

Parties: The Port of Oakland ("Port"), Canadian Transport Co., Ltd. ("CTCO").

Synopsis: The Agreement provides for CTCO to have the nonexclusive right to certain assigned premises at the Port's Charles P. Howard Terminal for berthing, loading and discharging of vessels and related operations. The term of the Agreement is for three years.

By Order of the Federal Maritime Commission.

Dated: December 29, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 93–19 Filed 1–4–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–3–4210–05; MIES–043236]

Realty Actions, Sales, Leases, etc.; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public land in Chippewa County, Michigan—modified competitive method.

SUMMARY: The following public land has been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), at not less than the estimated fair market value (FMV) of $4,800.00. The public land will not be offered for sale for at least 60 days following the date of this notice. The public land is described as follows:

MIES–043236

T. 41N., R. 7E., Sec. 30, Lot 3, Michigan Meridian, Drummond Township, Chippewa County, Michigan (containing approximately 2.50 acres);

The public land described above is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice in the **Federal Register**, whichever occurs first.

The public land will be offered for sale at a public auction beginning at 10 a.m. CST, on March 15, 1993 at Reuss Federal Plaza, Suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203. This sale will be by modified competitive procedures. Mr. Thomas A. McCaskill will be given the opportunity to meet the highest bid received at public auction. Sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Milwaukee District Office at Reuss Federal Plaza, Suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, no later than 3 p.m. CST on March 12, 1993. Bid envelopes must be marked on the left front corner with MIES–043236 and March 15, 1993. Bids must be for not less than the appraised FMV specified in this notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the U.S. Department of the Interior, BLM for not less than 10 percent of the amount bid.

The terms and conditions applicable to the sale: (1) All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Milwaukee District Office; and

(2) There is no legal access to the parcel because it is landlocked by the adjacent parcel to the north. There is physical access to the parcel by boat.

Federal law requires that all bidders must be U.S. citizens, 18 years or older, or in the case of corporations, be subject to the laws of any State of the United States. Proof of these requirements must accompany the bid.

Under modified competitive sale procedures, an apparent high bid will be declared at public auction. The apparent high bidder and the designated bidder (Mr. Thomas A. McCaskill) will be notified. The designated bidder shall have fifteen (15) days from the date of notification to exercise the preference consideration given to meet the high bid. Should the designated bidder fail to submit a bid that matches the apparent high bid within the specified time period, the apparent high bidder shall be declared high bidder. The total purchase price for the land shall be paid with 180 days of the date of the sale.

Detailed information concerning the sale, including the reservations, procedures for and conditions of sale, planning and environmental documents, are available at the Milwaukee District Office.

DATES: On or before February 19, 1993, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. In the absence of objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT:

Duane Marti, Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631; telephone number (414) 297–4429.

Gary D. Bauer,

District Manager.

[FR Doc. 93–6 Filed 1–4–93; 8:45 am]

BILLING CODE 4310–GJ–M

Minerals Management Service

Outer Continental Shelf (OCS) Oil and Gas Information Program

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Minerals Management Service has recently released a publication entitled "Accidents Associated with Oil and Gas Operations, Outer Continental Shelf, 1956–1990, OCS Report MMS 92–0058." This 324-page report is a compilation of descriptions of all blowouts, explosions and fires, pipeline breaks or leaks, significant pollution incidents, and major accidents that occurred on federally leased offshore lands for 1956 through 1990.

The report identifies accidents by area, block number, lease number, platform number, well number, and operator. It describes the type of accident, corrective action taken, and the amount of pollution. It provides figures on fatalities, injuries, and property and environmental damage.

ADDRESSES: This OCS REPORT, MMS 92–0058, is available for inspection at the Technical Communication Services; Document Distribution Center; Minerals Management Service, Mail Stop 4530; 381 Elden Street, room 1317; Herndon, Virginia 22070–4817, telephone (703) 787–1080. Copies of this report can be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Lloyd M. Tracey; Engineering and Standards Branch; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: This report is published pursuant to 30 CFR part 252—OCS Oil and Gas Information Program, 44 FR 46408, August 7, 1979. An outline of the contents of the report is set forth below.

Accidents Associated with Oil and Gas Operations in the OCS.

I. Introduction

II. Gulf of Mexico (GOM) OCS Region

Table 1, Crude Oil and Condensate Spill Incidents of 200 or More Barrels, OCS—GOM.

Table 2–A, Accidents Associated with Oil and Gas Operations on the OCS, GOM, Blowouts.

Table 2–B, Accidents Associated with Oil and Gas Operations on the OCS, GOM, Explosions and Fires.

Table 2–C, Accidents Associated with Oil and Gas Operations on the OCS, GOM, Pipeline Breaks or Leaks.

Table 2–D, Accidents Associated with Oil and Gas Operations on the OCS, GOM, Significant Pollution Incidents, 50 bbl (2,100 gal) or More.

Table 2–E, Accidents Associated with Oil and Gas Operations on the OCS, GOM, Major Accidents.

III. Pacific OCS Region

Table 3, Crude Oil and Condensate Spill Incidents of 200 or More Barrels, OCS—Pacific.

Table 4–A, Accidents Associated with Oil and Gas Operations on the OCS, Pacific, Blowouts.

Table 4–B, Accidents Associated with Oil and Gas Operations on the OCS, Pacific, Explosions and Fires.

Table 4–C, Accidents Associated with Oil and Gas Operations on the OCS, Pacific, Pipeline Breaks or Leaks.

Table 4–D, Accidents Associated with Oil and Gas Operations on the OCS, Pacific, Significant Pollution Incidents, 50 bbl (2,100 gal) or More.

Table 4–E, Accidents Associated with Oil and Gas Operations on the OCS, Pacific, Major Accidents.

IV. Alaska OCS Region

Table 5–E, Accidents Associated with Oil and Gas Operations on the OCS, Alaska, Major Accidents.

V. Atlantic OCS Region

Table 6–E, Accidents Associated with Oil and Gas Operations on the OCS, Atlantic, Major Accidents.

VI. Summary Tables for the Entire OCS

Table 7, Summary of Crude Oil and Condensate Spill Incidents of 200 or More Barrels, OCS.

Table 8, Summary of Accidents Associated with Oil and Gas Operations on the OCS, 1956–1990.

VII. Graphs of Data Pertaining to Accidents Associated With Oil and Gas Operations on the OCS

Figure 1, Crude & Condensate Spills≥200 bbl, OCS—GOM.

Figure 2, Crude & Condensate Spills≥200 bbl, OCS—Pacific.

Figure 3, Volume of Crude & Condensate Spilled, OCS—GOM.

National Park Services

Cape Cod National Seashore; South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; 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 10), that meetings of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 22, 1993.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, of his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The commission members will meet at 1 p.m. on Friday, January 22, 1993, for a regular business meeting which will convene at Park Headquarters for the following reasons:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting.
3. Reports of Officers.
4. Superintendent's Report.
5. Water Resources on the Lower Cape.
6. Land Acquisition Program.
7. New Business.
8. Agenda for Next Meeting.
9. Date for Next Meeting.
10. Communications/public comment.
11. Adjournment.

The business meetings are open to the public. It is expected that 15 persons will be able to attend each meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meetings or file written statements. Such requests should be made to the park superintendent at lease seven days prior to the meeting. Further information concerning these meetings may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: December 23, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 93–17 Filed 1–4–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 26, 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 January 21, 1993.

Antionette J. Lee,

Acting Chief of Registration, National Register.

ALABAMA

Cullman County

Greene, Ernest Edward, House, 105 6th Ave. SE., Cullman, 92001828

Dallas County

Plattenburg, Wesley, House, 601 Washington St., 92001827

Jefferson County

Rickwood Field, 1137 2nd Ave. W., Birmingham, 92001826

Perry County

Judson College Historic District, Roughly bounded by E. Lafayette, Curb, Mason and Washington Sts., Marion, 92001825

Randolph County

Roanoke Downtown Historic District, Roughly, jct. of Main, West Point, Chestnut, Louina and Knight, and Main E to Trammell and West Point E to Church, Roanoke, 92001829

Tuscaloosa County

Murphy—Collins House, 2601 Paul Bryant Dr., Tuscaloosa, 92001824

ARIZONA

Maricopa County

Story, F. O., Neighborhood Historic District (Boundary Increase), Roughly bounded by 17th Ave., Culver St., 15th Ave. and Lynwood St., also lots on Roosevelt St. and McDowell Rd., Phoenix, , 92001834

ARKANSAS

Johnson County

Science Hall, University of the Ozarks, University of the Ozarks campus, W of AR 103, Clarksville, 92001830

FLORIDA

Orange County

Huttig, John N., Estate, 435 Peachtree Rd., Orlando, 92001776

LOUISIANA

East Baton Rouge Parish

Les Chenes Verts (Louisiana's French Creole Architecture MPS), Jct. Highland Rd. and Jean Lafitte Ave., Baton Rouge, 92001831

Ory House (Louisiana's French Creole Architecture MPS), Jct. of Highland Rd. and Jean Lafitte Ave., Baton Rouge, 92001818

St. Tammany Parish

Salmen, Albert, House, 213 Cleveland Ave., Slidell, 92001822

Tangipahoa Parish

Reed Farmstead Log Dependencies, LA 445, Husser vicinity, 92001821

West Feliciana Parish

3 V Tourist Court, 111 E. Commerce St., St. Francisville, 92001832

NEW MEXICO

Dona Ana County

San Jose Church, 317 Josephine St., La Mesa, 92001817

McKinley County

Vogt. Evon Zartman, Ranch House, 1 mi; S of Ramah, 500 ft. E of NM 53, Ramah vicinity, 92001819

NORTH CAROLINA

Dare County

First Colony Inn, 6720 S. Virginia Dare Trail, Nags Head, 92001835

OKLAHOMA

Garfield County

Champlin, N. H., House, 612 S. Tyler, Enid, 92001833

PENNSYLVANIA

Blair County

Tyrone Borough Historic District, Roughly bounded by W. 14th St., Logan Ave., Bald Eagle Ave., the Little Juniata R., W. 8th St. and Jefferson Ave., Tyrone, 92001823

TENNESSEE

Monroe County

Scott Mansion, Scott Mansion Rd., about 1¼ mi. E of TN 68, Tellico Plains, 92001816

TEXAS

Kleberg County

Ragland, John B., Mercantile Company Building, 201 E. Kleberg Ave., Kingsville, 92001820

[FR Doc. 93–13 Filed 1–4–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–560 (Final)]

Sulfanilic Acid From Hungary

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: Effective October 22, 1992, the Commission instituted the subject investigation and established a schedule for its conduct (57 FR 54420, November 18, 1992). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from December 29, 1992 to February 3, 1993 (57 FR 57729, December 7, 1992). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's schedule for the investigation is revised as follows: a supplemental brief addressing only the final antidumping determination of the Department of Commerce is due on February 8, 1993; the brief may not exceed five (5) pages in length. The other dates announced in the Commission's notice of investigation cited above are unchanged.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR party 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: December 28, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–34 Filed 1–4–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32212]

Soo Line Railroad Co.; Trackage Rights Exemption; Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) has agreed to grant overhead trackage rights to Soo Line Railroad Company over IHB's line extending between IHB's connection with Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT) at GTW Tower, in Blue Island, and IHB's connection with B&OCT at CP Calumet Park, in Calumet City, IL. The trackage rights were to become effective on December 18, 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: Larry D. Starns, 1000 Soo Line Building,

105 South Fifth Street, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *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).

Decided: December 28, 1992.

By the Commission, Julia M. Farr, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–58 Filed 1–4–93; 8:45 am]

BILLING CODE 7035–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory committee on bankruptcy rules.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules. The meeting will be open to public observation but not participation. The meeting will commence at 9 a.m.

DATES: February 18–19, 1993.

ADDRESSES: Innisbrook Hotel, Tarpon Springs, Florida 34688–1088.

FOR FURTHER INFORMATION CONTACT: Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: December 16, 1992.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–23 Filed 1–3–93; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–7603]

Metropolitan Life Insurance Co.; Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption relates to the establishment and operation by Metropolitan Life Insurance Company (Met) of an open-ended commingled real estate equity separate account (the Separate Account) in which certain plans (the Participating Plan or Participating Plans) invest.

EFFECTIVE DATE: If granted, this exemption would be effective as of September 21, 1989, the first date a transaction described in Section I(a) herein occurred.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 19, 1993.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–7603. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and from 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. The proposed exemption was requested in an application filed by Met pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). 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 requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.[1]

Summary of Facts and Representations

1. Met is a mutual life insurance company organized under the laws of the State of New York. Met represents that it is the second largest life insurance company in the United States and that it provides insurance products and asset management and other services for numerous employee benefit plans subject to the provisions of title I of the Act. As of December 31, 1991, Met had under management in its general account (the General Account) and all of its separate accounts, a portfolio of mortgage loans and real estate equities of approximately $28.1 billion. During 1991, approximately $900 million was invested in real estate investments. As of December 31, 1991, real estate investments comprised approximately 29% of all the assets of Met.

2. The Separate Account is an open-ended commingled real estate equity separate account which had a net asset value of $104.8 million, as of May 31, 1992. It is represented that the Separate Account is marketed primarily as an investment for defined contribution plans. Met believes that there is significant need for a pooled investment which can provide interests in equity real estate investments to participants in defined contribution plans, but believes that liquidity requirements have largely restricted the utilization of such pools to defined benefit plans. Met, however, has developed a mechanism which Met represents permits the Separate Account to offer an undiluted real estate equity return to defined contribution plans without sacrificing the ability of individual participants of such plans to contribute to, or withdraw investments from, such Separate Account on a daily basis.

Met represents that the cash to facilitate the liquidity needs of the Separate Account is obtained from the following sources: (a) The contributions to the Separate Account by Participating Plans either directly or on behalf of the individual participants in Participating Plans; and (b) the amounts attributable to transfers of balances from other investment funds in such plans to the Separate Account by individuals in Participating Plans pursuant to individual participant direction. When amounts from sources (a) and (b), described above, are inadequate to

[1] For purposes of this proposed exemption references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

satisfy net withdrawal requests from Participating Plans or from individual participants, Met's General Account proposes to provide liquidity to the Separate Account by purchasing units from the Separate Account (the Units). Transactions involving purchases of the Units by Met's General Account are discussed in paragraphs #5 and #6 below.

It is represented that the operation of the Separate Account may generate cash, either as a result of income from rents from real estate investments, from other temporary investments, or from receipts from the sale of such investments, prior to reinvestment of such earnings and proceeds by the Separate Account. From such sources of cash, the Separate Account may, as needed from time to time, reserve amounts for payment of projected operating expenses and other liabilities on the real estate investments held in the Separate Account. However, for the purposes of responding to requests from any of the Participating Plans to withdraw all investments from the Separate Account or from individual participants in any of the Participating Plans to transfer amounts from the Separate Account to other investment vehicles, Met does not maintain a reserve in the Separate Account. Met represents that such a reserve would dilute the rate of return from the real estate assets of the Separate Account.

3. In order to optimize the efficient operation of the Separate Account and to assure that an appropriately diversified portfolio of properties (the Property or Properties) was available to offer to plans interested in participating, Met believed that initially the Separate Account needed an investment pool of approximately $100 million dollars. Met represents that when newly established, the Separate Account could not rely on obtaining such an amount from Participating Plans within a short period of time in order to commence operation with an appropriately diversified portfolio. As a result, prior to the first purchase of any Units in the Separate Account by Participating Plans, Met's General Account contributed certain amounts as seed money (the Seed Money) to the Separate Account, during a start up period (the Start Up Period) in order to provide for such a portfolio of Properties.

In exchange for its initial contribution of Seed Money, Met received Units of the Separate Account representing 100% of the value of the Separate Account at that time. Thereafter, as Properties[2] were identified as investments for the Separate Account, Met continued to contribute Seed Money and receive Units.[3] Each time money was generated by incoming net contributions from Participating Plans or from subscriptions paid by plans choosing to participate in the Separate Account, Met withdrew portions of its Seed Money from the Separate Account. Such withdrawals of Seed Money were accomplished by the redemption of Met's Units in the Separate Account at the value of such Units on the date when redeemed. Met represents that it will continue to withdraw Seed Money until the total amount of Seed Money ultimately returned to Met will equal the lesser of: (1) The amount (not to exceed $100 million) actually contributed by Met to the Separate Account in order to acquire the Properties, or (2) the amount received by Met when the Units it acquired in exchange for its contributions of Seed Money are redeemed at their then current value. It is anticipated that following the return of the Seed Money, by means of sufficient redemptions of Met's Units, Met would have little, if any, interest in the Separate Account.[4]

Whenever net participant contributions are received from Participating Plans, such net contributions are automatically applied to redeem the Units which were obtained by Met as discussed in paragraph #3 above. It is represented that until all of Met's Units, both those acquired upon contributions of Seed Money and those acquired from time to time in order to provide liquidity to the Separate Account, are redeemed, Met has no discretion to cause new net participant contributions to be invested in additional Properties.

4. The Start Up Period for the Separate Account began on December 21, 1988, the date on which Properties were first acquired by the Separate Account using Seed Money. The Start Up Period will end on the earliest to occur of: (a) The expiration of four years following the beginning of the Start Up Period, or (b) the first date, after the total value of the Separate Account has reached $100 million, and on which the percentage of the total number of Units owned by Met in the Separate Account is ten percent (10%) or less. Met represents that in December 1988, it began operation of the Separate Account under the rules and procedures of the Separate Account which are consistent with the terms and conditions as set forth in this proposed exemption, even though no plans were participating in the Separate Account at that time and even though Met then owned 100% of the Units in the Separate Account.

5. During the operation of the Separate Account, it is represented that Met's ownership of Units rises and falls essentially on an automatic basis, as either: (1) Met sells Units when there is a net contribution amount in the Separate Account, or (2) Met purchases Units to provide liquidity to the Separate Account to the extent requests for withdrawals from Participating Plans or from individual participants exceed new contributions or transfers. Although Met's Unit share may increase during the Start Up Period by reason of Met's continuing contributions of Seed Money or by its acquisition of Units in order to provide liquidity to the Separate Account, it is represented that such share in the Separate Account will not be increased by a purchase of Units

[2] It is represented that the Properties purchased by Met for the Separate Account are small- to medium-sized retail and office buildings, light industrial facilities, and residential apartment space which range in value up to $15 million and which have good operating income. It is represented that the Properties reflect geographical and investment diversification. Met believes that these types of Properties as investments for the Separate Account are appropriately acquired on a fee interest basis with the ownership of the Properties to be held entirely in the Separate Account.

[3] Met represents that as of June, 1991, its General Account had contributed Seed Money of approximately $100 million to the Separate Account.

[4] Met believes that the analysis contained in Advisory Opinion 83–38A (July 22, 1983) is applicable to Met's transfer of the Seed Money to the Separate Account, and to the Separate Account's redemption of Units from Met which were acquired when Met contributed Seed Money to the Separate Account. This opinion held that seed money allocated to separate accounts by an insurance company in order to aid in the start-up and management of those accounts would not be treated as assets of the plans which invested in the separate accounts, and that the redemption by the insurance company of participation units in the separate accounts would not constitute a violation of the prohibited transaction provisions of the Act, solely by reason of the transfer of seed money from the separate accounts to the insurance company's general account. In this regard, Met maintains that similar transfers of seed money between its Separate Account and its General Account do not violate section 406(a)(1) (A) and (D) or section 406 (b)(1) and (b)(2) of the Act. Thus, the Department is offering no relief, herein, for the transfer of the Seed Money into the Separate Account or the redemption by the Separate Account of Met's Units acquired with the Seed Money, as above described. The Department notes that Advisory Opinion 83–38A did not address the situation involving the redemption of units of the separate account by the insurance company, when, at the same time, there were outstanding requests for redemption by participating plans. As a result, the Department has determined to propose exemptive relief from September 21, 1989, the date, according to Met, when it first purchased Units of the Separate Account to satisfy net withdrawal requests from Participating Plans. (See Section I(a) of the proposed exemption, as set forth below, which provides an exemption for certain transactions involving the purchase of Units of the Separate Account by Met.)

by Met for any other reason. Met recognizes the potential that, through the purchases of Units to provide liquidity, Met may retain an unanticipated level of ownership in the Separate Account. As the result of such purchases, Met's interest in the Separate Account may at any time after the end of the Start Up Period increase beyond a certain stated percentage of the total value of the Separate Account Units (the Trigger Point).[5]

In the event of such an increase beyond the Trigger Point through liquidity purchases of Units by Met from the Separate Account, Met proposes to reduce its percentage of ownership in the Separate Account: (a) Through the use of cash available in the Separate Account (Available Cash), or (b) through the use of monies generated by the sale of Properties from the Separate Account. In this regard, Available Cash is defined as the income and other amounts received by the Separate Account from rents and from other sources, such as temporary investments, that are not required to be held for projected expenses with respect to the Separate Account. It is represented that net contributions from Participating Plans would not be deemed Available Cash for this purpose. As discussed in paragraph #6 below, such net contributions from Participating Plans would have automatically been applied when received to redeem the Units held by Met.

These methods of reducing Met's ownership in the Separate Account to a percentage equal to or below the Trigger Point and the process of increasing and decreasing Met's interest in the Separate Account through purchases and sales of Units, involve transactions between the Separate Account and the General Account of Met. Further, because cash flows to and from the Separate Account, as a result of contributions, transfers or withdrawals by Participating Plans or by individual plan participants, are offset either on a plan by plan basis or will be aggregated for all Participating Plans before there is an acquisition or a disposition by Met of the Units it holds in the Separate Account, such acquisitions or dispositions could be viewed as indirect transactions between Met and the Participating Plans. Accordingly, Met has requested prohibited transaction relief for the above described transactions.

6. It is represented that Met offsets daily the amounts requested to be withdrawn or transferred by the Participating Plans and/or by individual participants against the amounts, during the same period, contributed by plans entering the Separate Account and/or transferred into the Separate Account from other investment vehicles. Met represents that the determination of whether there is a net contribution or net withdrawal in the Separate Account is a non-discretionary calculation that the Met pension administration group makes on the basis of aggregate cash flow information provided directly to them by various plan fiduciaries (the Plan Fiduciaries or Plan Fiduciary) of Participating Plans which hold Units in the Separate Account. It is represented that during the Start Up Period, any net withdrawals or contributions from the Separate Account on a given valuation date are determined separately for each Participating Plan. After the Start Up Period is completed, it is anticipated that the withdrawals and contributions for all Participating Plans will be aggregated for purposes of this determination.

In order to provide liquidity to the Separate Account, whenever a net withdrawal occurs, Met purchases additional Units sufficient to provide the cash needed to meet the amount of the withdrawal requests. Whenever a net contribution results after withdrawal requests are satisfied, such net contribution amounts are applied to the sale of Units held by Met for the purpose of reducing Met's ownership interest in the Separate Account. If, at that time, Met owns no Units, then any net contribution creates new Units at the current Unit value and the net cash inflows into the Separate Account accumulate until sufficient to purchase additional Properties.[6]

Cash amounts necessary to provide liquidity to the Separate Account or to reduce Met's ownership in the Separate Account are transferred into and out of the Separate Account and are converted into and out of Units daily. In this regard, Met guarantees liquidity to the individual participants in Participating Plans invested in the Separate Account at the current daily value of the Units of the Separate Account. It is represented that payouts to such individual participants are made in accordance with any limitations on the timing or frequency of such payouts which may be imposed under applicable plan provisions.

Notwithstanding guaranteed liquidity to individual participants, it is represented that under certain circumstances limitations on the timing or frequency of payouts are imposed by Met upon requests for transfers and withdrawals which are initiated by the sponsor of a Participating Plan. However, such limitations apply only if: (1) The sponsor initiated transfer or withdrawal exceeds $5 million for each Participating Plan that is transferring or withdrawing, and (2) individual participants in such Participating Plans will not be receiving the amounts transferred or withdrawn. In such event, on the last business day of each succeeding month until the full amount is distributed, Met proposes to make monthly payments in installments of about $5 million to each Participating Plan that is transferring or withdrawing. If the total amount transferred or withdrawn by a Participating Plan is $60 million or more, Met represents that payments of approximately equal installments will be made on the last business day of the month over a period of twelve (12) months. However, it is represented that, regardless of the dollar limitations imposed on distribution amounts when the sponsor of a Participating Plan initiates a transfer or withdrawal, if the money is intended for distribution to the individual participants in a Participating Plan, Met will immediately make payments in full.

Met represents that all payouts will be at the prevailing value of the Units on the date the payout is made. Met states that any other method for fixing the value of payments would result either in the Participating Plans that remain in the Separate Account subsidizing the transferring or withdrawing plans, if the value of the Units has fallen, or, conversely, obtaining a windfall at the expense of the transferring or withdrawing plans, if the value of Units has risen. Met represents that these rules should not result in any inequities with respect to the transferring or withdrawing plans because: (1) The Plan Fiduciary prior to investing in the Separate Account is informed of the rules governing all distributions of this type, and (2) the participants in

[5] It is represented that the Trigger Point is the point at which Met's ownership in the Separate Account may be decreased with the approval of or as required by an independent fiduciary (the Independent Fiduciary). The Independent Fiduciary, acting on behalf of the Plans in the proposed transactions sets the percentage of Met's ownership of Units in the Separate Account which serves as the Trigger Point. See paragraph (d) of Section IV, herein, for a description of the independence, qualifications, and duties of the Independent Fiduciary. It is represented that the Trigger Point will arise only after the end of the Start Up Period. It is anticipated that following the end of the Start Up Period, the Trigger Point will not exceed ten percent (10%).

[6] In this regard, if one of the Properties were sold during the Start Up Period, it is represented that the proceeds of such sale also would be accumulated in the Separate Account and be used for reinvestment in new Properties, but would not be used to reduce Met's ownership in the Separate Account.

transferring or withdrawing plans always have the opportunity, as individuals, to transfer or withdraw from the Separate Account on any date. Although it is acknowledged that such individual participant action, as described in item (2) above, could not be effected for sponsor initiated transfers or withdrawals from the Separate Account by Participating Plans which maintain balanced funds, Met believes that the prior disclosure of the rules to the Plan Fiduciaries of such plans provides sufficient protection.

7. It is represented that when the Separate Account was first established, the initial value of each of the Units in the Separate Account was set at $100. Thereafter, the value of one of the Units equals the total value of the net assets of the Separate Account divided by the number of outstanding Units in the Separate Account divided by the number of outstanding Units in the Separate Account. It is represented that establishing the initial value for the Units at $100 afforded a reasonable starting point for determinations of Unit value and provided a basis for applying appropriate earnings factors, obtained through periodic valuations of the Properties in the Separate Account. It is represented that such $100 initial value has been a standard initial unit value for pooled separate accounts established by Met.

Met represents that the specified valuation rules and procedures, which are more fully described below, have been used by Met and the Independent Fiduciary in the operation of the Separate Account. In order to calculate the value of the Units, each of the Properties held in the Separate Account was valued initially at the price at which it was acquired. Thereafter, an independent qualified appraiser designated by Met and approved by the Independent Fiduciary has appraised and will appraise each of the Properties at least annually (the Annual Appraisals) on the anniversary date of purchase.[7] It is represented that replacement cost, comparable sales, discounted cash flow, current and projected occupancy levels, market conditions, and the condition of the Properties have been and will be considered by the independent qualified appraiser in the Annual Appraisals of the Properties. It is represented that the cost of the Annual Appraisals, such other appraisals as are necessary, and the cost of hiring the Independent Fiduciary were and will be charged to the Separate Account as a direct operating expense.

It is represented that Met's staff, in addition to the independent qualified appraiser, has conducted and will conduct an appraisal, as of December 31, of each year, for each of the Properties in the Separate Account. As more fully described in paragraphs #9 and #10 below, the Independent Fiduciary, as final determinant of value, selects the appropriate estimate from among conflicting values for any of the Properties, if any exists between Met's annual appraisals or the Annual Appraisals prepared by the independent qualified appraisers.

8. This annual value approved by the Independent Fiduciary for any of the Properties may be updated by Met every three months (the Quarterly Updates). In making Quarterly Updates, Met's staff reviews its own December 31st appraisal of each of the Properties, as well as the Annual Appraisals prepared by the independent qualified appraisers, and, if necessary, updates of both these appraisals. Met represents that these Quarterly Updates are performed on the quarterly anniversary of the property purchase date (See, footnote 7), and are not matched to the calendar quarter. Met represents that it takes into consideration in the Quarterly Updates the current rate of interest and inflation, occupancy levels, cash flow, regional and local market conditions, and other relevant factors, such as the availability of comparable space and whether there have been changes in access roads or other transportation facilities. As described more fully in paragraphs #9 and #10 below, the Independent Fiduciary has a substantial role in approving these adjustments to the value of the Properties.

In addition, Met has reviewed and will review the value of any of the Properties at the end of every month (the Monthly Reviews) where such Properties are not otherwise subject to Annual Appraisals, Quarterly Updates, or the yearly appraisals performed by Met on December 31. The purpose of the Monthly Reviews is to note whether there has been a material change in the value of any of the Properties resulting from a change, for example, in occupancy rate or leasing activity, rather than from fluctuations in general economic conditions. Met represents that in the operation of the Separate Account it rarely has changed the value of the Properties during these Monthly Reviews.

In addition to appraising, updating, and reviewing the value of the Properties, Met has calculated and will calculate the daily accrued value of the Units (the Daily Accruals). It is represented that the accrued value of a single Unit is based daily on the projected aggregate net monthly income of the Properties divided by the number of days in the month and by the number of Units outstanding for the Separate Account. Met compares this process to one employed with a fixed income obligation where interest is credited on a daily basis but is not distributed. Actual aggregate income and expense figures for the Properties, as determined in each prior month, are used to set income and expense projections for the succeeding month. It is represented that the amount of these monthly projections are communicated to, monitored by, and, where necessary, adjusted by the Independent Fiduciary. Met represents that because these Daily Accruals are based on net income, increases in the value of the Separate Account may occur. However, unlike the Annual Appraisals, Quarterly Updates, and Monthly Reviews, the Daily Accruals generally do not change the value of underlying Properties in the Separate Account. However, Met recognizes that certain events such as natural disasters may cause immediate and significant change to the value of the Properties which would be reflected in the Daily Accruals of the value of the Units. To date, Met represents that no such adjustment has occurred.

It is represented that Met has determined and will determine the value of all assets besides real estate in the Separate Account in a manner similar to the way such values would be determined if they were held in a non-real estate account in which group contract holders participate. It is represented that pending permanent investment in real estate, assets of the Separate Account (other than cash reserved to pay projected operating expenses) are invested in short-term securities, such as discount notes and interest-bearing notes. Met represents

[7] It is represented that when the Separate Account began Met: (1) Expected the Separate Account to acquire Properties in an evenly distributed fashion throughout the calendar year, and (2) intended the cycle of Annual Appraisals to cause Properties comprising different portions of the Separate Account and approximately 25% of the value of the Separate Account to be appraised by an independent qualified appraiser every three months. However, based on the dates when the Separate Account actually acquired Properties, Met represents that it may be necessary to adjust the timing of the Annual Appraisals for certain Properties in order to achieve a better balance of Annual Appraisal dates throughout the year. Met represents that any adjustments which may be made to the timing of the Annual Appraisals will be effected by accelerating the date when such Annual Appraisals are due, rather than by deferring them. Further, Met's adjustments to the timing of the Annual Appraisals would not cause the appraisals of the Properties prepared by the independent qualified appraisers to occur any less frequently than annually.

that the daily market value for both of these types of securities is done through an automated security accounting system. It is represented that all valuation procedures utilized by Met regarding property values in the Separate Account are approved and supervised by an Independent Fiduciary, as more fully described in paragraphs #9 and #10 below.

9. Following a procedure outlined in paragraph #14 below, Met appointed an Independent Fiduciary who assumed full fiduciary responsibilities under ERISA with respect to certain specified activities of the Separate Account. The Independent Fiduciary approved, prior to their adoption, the investment guidelines and valuation procedures of the Separate Account under which the day-to-day investment or valuation decisions by Met for the Separate Account have been made. Thereafter, the Independent Fiduciary is also responsible for approving any changes to such investment guidelines and valuation procedures.

In connection with the valuation of the Properties in the Separate Account, the Independent Fiduciary is responsible for approving Met's selection of the independent qualified appraisers who perform the Annual Appraisals of the Properties and for removing any names from the list of previously approved appraisers.

10. It is represented that Met cannot alter through any of its review methods, without the prior approval of the Independent Fiduciary, the value of any one or more of the Properties, if such would either: (a) Result in a six percent (6%) increase or decrease in the value of any of the Properties, since the last Annual Appraisal by a independent qualified appraiser; or (b) result in a greater than two percent (2%) increase or decrease in the value of the Separate Account, as determined in the prior month. As a further limitation, Met represents that within any quarter the aggregate increase or decrease in the value of the Separate Account, as a result of alterations in the valuation of Properties in the Separate Account by Met, will in no event exceed, without the approval of the Independent Fiduciary, four percent (4%). It is represented that any changes in value which exceed such percentage limitations and all independent appraisals have been and will be approved by the Independent Fiduciary prior to inclusion in a calculation of a value for the Units of the Separate Account.

In addition to the percentage limitations discussed above, it is represented that any adjustments, which are made by Met to the value of the Properties during the first three months after receipt of an Annual Appraisal prepared by an independent qualified appraiser, are made only after discussion with and approval by the Independent Fiduciary. Further, it is represented that the Independent Fiduciary has the discretion at any time: (a) To adjust the appraised value for any of the Properties in the Separate Account, if in the Independent Fiduciary's judgment and experience the characteristics of any of the Properties have changed, or (b) to order an additional independent appraisal of any of the Properties, if the Independent Fiduciary deems such to be necessary or appropriate to assure a correct value of such Properties or of the Separate Account.

11. It is represented that because Met acts as investment manager of the Separate Account, the Independent Fiduciary is not primarily responsible for the management of the Separate Account's assets it terms either of policy or operation. However, while the Independent Fiduciary is not ordinarily involved in the day-to-day investment management of the assets of the Separate Account, the Independent Fiduciary will be directly involved in the management and disposition of the Properties in the Separate Account at two points in time. The first point, the Trigger Point, occurs at any time after the end of the Start Up Period where the value of Met's Unit participation in the Separate Account exceeds a certain percentage of the total value of the Separate Account Units, as agreed upon between Met and the Independent Fiduciary. The second point occurs upon termination of the Separate Account.

As noted earlier, it is intended that Met's interest in the Separate Account after the Start Up Period will not exceed a certain percentage (anticipated to be ten percent (10%) or less) established as the Trigger Period by the Independent Fiduciary. However, it is recognized that if plans do not participate in the Separate Account to a sufficient degree during the Start Up Period, and/or if the Separate Account experiences a period of substantial net withdrawals, Met may retain or obtain more than ten percent (10%) interest in the Separate Account and such interest may exceed the percentage established as the Trigger Point. In this event, Met proposes after the end of the Start Up Period to reduce its percentage of ownership in the Separate Account through the use of: (a) Available Cash, as defined in Section IV(c), in the Separate Account; or (b) monies generated by the sale of Properties from the Separate Account.

It is represented that the Independent Fiduciary has the authority to: (1) Set the percentage of the Trigger Point, (2) establish a method to implement any changes in the Trigger Point, and (3) adjust the percentage for specified periods of time and to a specified extent, if the Independent Fiduciary believed such is in the best interest of the Separate Account. The Independent Fiduciary at the Trigger Point also has authority to approve or to require the reduction of Met's interest in the Separate Account, if, in the view of the Independent Fiduciary, such reduction is in the best interest of the Participating Plans in the Separate Account. Before Met's participation may be reduced by the use of Available Cash in the Separate Account, it is represented that Met will consult and agree with the Independent Fiduciary as to whether such method is appropriate. if, rather than use the Available Cash in the Separate Account, a sale of assets from the Separate Account is necessary in the opinion of Met and the Independent Fiduciary in order to reduce Met's ownership below the Trigger Point, the Independent Fiduciary will participate in the planning of any such program of sales, including the selection of the Properties to be sold and the determination of the guidelines to be followed in making such sales. If a difference of opinion arises between Met and the Independent Fiduciary, the decision of the Independent Fiduciary controls. It is represented that the Independent Fiduciary may require independent appraisals at the time any Properties are sold.

12. In addition to controlling the Trigger Point, the Independent Fiduciary is responsible for the activity of the Separate Account in the event of its termination and during the subsequent liquidation of its assets. During such liquidation, it is represented that the Independent Fiduciary has the ability to supervise the operation of the Separate Account, to approve all sales of Properties in the Separate Account, to approve the order in which such Properties are sold by the Separate Account, to set the price for such Properties, and to determine the timing of the disposition of those Properties.

Met, however, retains the authority to terminate the Separate Account. This decision would result in the wind-down of the operations of the Separate Account (the Wind Down). The Wind Down will begin on the date on which Met notifies all Participating Plans of its decision to terminate the Separate

Account and will conclude on the date on which no Units are held by any of the Participating Plans. Such notification of termination must be provided to the Participating Plans one year in advance of the termination of the Separate Account. During this one year period, Met will accept new investment money from Participating Plans but will not allow new plans to participate in the Separate Account. It is represented that during this one year period the Separate Account would continue to function as described in this proposed exemption, would honor withdrawal requests, and would accept contributions and transfers from Participating Plans and from individual participants. After this one year period has ended, no new money from any source would be taken by the Separate Account.

The Separate Account provides rules and procedures applicable during the Wind Down for the orderly redemption of the Units under two different circumstances: (a) Those applicable to redemptions of Units held by individual participants, and (b) those applicable to redemption of all of the Units owned by participating Plans. Both sets of rules and procedures are disclosed to and reviewed by the Plan Fiduciaries before any plan invests in the Separate Account. It is represented that the application of either set of rules and procedures does not involve the exercise of discretion by Met. Met has no authority with respect to the operation of the Separate Account that would permit Met to require any individual participant or any Participating Plan to leave the Separate Account or to reduce any individual's or any Participating Plan's level of participation in the Separate Account. It is represented that to the extent necessary to provide liquidity in either circumstance, Met's General Account will be required to acquire Units from the Separate Account.

Under the rules applicable to the redemption of Units held by individual participants, it is represented that such participants in any Participating Plan may continue to withdraw without limitation from the Separate Account during the Wind Down under the Separate Account procedures described in paragraph #6 of this proposed exemption.

On the other hand, Met represents that the rules applicable to redemptions of the Units held by Participating Plans during the Wind Down are a function of the size of the Participating Plans' interests in the Separate Account and are similar to the limitations imposed upon sponsor initiated transfers and withdrawals, as described above in paragraph #6 of this proposed exemption. Under these rules, if the value of the Units held by a Participating Plan on the effective date of the termination of the Separate Account (i.e. at least one year after notice of termination has been provided by Met), is less than $5 million, the entire interest of each such Participating plan will be redeemed. If the value of a Participating Plan's interest in the Separate Account is in excess of $5 million on the effective date of the termination, the distribution of the value of such Units shall be made pro rata over no longer than a twelve month period. Under these rules, each monthly payment over the course of the twelve month period (apart from the final payment) will be at least $5 million. During the Wind Down period in order to provide further flexibility for Participating Plans, the Separate Account provides that any Participating Plan may elect to defer redemption with respect to its Units in the Separate Account and maintain its participation in the final distribution of money in the Separate Account to the Participating Plans who choose to remain will occur only after all the Properties have been sold. Under this procedure, the rules discussed above for the orderly redemption of Units in the event the Separate Account is terminated would not be applied to a Participating Plan that elects to continue its investment in the Separate Account. However, any Participating Plan which elects to stay invested in the Separate Account could, at any time prior to the final distribution, begin the redemption of its Units in accordance with the rules discussed above which govern redemption of Units during the Wind Down. Upon termination and liquidation of the Separate Account, any Units held by Met will be the last Units redeemed.

13. In order to fulfill its responsibilities with respect to the Separate Account, the Independent Fiduciary receives a variety of written reports on a monthly basis (the Monthly Reports) which detail the activity in the Separate Account. The information contained in the Monthly Reports includes, but is not limited to, descriptions of investment decisions made by the Met portfolio manager of the Separate Account, operating results from the Properties (including variances from projections), as well as information with respect to the daily values, of Units, cash flow in and out of the Separate Account, and the percentage of Units held by Met in the Separate Account, as of the end of each month. The Reports provide information with respect to current values of the Properties reflected in the Quarterly Updates, and the Monthly Reviews, and such incremental adjustments in the value of the Units, as is reflected in the Daily Accruals of income and expenses.It is represented that the Independent Fiduciary also receives copies of: (a) Annual audits of the Separate Account prepared by independent auditors, (b) Annual Appraisals prepared by independent appraisers and by Met, and (c) any other reasonably available information or materials which Met believes to be necessary or which are requested by the Independent Fiduciary. It is represented that the format of the Monthly Reports are developed by Met with assistance and approval of the Independent Fiduciary, and that the materials in the Monthly Reports are reviewed in regularly scheduled meetings between the Met portfolio manager and the Independent Fiduciary.

14. Landauer Associates, Inc. (Landauer) has been appointed by Met to serve as Independent Fiduciary. In this regard, Landauer has acknowledged in writing that it has assumed fiduciary responsibility on behalf of the assets of the Participating Plans invested in the Separate Account. Landauer represents that it has undertaken to perform the duties of the Independent Fiduciary described in this proposed exemption for the exclusive benefit of the individual participants in the Participating Plans and their beneficiaries.

Landauer states that they are independent in that the gross income received by Landauer (or any partnership or corporation of which Landauer is a ten percent (10%) or more partner or shareholder) from Met and its affiliates (the Affiliates) for any fiscal year ending during the term of its agreement to serve as Independent Fiduciary shall not exceed five percent (5%) of its annual gross income from all sources for the preceding fiscal year. Such income limitation includes fees for services rendered to the Separate Account as the Independent Fiduciary for the proposed transactions. Further, Landauer states that it shall not (a) acquire any property from, sell any property to, or borrow any funds from, Met or any of its Affiliates during the period for which it serves as Independent Fiduciary, or (b) negotiate any such transaction during the period that Landauer serves as the Independent Fiduciary.

Landauer states that it is qualified in that it has at least five years of experience with respect to commercial

real estate investment. Landauer also represents that it has seven fully-staffed offices in the United States providing professional real estate counseling services nationwide. In addition, Landauer has provided teams of specialists who advise, appraise, negotiate, buy, sell, lease, finance, and manage portfolios for business, financial, and non-profit institutions.

It is represented that each of the Participating Plans was informed of the appointment of Landauer as the Independent Fiduciary for the Separate Account, and information regarding the role of the Independent Fiduciary was provided to the Plan Fiduciaries, prior to their decision to offer the Separate Account as an investment option under each respective plan. Further, it is represented that similar information with respect to Landauer or any successor Independent Fiduciary will be disclosed to the fiduciaries of plans prior to the investment in the Separate Account by plans in the future. A decision by a Plan Fiduciary on behalf of a plan to participate in the Separate Account after full disclosure has been made by Met will constitute approval and acceptance of Landauer or any successor Independent Fiduciary.

Landauer has been appointed by Met to a three (3) year term of office which is renewable for three (3) year terms from time to time without limitation. The renewal of Landauer's appointment is subject to the approval of the Plan Fiduciaries of Participating Plans in the Separate Account. It is represented that Landauer's appointment will not be renewed, if twenty-five percent (25%) of the Plan Fiduciaries of Participating Plans in the Separate Account disapprove.

It is further represented that Landauer will be subject to removal annually, with or without cause, if a majority of the Units held by Participating Plans in the Separate Account vote in favor of such removal, following receipt by the Participating Plans of an annual report on the Separate Account which details such procedure for removal. Met may terminate Landauer's appointment only "for cause," as set forth in the contract between Met and Landauer.

In addition, Landauer's appointment as Independent Fiduciary shall terminate by Landauer giving Met not less than 180 days notice of resignation from office in writing. In the event that Landauer resigns, Landauer's three (3) year appointment is not renewed, or Landauer is removed from its responsibilities as Independent Fiduciary, Met will nominate a successor and will seek approval of such nomination from the Plan Fiduciaries, other than Met acting in its individual capacity. It is represented that the nominee will not be appointed to serve as the Independent Fiduciary, if such nominee is disapproved by 25% of the Plan Fiduciaries. In the event of the disapproval of a nomination, a new nomination will be made and approval sought in the same manner as described above.

15. Landauer represents that it understands the Separate Account valuation procedure, as described in paragraphs #7 and #8 above. In Landauer's opinion, it is completely informed and understands the need for independence in the essential valuation structure and has scrupulously maintained an independent position with regard to Met and its staff. The operating experience which Landauer has had with the Separate Account, since it was established, has satisfied Landauer that the basic concept and the structuring of the relationship between Met, as investment manager, and Landauer, as Independent Fiduciary, protects against any manipulation of the Separate Account by Met.

Landauer has pointed out, however, that the valuation process is not a completely mechanical one. Landauer represents that the Daily Accruals of Unit values and, only to a slightly lesser extent, the Monthly Reviews of the values of the Properties may be considered somewhat mechanical, as such amounts are calculated by computer based upon information supplied by third party managers of the Properties and by the appraisers. With respect to the Quarterly Updates and Annual Appraisals performed by Met and by independent appraisers, Landauer represents that the judgment and perspective of the appraisers play a major role in the final estimation of value, even though a disciplined methodology, which is mathematical in nature, is used consisting of different approaches to value. Subject only to Landauer's discretion and judgment on the facts and circumstances in a particular situation, there are no restrictions, standards, or limitations on Landauer's right, as Independent Fiduciary, to alter valuations received from independent qualified appraisers and to obtain a new independent appraisal of any of the Properties at any time. Landauer represents that, over the period of time since the Separate Account was established, it has asked various independent appraisers for re-consideration of their valuation results and required additions, clarifications, and modifications. It is further represented that whenever there has been a difference of opinion about any particular valuation, Met has accepted and acceded to Landauer's judgment.[8]

It is represented that a written record is being maintained by Landauer of its appraisal functions and the rationale employed in estimating market value. Landauer also represents that it believes its monitoring process protects Unit holders to the maximum extent possible. While carrying out its responsibilities as Independent Fiduciary since the establishment of the Separate Account, as described above in paragraphs #9 and #10, Landauer represents that it has overseen the quality of the appraisal functions performed by Met and by outside independent qualified appraisers. Landauer states that it has physically observed the computer methodology employed by Met in arriving at Unit values set by the Daily Accruals and Monthly Reviews and has analyzed the mechanical calculations. In fulfilling its monitoring function, Landauer has also conducted surprise visits and scheduled visits to Separate Account Properties. With regard to monitoring the real estate valuation process, Landauer represents that it has also been and will be in contact with managing agents and account personnel.

16. Met, the investment manager of the Separate Account, acknowledges its status as a fiduciary pursuant to section 3(21) of the Act with respect to the assets of the Participating Plans which are invested in the Separate Account.[9]

[8] In the application file Landauer provides an example of one such occasion where Landauer believed that neither the appraisals prepared by Met nor the Annual Appraisals prepared by an independent qualified appraiser gave sufficient weight to the limited income growth potential inherent in the subject's long-term net lease and its impact on the value of the asset to other like-minded investors. In that instance, in the opinion of Landauer, the returns produced by Met's and the independent qualified appraiser's values, were not sufficiently attractive to market the property within a reasonable time framework. As a result, Landauer represents that it applied a moderately higher income capitalization rate to generate a slightly lower, yet more realistic estimate of market value for that property.

[9] The Department is not providing any relief herein with respect to the fees charged by Met to the Separate Account. In this regard, Met notes that its fee for serving as investment manager for the Separate Account is based upon 1.25% of the first $25 million of the net asset value of the holdings in the Separate Account and 1.00% of any amount in excess of $25 million. For purposes of determining the net asset value of holdings in the Separate Account, the amount of any indebtedness of the Separate Account reduces the value of the Separate Account upon which Met's fee is based. All fees are determined and withdrawn monthly from the Separate Account by Met and are reflected as a reduction in the return on the interests of the Participating Plans in the Separate Account. Such fees (including contingency charges) are apportioned among all the Participating Plans in the Separate Account, based upon each of the Participants Plans' dollar amount of investment.

As the investment manager of the Separate Account, Met acquires and disposes of the individual real estate Properties which comprise the assets of the Separate Account. In addition to being empowered as real estate manager, Met has authority to modify the property selection criteria, consistent with the diversification requirements of the Separate Account. Met also has the power: (a) To leverage Properties with loans from third-party lenders to the extent that it is consistent with prudent management of the Separate Account; or (b) to cause the Separate Account to participate in transactions where an unrelated joint venture partner may be involved. Met maintains that such transactions do not require separate relief under this proposed exemption.[10] Met also represents that the following transactions have not been and will not be permitted in the Separate Account:

(a) Participation by Met, any Affiliate of Met, the General Account of Met, or any other Met separate account in any joint venture with the Separate Account or in the ownership of any of the Properties in the Separate Account either along or together with a joint venture partner;

(b) Loans by Met's General Account to the Separate Account in order to leverage any purchases of the Properties or otherwise; and

(c) Acquisition of Properties from, or sale to, Met's General Account or any other separate account over which Met has investment control.

It is represented that sales or purchases of Properties in the Separate Account (other than at a Trigger Point or termination of the Separate Account, as previously described) do not cause funds to flow to or from Met's General Account or other separate accounts over which Met has investment control. Rather, the proceeds of any sale of Properties are reinvested in the Separate Account in accordance with the investment guidelines of the Separate Account, as established by the Independent Fiduciary. (In the event that the Trigger Point is reached or in the event the Separate Account is terminated, Landauer, as the Independent Fiduciary, has confirmed its understanding and acknowledged acceptance of its responsibilities, as discussed above in paragraphs #11 and #12.)

17. It is represented that the Separate Account is a separate account within the contemplation of section 3(17) of the Act. The Separate Account was established and is operated in accordance with the requirements of section 4240 of the New York Insurance Law. Further, Met's attorney's review all sales materials and disclosures used in connection with annuity and insurance products to assure compliance with the laws and regulations of New York and other states. The Separate Account is not registered with the Securities and Exchange Commission, because Met represents that it relies on applicable exemptions from the registration requirements of the Investment Company Act of 1940 and the Securities Act of 1933.

18. Plans first began participating in the Separate Account on September 8, 1989 It is represented that the decision to acquire Units by the Participating Plans in the Separate Account has been and will be made by independent Plan Fiduciaries without influence or control by Met. It is represented that the initial members of the Separate Account were tax qualified plans. Specifically, Met notes that the Separate Account was designed for defined contribution plans (the D.C. Plans) which are qualified under section 401(a) of the Code. The Metropolitan Savings and Investment Plan and similar plans of Met's subsidiaries (the Met Savings Plans) also participate in the Separate Account. As of May 31, 1992, the Met Savings Plans' Units in the Separate Account represented approximately 11.15% of the net asset value of the Separate Account. As of December 31, 1991, participation in the Separate Account represented approximately .9% of the total assets of the Met Savings Plans. It is represented that this portion of the Separate Account held by the Met Savings Plans is not anticipated to increase greatly.[11]

Also included in the category of qualified plans eligible to invest in the Separate Account are certain teachers' plans which comply with the requirements of section 403(b) of the Code. In addition to qualified ERISA plans, Met believes that non-ERISA plans, such as government sponsored plans, which meet the requirements of section 414(d) of the Code and which have long been participants in separate accounts maintained by Met and other insurance carriers, also should be afforded the opportunity to participate in the Separate Account. Met has represented its understanding that this proposed exemption, if granted, will apply only to those Participating Plans that are subject to section 406 of the Act and/or section 4975 of the Code.

It is anticipated that the principal investors in the Separate Account will be D.C. Plans under which individual participants, subject to the respective limitations set forth by such plans, are afforded the opportunity to direct the investment of their account balances among a series of investment alternatives. However, Met believes that the Separate Account can also be useful to D.C. Plans that maintain "balanced funds", also subject to participant election, where the Plan Fiduciary for the balanced fund determines to acquire an interest in the Separate Account. Although participants in such "balanced funds" would not have the direct authority to contribute to or withdraw contributions from the Separate Account, their ability to direct investments with respect to a "balanced fund" which includes an interest in the Separate Account gives rise to the same requirements for liquidity as exist in participant directed D.C. Plans. It is represented that contribution and withdrawal requests with respect to the Separate Account will be received by Met periodically with respect to each of the Participating Plans at the direction of Plan Fiduciaries or authorized recordkeepers. It is represented that the individual records for each participant in each of the Participating Plans is the responsibility of the Plan Fiduciaries. However, Met represents that it retains the right to audit such records.

Met represents that, as of June 30, 1992, there were a total of forty-nine (49) plans participating in the Separate Account. Of this number, it is represented that there were twenty-seven (27) Participating Plans in the Separate Account, as of the end of 1990. In addition, eleven (11) plans began participating in 1991, and fifteen (15) more began participating by the middle of July 1992. The net asset value of the Units held by all the plans participating in the Separate Account, as of May 31, 1992, was $17.1 million. This amount represented approximately 16.3% of the total net assets of the Separate Account.

[10] The Department is expressing no opinion whether any such transactions would violate section 406 of the Act and is offering no relief for transactions other than those proposed.

[11] Met represents that the acquisition by the Met Savings Plans of Units in the Separate Account should not violate section 406 (a) and (b) of the Act, by reason of the statutory exemption contained in section 408(b)(5) of the Act. In this regard, Met also notes, that Advisory Opinion No. 79–79A, dated November 7, 1979, held that the amendment of an annuity contract and the concomitant transfer of assets from one separate account to another would be exempt from the prohibited transaction provisions of section 406(a)(1), and 406(b)(1) and (406(b)(2) under section 408(b)(5), if the conditions of section 408(b)(5) are met, including the condition that no more than adequate consideration is charged. The Department, is offering no view herein as to whether the acquisition by the Met Savings Plans of Units in the Separate Account is covered by the statutory exemption provided in section 408(b)(5).

The remaining portion of the assets of the Separate Account is held by Met's General Account.

It is represented that none of the Participating Plans had withdrawn from the Separate Account prior to February 1991; however, since that time, Met represents that four plans have done so. The dates of withdrawals and the amounts involved are represented to be as follows:

1. February, 1991—$504,382
2. September, 1991—$89,430
3. September, 1991—$2,746
4. February, 1991—$838

In addition to the above withdrawals by Participating Plans, it is represented that on several occasions during the operation of the Separate Account net withdrawals by individual participants of Participating Plans on a given date have exceeded net contributions to the Separate Account, such that Met has been required to acquire Units of the Separate Account in order to provide liquidity to fund such withdrawals. Met represents that the first instance of such occurred on September 21, 1989, and for this reason, Met has requested retroactive exemption relief to become effective as of that date.

It is represented that Met maintains a separate record of the Units it acquired as a result of providing liquidity to fund such withdrawals and intends to redeem such Units from the Separate Account only after the Units which Met acquired from contributions of Seed Money have been redeemed as a result of net contributions from Participating Plans.

19. Before electing to establish the Separate Account as an investment alternative, it is represented that the Plan Fiduciaries of any plans interested in participating in the Separate Account were and are provided with a full disclosure concerning the investment guidelines, structure, the manner of operation and administration of the Separate Account, and the procedures for withdrawal, transfer, distribution, and payout applicable to the Separate Account. Plan Fiduciaries were and are provided with the expense and fee provisions of the Separate Account, (including but not limited to a description of the services provided by Met and an estimate of the amount of the fees), together with appropriate financial statements, (including but not limited to the most recent audited annual report, income statement, and balance sheet), and as of the end of the most recent fiscal period of the Separate Account, a schedule of fees paid, a list of the buy/sells of Properties, and a list of the assets in the Separate Account. Thereafter, such Plan Fiduciaries have received and will receive monthly valuation reports and quarterly reports on the Separate Account which include a financial statement of the Separate Account and a list of current holdings. In addition, the Plan Fiduciaries receive any reasonably available information which Met reasonably believes to be necessary or which the Plans Fiduciaries reasonably request in order to determine whether any plan should purchase, sell, or continue to hold Units in the Separate Account.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include Plan Fiduciaries and individual participants of Participating Plans which have invested or may invest in the Separate Account. Because it is represented that Met does not know which plans or participants may choose from time to time in the future to invest in the Separate Account, and because some Participating Plans and some individual participants have invested in the Separate Account and have withdrawn, Met does not know the number of plans or individual participants and beneficiaries which therefore may be affected by the requested exemption. In addition, because the maintenance of an account of the type such as the Separate Account requires a substantial pool of assets and a correspondingly large participant base, it would be expected and intended that many thousands of individuals may have invested or may be invested, or may ultimately invest in the Separate Account. Accordingly, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Met, of a copy of the notice of pendency of this proposed exemption (the Notice), within fifteen (15) days of the date of the publication of such Notice in the **Federal Register** to: (1) The Plan Fiduciaries of any Participating Plans which in the past have participated in the Separate Account but which are no longer invested in the Separate Account; and (2) to the Plan Fiduciaries of Participating Plans which are invested in the Separate Account on the date of the publication of the Notice in the **Federal Register**. Such distribution to interested persons shall inform interested persons of their right to comment and to request a hearing, and shall include a copy of the Notice, as published in the **Federal Register**. Further, with respect to all plans which in the future contemplate investing in the Separate Account, distribution of a copy of the Notice and, if the exemption has been granted, a copy of the grant, as published in the **Federal Register**, will occur at least thirty (30) days prior to the investment of any such plan in the Separate Account.

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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption 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) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above.

All comments will be made a part of the record. Comments received will be available for public inspection with the

application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I—Exemption for Certain Transactions Involving the Purchase and Sale of Units of the Separate Account by Met

If the exemption is granted, the restrictions of section 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 to the following transactions described below, if each of the conditions set forth in Section III is met.

(a) The purchase of Units of the Separate Account by Met, during the Start Up Period, in the event of net withdrawals from the Separate Account;

(b) The sale of Units by Met, during the Start Up Period, following any purchases described in Section I(a) above, in the event of net contributions to the Separate Account; and

(c) The purchase and sale of Units of the Separate Account by Met in the event of new withdrawals from the Separate Account or net contributions to the Separate Account, following the termination of the Start Up Period.

Section II—Exemption for Certain Transactions Involving Sales of Properties in the Separate Account and the Purchase of Met's Units of the Separate Account

If the exemption is granted, 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 to the use of Available Cash in the Separate Account, or to the sale of Properties owned by the Separate Account, for the purpose of the Separate Account's purchasing Units held by Met in connection with a decrease in Met's participation in the Separate Account after the Trigger Point has been met or during the Wind Down of the Separate Account; provided that the conditions set forth in Section III are met.

Section III—General Conditions

The exemption is conditioned upon Met's adherence to the material facts and representations described in this Notice and upon satisfaction of the following requirements:

(a) The decision to participate in the Separate Account by a plan, other than the Met Savings Plans, has been and will be made by Plan Fiduciaries who are unrelated to Met and its Affiliates;

(b) Each Property in the Separate Account has been and will be valued at least annually by an independent appraiser;

(c) No Properties have been or will be purchased for the Separate Account during the Start Up Period with plan contributions or monies other than Met's Seed Money, and neither Available Cash nor the proceeds from sales of Properties in the Separate Account have been or will be used to redeem Met's Units during the Start Up Period;

(d) Prior to investment in the Separate Account by any plan, except as otherwise specified below in paragraph (d)(9) of this Section III, Met will furnish the Plan Fiduciaries with:

(1) Full disclosure concerning the investment guidelines, structure, manner of operation, administration of the Separate Account, the method of valuation applicable to the Units, and the method of valuation applicable to the assets of the Separate Account,

(2) A written description of potential conflicts of interest that may result from Met's acquisition, purchase, retention, redemption, or sale of Units in the Separate Account,

(3) The rules and procedures for withdrawal, transfer, redemption, distribution, and payout applicable throughout the term of the Separate Account to Met, to the Participating Plans in the Separate Account, and to individual participants of the Participating Plans,

(4) The expense and fee provisions of the Separate Account, (including but not limited to a description of any services rendered by Met, a schedule of fees for such services, and an estimate of the amount of fees paid by the Separate Account annually),

(5) A list of all assets in the Separate Account, as of the end of the most recent fiscal period of the Separate Account, and a list of the Properties which the Separate Account has bought or has sold within twelve months prior to the end of the most recent fiscal period of the Separate Account,

(6) The appropriate financial statements pertaining to the Separate Account, (including but not limited to the most recent audited annual report, an income statement, and a balance sheet),

(7) Copies of the most recent monthly reports on the Separate Account and the most recent monthly reviews and the quarterly updates of the valuation of the Separate Account (including a list of the holdings of the Separate Account during those periods),

(8) Any reasonably available information which Met believes to be necessary or which the Plan Fiduciaries reasonably request in order to determine whether any plan should acquire Units in the Separate Account, and

(9) Upon publication of this Notice, a copy of such Notice, as it appears in the **Federal Register**, shall be provided to Plan Fiduciaries for all Participating Plans which were invested or are at the time invested in the Separate Account. If this proposed exemption is granted, the Plan Fiduciaries of all Participating Plans which were invested or which are at the time invested in the Separate Account shall receive upon publication of the grant a copy of such grant, as it appears in the **Federal Register.** If subsequent to the grant, any plans choose to invest in the Separate Account, such plans will be provided, at least thirty (30) days prior to the investment in the Separate Account by such plans, with copies of both the Notice and the grant, as such documents appeared upon publication in the **Federal Register.**

(e) Met periodically makes available information which Met reasonably believes to be necessary or which the Plan Fiduciaries reasonably request in order to determine whether any plan should buy, sell or continue to hold Units in the Separate Account.

(f) An Independent Fiduciary has been appointed coincident with the start of operations of the Separate Account. The Independent Fiduciary's responsibilities include but are not limited to:

(1) Reviewing and approving investment guidelines established by Met for the Separate Account and approving any changes to such guidelines;

(2) Monitoring the conformity of the Properties acquired for the Separate Account to the requirements of such guidelines;

(3) Reviewing and approving the valuation procedures for the Separate Account and approving changes in such procedures;

(4) Reviewing and approving the valuation of the Units in the Separate Account and of the Properties held in the Separate Account, as described in

the summary of facts and representations;

(5) Approving the appointment of all independent appraisers retained by Met to perform periodic valuations of the Properties in the Separate Account;

(6) Requiring appraisals in addition to those normally conducted whenever the Independent Fiduciary believes that the characteristics of any of the Properties have changed materially, or with respect to any of the Properties, whenever it deems an additional appraisal to be necessary or appropriate in order to assure the correct valuation of the Separate Account;

(7) Reviewing the purchases and sales of Units by Met and the Participating Plans in the Separate Account to assure that the correct values of the Units and of the Separate Account are applied;

(8) Following the termination of the Start Up Period, determining the appropriate Trigger Point with respect to Met's ongoing ownership of Units, establishing a method to implement any changes in such Trigger Point, adjusting the percentage which serves as the Trigger Point, approving or requiring any reduction of Met's interest in the Separate Account, and approving the manner in which such reduction of Met's participation in the Separate Account in excess of the Trigger Point is to be effected;

(9) In the event the Trigger Point is reached, participating in the planning of any program of sales of the assets of the Separate Account, including the selection of the Properties to be sold, the guidelines to be followed in making such sales, and the approval of such sales, if in the opinion of the Independent Fiduciary, such sales are desirable at the Trigger Point to reduce Met's ownership of Units in the Separate Account or to facilitate the Wind Down;

(10) Supervising the operation of the Separate Account during the Wind Down;

(11) During the Wind Down, planning any program of sales of the assets of the Separate Account, including the selection of the Properties to be sold, the guidelines to be followed in making such sales, and approving the sale of the Properties in the Separate Account, in the event of the termination of the Separate Account, if in the opinion of the Independent Fiduciary, such sales are desirable to facilitate the Wind Down; and

(12) Reviewing any other transactions or matters involving the Separate Account that are submitted to the Independent Fiduciary by Met and determining whether such transactions or matters are fair to the Separate Account and in the best interest of the Separate Account.

(g) The proposed exemption is also subject to the condition that the following transactions involving the Separate Account have not occurred and will not occur:

(1) Participation by Met, any Affiliate of Met, Met's General Account, or any other separate account over which Met has investment control in any joint venture with the Separate Account, or in the ownership of any of the Properties of the Separate Account, either alone or together with a joint venture partner.

(2) Lending of funds by Met's General Account to the Separate Account in order to leverage any purchase of any of the Properties, or otherwise.

(3) Acquisition of any Properties from or sale of any Properties to Met's General Account or any other separate account over which Met has investment control.

(h) Met must maintain for a period of six (6) years from the date of any transaction, the records necessary to enable the persons described in paragraph (i) of this Section III to determine whether the conditions of this exemption have been met. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Met or its Affiliates, the records are lost or destroyed prior to the end of the six-year period, and no parties in interest, other than Met and its Affiliates, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (i) below.

(i)(1) Except as provided in subparagraph (2) of this subsection (i) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (h) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any Plan Fiduciary of a Participating Plan in the Separate Account who has authority to acquire or dispose of the interest of such Participating Plan, or any duly authorized employee or representative of such Plan Fiduciary,

(C) Any contributing employer to any Participating Plan in the Separate Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan in the Separate Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (i) shall be authorized to examine trade secrets of Met, any of its Affiliates, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this exemption:

(a) "Affiliate" of Met includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Met,

(2) Any officer, director or employee of Met, or of a person described above in paragraph (a)(1) of Section IV, and

(3) Any partnership in which Met is a partner.

(b) "Control" means the power to exercise a controlling influence over the management or policies or a person other than an individual.

(c) "Available Cash" means the income and other amounts received by the Separate Account from rents and other sources, such as temporary investments, that are not required to be held for projected expenses with respect to the Separate Account. Such term does not include net contributions from Participating Plans.

(d) "Independent Fiduciary" means a person who:

(1) Is not an Affiliate of Met, as defined in Section IV(a);

(2) Does not have an ownership interest in Met or its Affiliates;

(3) Is not a corporation or partnership in which Met or any of its Affiliates has an ownership interest;

(4) Is not a fiduciary with respect to any Participating Plan in the Separate Account;

(5) Has acknowledged in writing acceptance of fiduciary responsibility; and

(6) Is either:

(i) a business organization which has at least five (5) years of experience with respect to commercial real estate investments or other appropriate experience;

(ii) a committee comprised of three to five individuals who each have had at least five (5) years of experience with respect to commercial real estate investments or other appropriate experience, or

(iii) a committee comprised both of a business organization or organizations

and individuals have the qualifications described in paragraphs (d)(1–5) of Section IV above.

For purposes of this definition, no organization or individual may serve as an Independent Fiduciary for the Separate Account for any fiscal year, if the gross income received from Met or its Affiliates by such organization or individual (or by any partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder) for that fiscal year exceeds five percent (5%) of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the 5% limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an Independent Fiduciary. The income limitation will include services rendered to the Separate Account as Independent Fiduciary, as described in this proposed exemption.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may:

(1) Acquire any property from, sell any property to, or borrow any funds from, Met, its Affiliates, or any separate account maintained by Met or its Affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six (6) months after such organization or individual ceases to be an Independent Fiduciary; or

(2) Negotiate any such transaction, described above in paragraph (d)(1) of Section IV during the period that such organization or individual serves as Independent Fiduciary.

No Plan Fiduciary or sponsor of a Participating Plan or a designee of such Plan Fiduciary, sponsor, or Participating Plan may serve as the Independent Fiduciary with respect to the Separate Account.

(e) "Met Savings Plans" means the Metropolitan Savings and Investment Plan sponsored by Met and similar defined contribution plans sponsored by Met's subsidiaries.

(f) "Participating Plan" or "Participating Plans" means a plan qualified pursuant to section 401(a) or 403(b) of the Code which may participate in ownerships of Units in the Separate Account and which are subject to section 406 of the Act and section 4975 of the Code.

(g) "Plan Fiduciary" or "Plan Fiduciaries" means the individual fiduciary or fiduciaries acting on behalf of each of the Participating Plans that invest in the Separate Account.

(h) "Properties" means the geographically dispersed small- to medium-sized retail and office buildings, light industrial facilities, and residential apartment space, ranging in value up to $15 million with good operating income which Met has acquired or will acquire on behalf of the Participating Plans which invest in the Separate Account.

(i) "Seed Money" means the total amount (not to exceed $100 million) actually contributed by Met to the Separate Account for the purpose of acquiring Properties.

(j) "Separate Account" means the real estate equity pooled separate account invested in by plans, as described herein.

(k) "Start Up Period" means a period which began on December 21, 1988, the date on which Properties were first acquired by the Separate Account; and will end on the earliest to occur of: (1) The expiration of four years following the beginning of the Start Up Period; or (2) the first date, after the total value of the Separate Account has reached $100 million, on which the percentage of the total number of Units in the Separate Account owned by Met is 10% or less.

(l) "Trigger Point" means the point at which Met's ownership in the Separate Account may be decreased with the approval of or as required by the Independent Fiduciary. The Independent Fiduciary, acting on behalf of the Plans in the proposed transactions, sets the percentage of Met's ownership of Units in the Separate Account which serves as the Trigger Point. In this regard, the Trigger Point will arise only after the end of the Start Up Period.

(m) "Units" means the units of interest into which equity participation in the Separate Account is divided.

(n) "Wind Down" means the period which begins on the date on which Met notifies all the Participating Plans in the Separate Account that it has decided to terminate the Separate Account and concludes on the date on which no Units are held by any of the Participating Plans.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the proposed exemption.

Signed at Washington, DC, this 30th day of December, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–79 Filed 1–4–93; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Blue Ribbon Panel on High Performance Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: January 21, 1993; 8:30 a.m. to 5:30 p.m. January 22, 1993; 8:30 a.m. to 1:30 p.m.

Place: Room 540, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7936.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide current knowledge on the state of supercomputing to the National Science Board; to assess the contributions of high performance computing to scientific research and education; to help project changes required by developments in this rapidly evolving field; and to provide recommendations on NSF's possible future role in supercomputing.

Agenda:

(1) Discuss charter
(2) Identify issues to be addressed
(3) Identify needed inputs and sources
(4) Establish Issue Working Groups
(5) Discuss timetable and plan future meetings

Dated: December 30, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–61 Filed 1–4–93; 8:45 am]

BILLING CODE 7555–01–M

Permit Issued; J. Ward Testa

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office,

Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On November 30, 1992 the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to J. Ward Testa on December 30, 1992.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 93-45 Filed 1-4-93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of 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.

2. The title of the information collection:

10 CFR part 35—Medical Use of Byproduct Material

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: Physicians and medical institutions who are applicants for or holders of an NRC license authorizing the administration of byproduct material or its radiation to humans for medical use.

6. An estimate of the number of responses annually: 3,220,707.

7. An estimate of the total number of hours needed to complete the requirement or request: An average of 0.01 hours per response, plus approximately 162.44 hours per recordkeeper. The total industry burden is approximately 330,201 hours annually.

8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: 10 CFR part 35, Medical Use of Byproduct Material, contains requirements that apply to NRC licensees who are authorized to administer byproduct material or its radiation to humans for medical use. The information in the required reports, applications and records is used by NRC to ensure that the health and safety of the public is protected and that licensee possession and use of byproduct material is in compliance with license and regulatory requirements. The revision is a net increase adjustment in burden resulting primarily from a reevaluation of the time required to perform individual activities and the number of times those activities are performed.

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 (3150-0010), 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 28th day of December 1992.

For the Nuclear Regulatory Commission.

George H. Messenger,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 92-49 Filed 1-4-93; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision (Expedited Review—OMB approval is requested within 30 days of receipt of the "Request for OMB Review").

2. The title of the information collection: Requalification Examination Feedback Form.

3. The form number if applicable: Not applicable

4. How often the collection is required: Once per year at each power reactor facility during the NRC-conducted requalification examination.

5. Who will be required or asked to report: All operators, evaluators and facility licensee representatives (including facility licensee managers) participating in the NRC requalification examination at a power reactor will be asked to report on a voluntary basis.

6. An estimate of the number of annual responses: Approximately 675 facility personnel consisting of 450 operators, 175 facility representatives and evaluators, and 50 facility managers.

7. An estimate of average burden per response: Approximately 30 minutes.

8. An estimate of the total number of hours needed annually to complete the requirement or request: Approximately 340 hours (30 minutes per questionnaire ×675 personnel).

9. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

10. Abstract: Industry is concerned that failure to pass requalification examinations may be a result of high levels of stress experienced by the operators rather than a lack of knowledge. In SECY-91-391, "Results of the Study of Requalification Examination Stress," the U.S. NRC staff evaluated the issue of undue examination stress and reported its findings and planned actions. The Operator Licensing Branch of the Office of Nuclear Reactor Regulation, U.S. NRC, will monitor the success of the actions put in place to reduce undue examination stress through the use of the requested requalification examination feedback form.

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 20555-0001.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150-0159), NEOB-3019, 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.

Dated at Bethesda, Maryland, this 28th day of December 1992.

For the Nuclear Regulatory Commission.

George H. Messenger,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 93–47 Filed 1–4–93 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provision 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 parts 30, 40, 70, and 72, Timeliness in Decommissioning of Materials Facilities.

3. The form number if applicable: NRC Form 314.

4. How often is the collection required: A one-time notification is required within 60 days of the licensee's decision to terminate all activities involving materials authorized under the license and within 60 days of terminating licensed activities at a portion of a licensed site. In addition, the licensee may request a delay in initiating decommissioning at least 1 month before the deadline for notification submittal.

5. Who will be required or asked to report: Part 30, 40, 70 and 72 NRC and Agreement State licensees terminating licensed activities at all or portions of their licensed sites.

6. An estimate of the number of responses: 2747 per year.

7. An estimate of the number of hours needed annually to complete the requirement or request: 2073.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Applicable.

9. Abstract: The proposed rule would require licensees to make timely notification to the Commission when all or portions of the licensee's facilities are no longer being used for licensed activities. Requirements are also included to ensure timely submittal of decommissioning plans and completion of decommissioning.

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 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150–0009, 3150–0017, 3150–0020, 3150–0028, and 3150–0132), NEOB–3019, 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 J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 28th day of December, 1992.

For the Nuclear Regulatory Commission.

George H. Messenger,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 93–46 Filed 1–4–93; 8:45 am]

BILLING CODE 7590–01–M

[Doc. Nos. 50–528, 50–529, and 50–530]

Arizona Public Service Co., Et Al.; Palo Verde Nuclear Generating Station; Unit Nos. 1, 2, and 3; Receipt of Petition for Director's Decision

Notice is hereby given that by petition dated October 23, 1992, Thomas J. Saporito, Jr. (petitioner) requested that the Commission take action with regard to Arizona Public Service Company's (APS or licensee) Palo Verde Nuclear Generating Station Units 1, 2, and 3. Specifically, the petitioner requests that the Commission institute a show cause proceeding to modify, suspend, or revoke the operating licenses of the three Palo Verde units and order their immediate shutdown until such time as a nuclear safety evaluation can be performed on approximately 72 safety valves currently installed at the nuclear station.

As a basis for the request, the petitioner states that APS and the NRC cannot be sure whether the 72 safety valves will operate within their design bases and setpoint tolerances to mitigate an overpressurization event in any of the Palo Verde units. In support of this assertion, the petitioner provides the following reasons: (a) An APS request of November 13, 1990, to revise the technical specifications of its operating licenses for Palo Verde Units 1, 2, and 3 to increase the allowable setpoint tolerances for the main steam safety valves was signed by a person who was not technically qualified to provide safety commitments for this or any license amendment request and 56 persons in engineering positions at Palo Verde hold those positions without having a bachelor of science degree in engineering. (b) The licensee's interoffice memorandum of March 22, 1991, responds to an employee who stated a concern that the amendment request to increase the allowable setpoint tolerance for the safety valves indicates that the peak analyzed pressure for the loss of condenser vacuum transient is 2740.9 pounds per square inch absolute (psia), leaving only a 9.1 psia margin to the safety limit of 2750 psia. (c) The NRC staff's interoffice memorandum of December 4, 1991, stated it was not prudent to entertain the licensee's request to revise its technical specifications at this time. (d) APS's June 1992 Condition Report Disposition Request (CRDR No. 1–2–0139) documented the following inadequacies in safety valves: certain valves were found with blowdown rings out of their required position; there is an industrial history of these valves on set pressure drifting; actual experience with safety valves in nuclear applications is that frequently they neither lift at the required setpoint nor reseat tightly without leaking; the variation of the setpoint from the requirements often exceeds not only ±1 percent but also ±3 percent; this is the first time that Unit 1 valves have been tested at their required temperature profile; preventive maintenance has not been performed on Unit 1 valves since 1984; exercising the valves has no useful effect on preventing valve setpoint drift and could result in result in failure to reseat and in seat leakage, damage to the valve seating surface, and ultimately erratic set pressure causing premature lift and failure to lift. (e) One of the authors of CRDR No. 1–2–0139 testified to NRC officials that the licensee falsified documents related to its request to revise the technical specifications. (f) A person told the petitioner that two investigators from the NRC Office of Investigations told her that they had documents demonstrating that licensee officials falsified documents related to the licensee's request to revise its technical specifications. (g) On October 8, 1991, one of the licensee's engineers willfully violated a safety-related procedure by intentionally adjusting PSV–574 contrary to the requirements of the procedure.

The request is being treated pursuant to § 2.206 of the Commission's regulations (10 CFR 2.206). The petition has been referred to the Director, Office of Nuclear Reactor Regulation. As provided by § 2.206, appropriate action will be taken on this petition within a reasonable time. By letter dated December 29, 1992, the Director denied

the petitioner's request for an immediate shutdown of Units 1, 2, and 3.

A copy of the petition and letter dated December 29, 1992 are available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland this 29th day of December 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–51 Filed 1–4–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–220]

Niagara Mohawk Power Corp.; (Nine Mile Point Nuclear Station Unit No. 1); Exemption.

I

Niagara Mohawk Power Corporation (NMPC or the licensee) is the holder of Facility Operating License No. DPR–63, which authorizes operation of Nine Mile Point Nuclear Station Unit No. 1 (the facility or NMP1), at a steady-state reactor power level not in excess of 1850 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Oswego County, New York. The license provides among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Section III of appendix J to 10 CFR part 50 requires the development of a program to conduct periodic leak testing of the primary reactor containment and related systems and components, and components penetrating the primary containment pressure boundary. The interval between local leak rate tests for containment isolation valves (Type C tests) is specified by Section III.D.3 to be no greater than 2 years.

III

By letter dated November 3, 1992, NMPC requested a one-time only exemption (for a maximum of 7 weeks) from the requirements of 10 CFR part 50, appendix J, Section III.D.3, regarding periodic retest schedules for 39 Type C tests. This letter superseded an application from NMPC dated October 14, 1992. The requested exemption would permit continued operation of the facility until its next refueling outage, which will begin no later than February 19, 1993. Otherwise, the required testing would require a plant shutdown 7 weeks before the end of the current fuel cycle.

IV

Section III.D.3 of appendix J to 10 CFR part 50 states that Type C tests shall be performed during reactor shutdowns for refueling, at an interval not to exceed 2 years. The licensee has requested a one-time exemption from the regulations.

The 2-year interval requirement for Type C testing is intended to be often enough to preclude significant deterioration between tests and long enough to permit the tests to be performed during routine plant outages. Leak rate testing of containment isolation valves during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Furthermore, some containment isolation valves cannot be tested at power. For those valves that cannot be tested during power operation, or for which testing at power would yield unnecessary radiation exposure of personnel, the Commission staff believes the increase in confidence of containment integrity following a successful test is not significant enough to justify the hardships and costs associated with a plant shutdown specifically to perform the tests within the 2-year time period.

V

The Commission has determined the pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of Section III.D.3 of appendix J to 10 CFR part 50 is to provide an interval short enough to prevent serious deterioration from occurring between tests and long enough to permit testing to be performed during regular plant outages. For containment isolation valves that cannot be tested at power, or for containment isolation valves where testing at power involves unreasonable risk to personnel and equipment, the increased confidence in containment integrity following successful testing is not significant enough to justify a plant outage merely to perform the tests within the 2-year interval. The licensee has presented information accepted by the Commission, which gives a high degree of confidence that the components affected by this exemption will not degrade to an unacceptable extent. Acceptable leakage limits are defined in Sections III.B.3(a) and III.C.3 of appendix J to 10 CFR part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (57 FR 54621).

This Exemption is effective upon issuance and shall expire on February 20, 1993.

Dated at Rockville, Maryland, this 24th day of December 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–50 Filed 1–4–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co. et. al. (Trojan Nuclear Plant); Exemption.

I

On November 21, 1975, the Commission issued Facility Operating License No. NPF–1 to Portland General Electric Company, *et al.*, (the licensee), for operation of the Trojan Nuclear Plant located in Columbia County, Oregon. The licensee provided, among other things, that the facility is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

II

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR part 50. Section IV.F.2 of appendix E requires that each licensee annually exercise its emergency plan. The licensee was scheduled to conduct the 1992 annual exercise on December 15, 1992. The last annual exercise was conducted on September 24–25, 1991.

By letter dated December 11, 1992, the licensee requested an exemption from 10 CFR part 50, appendix E, (IV)(F)(2) which would defer conducting its annual emergency plan exercise scheduled for December 15, 1992, until the first quarter of 1993. The licensee stated that conducting the exercise on December 15, 1992, was impractical due to the continued forced outage resulting from a steam generator tube leak.

Ongoing outage activities would be hampered by the conduct of an exercise at this time. The licensee does not expect the plant to startup until after January 1, 1993. The one time schedular exemption will allow the annual emergency plan exercise to be deferred until the first quarter of 1993.

III

The NRC staff has reviewed the licensee's request for a one time extension of the Trojan Nuclear Plant emergency plan exercise completion date. The most recent Systematic Assessment of Licensee Performance (SALP) Report, covering the period from April 1, 1991 through May 31, 1992, indicated that resources are adequate and reasonably allocated so that good plant performance is being achieved in the area of emergency preparedness. The licensee was rated to be in Performance Category 2 for the functional area of emergency preparedness. In addition, evaluation of the licensee's performance during their 1991 annual exercise indicated that the licensee was fully capable and prepared to take actions necessary to protect the public's health and safety.

Due to difficulties in coordinating schedules of all involved parties to exercises (NRC, FEMA, Licensee, State governments, local governments, and volunteer agencies) the time frame of annual has been interpreted to be met as long as an exercise is conducted during the calendar year. Hypothetically, a licensee could conduct an exercise on January 1 one year and December 31 the following year and still meet the requirement of 10 CFR part 50 appendix E.IV.F.2., even though a period of 24 months had elapsed. In this instance, the licensee conducted an exercise in September of 1991 and is proposing to conduct an exercise some time between January and March of 1993, a period of 16 to 18 months. The licensee is also scheduled to conduct another exercise in November 1993, a period of 8 to 10 months. Approving deferment of the 1992 exercise to the first quarter of 1993 will not create an unacceptable lapse in time between exercises.

The licensee has made a good faith effort to conduct the exercise within the calendar year. The scope and objectives for the 1992 exercise were submitted to the NRC for review on August 12, 1992. The exercise was originally scheduled for November 17, 1992, but was rescheduled for December 15, 1992 due to the steam generator tube leak and forced outage at the plant. The licensee undertook the necessary preparatory actions to conduct the annual exercise on this date, in an effort to comply with 10 CFR part 50 appendix E, (IV)(F)(2). However, as a result of the continued forced outage, the 1992 annual exercise could not be practicably performed on December 15, 1992.

The current forced outage for steam generator eddy current inspection requires the reactor coolant system to be operated in a reduced inventory condition. The licensee's request not to conduct an exercise while plant staff is involved in a major outage is prudent. This allows for the focusing of resources to accomplish complicated outage tasks without unnecessary distractions or delays. The licensee does not expect the plant to restart until after January 1, 1993. The one time exemption from the annual requirement will allow the licensee to defer the exercise until the first quarter of 1993. This exemption applies to the 1992 annual exercise and does not defer the licensee's 1993 annual exercise which is currently scheduled for the fourth quarter of 1993. Therefore, the requested one time schedular exemption from 10 CFR part 50, appendix E, (IV)(F)(2) is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption. The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation in that the licensee has deferred the 1992 annual exercise until the first quarter of 1993 to allow for the completion of activities associated with the forced outage.

Accordingly, the Commission hereby grants an exemption as described in Section III above from 10 CFR part 50, appendix E, (IV)(F)(2) to defer the completion date of the emergency plan exercise until the first quarter of 1993. This exemption is effective until the end of March 1993.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (57 FR 61934).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of December 1992.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93-52 Filed 1-4-93; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Thursday and Friday, January 14 and 15, 1993, at the Madison Hotel, 15th & M Streets, NW., Washington, DC.

The full Commission will convene on Thursday at 9 a.m. until 5 p.m., and on Friday from 9 a.m. to approximately 3:30 p.m., in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 93-10 Filed 1-4-93; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane, (202) 272-5407.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Amendments

File No.	Rule/Form
270-128	Form U-1.
270-129	Rule 50.
270-79	Rules 93 and 94, Form U-13-60 and 17 CFR part 256 and 256(a).
270-161	Rule 71(a), Forms U-12(I)-A and U-12(I)-B.
270-168	Rule 1(c) and Form U5S.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval amendments to rule 71 and Forms U5S, U-12(I)-A, U-12(I)-B and U-13-60; and the rescission of rule 50 under the Public Utility Holding Company Act of 1935 ("Act") (15 U.S.C. 79 *et seq.*).

The amendments would change the reporting burdens associated with rules 24 and 50(d) and Forms U5S, U-12(I)-

B and U–13–60. Although the reporting burden associated with Form U–1 would not change, the amendments would have the effect of reducing the number of applications and/or declarations on Form U–1. The Commission anticipates that the amendments would eliminate the necessity for 14 filings on Form U–1 per year so the total annual burden would be 27,125 hours. The amendments would also reduce the number of statements required under rule 24 which must be filed with the Commission. The Commission anticipates a reduction of 90 burden hours for complying with the requirements of rules 24 and 50(d) so the total annual burden would be 340 hours.

Form U5S would be amended to require annual reporting of investments under rule 40(a)(5). The 14 filers on Form U5S will incur an increase of one hour in the time spent preparing the form as a result of the proposed amendments, which corresponds to a total annual burden of approximately 132.4 hours. Form U–13–60 would be amended to comport with changes to the Federal Energy Regulatory Commission's standard of accounts for utility companies. The 16 companies who file on Form U–13–60 will incur an increase of 3 hours, bringing the total time to 14.5 hours per response, to complete Form U–13–60 as a result of the proposed amendments, which corresponds to a total annual burden of 232 hours. Finally, the proposed amendments would permit the 785 filers anticipated to file annually on Form U–12(I)–B to file once every three years rather than once a year, as is the current practice. The annual burden for all filers would then be 174.5 hours. These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Projects 3235–0126) [Rules 24 and 50], 3235–0125 [Form U–1], 3235–0164 [Form U5S], 3235–0153 [Form U–13–60], and 3235–0173 [Forms U–12(I)–A and U–12(I)–B], Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: December 11, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–59 Filed 1–4–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31662; File No. SR–NASD–92–40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Payment of Gratuities or Anything of Value by Members to Others

December 28, 1992.

On November 2, 1992 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to Article III, Section 10(a) of the Rules of Fair Practice.

The proposed rule change was published for comment in Securities Exchange Act Release No. 31486 (November 19, 1992), 57 FR 55607 (November 25, 1992). No comments were received.

Article III, Section 10(a) of the NASD's Rules of Fair Practice currently sets a limit of $50 per person per year for the payment of anything of value, including gifts and gratuities, by a member or associated person of a member to another person where the payment is in relation to the business of the employer of the person receiving the payment or gratuity. The rule protects against improprieties which might arise in connection with the giving by members or associated persons of substantial gifts or monetary payments to certain persons without their employer's knowledge.

Prior to 1969, Section 10 completely prohibited the payment of gratuities or anything of value to employees of others. The current $50 limitation was increased from $25 in 1984.[3] Because of the amount of time that has elapsed since the dollar limitation was last adjusted, the NASD is proposing to increase the dollar limitation for the payment of gratuities or anything of value to $100 per person per year.

The NASD states that the proposed rule change is consistent with the recently approved Rule 350(a) of the New York Stock Exchange ("NYSE"), which raised the value limit on the amount of a gratuity from $50 to $100 that an Exchange member may give to another without obtaining the prior written consent of the recipient's employer.[4] The proposed rule would simplify compliance obligations of NASD member firms that are also members of the NYSE.

The Commission finds that the proposed rule change will only revise the dollar limitation in the rule and will neither change the categories of persons covered by the rule nor the other requirements under Section 10 concerning prior written agreements and record-keeping relating to such compensation for services. The Commission believes that, even with the proposed increase, the dollar amounts are relatively low and will neither compromise the intent, nor reduce the ability, of the rule to prevent fraudulent acts and practices which might arise in connection with the giving of valuable gifts or payments to persons without their employer's knowledge.

The Commission finds that the proposal is consistent with the provisions of section 15A(b)(6) of the Act,[5] which require that the rules of the Association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade. The proposed rule change adjusts the dollar limit under Article III, Section 10 to be consistent with NYSE Rule 350(a); the Commission believes that increasing the dollar amount is reasonable given the amount of time that has elapsed since the last increase. In addition, the Commission believes that even with the increase, the dollar values are relatively low, and that it is appropriate to take into account the effects of inflation.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–92–40) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–60 Filed 1–4–93; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 26, 1984).

[4] See Securities Exchange Act Release No. 30877 (June 30, 1992), 57 FR 30283 (July 8, 1992).

[5] 15 U.S.C. 78o–3.

[6] 17 CFR 200.30–3(a)(12) (1992).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92-079]

Chemical Transportation Advisory Committee (CTAC) and CTAC Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Materials Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: A. The Chemical Transportation Advisory Committee will hold a meeting on Tuesday, February 23, 1993 in room 2415, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593. The meeting is scheduled to begin at 9:30 a.m. and end at 2 p.m.

The agenda for the meeting follows:

1. Opening remarks—RADM Henn,
2. U.S. Coast Guard remarks,
3. Chairman's remarks and general interest topics,
4. Issue briefs:
   Tankerman regulations,
   Tank Filling Limits,
   Static Discharge During Gauging,
5. Subcommittee reports:
   Fire fighting media review; final report,
   46 CFR part 151 revision; interim report,
6. New tasks and initiatives:
   Applicability of OPA-90 to Chemical Tankships,
   Chemical Compatibility Table,
   Marine Occupational Safety and Health Subcommittee,
7. International activities update,
8. Other business:
   Coast Guard human factors initiatives—domestic/international,
   Chemical carriers initiative for assessment and management of bulk chemical and gas shipping operations,
9. Closing.

B. The Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Materials Cargoes, title 46 Code of Federal Regulations (CFR) part 151, of the Chemical Transportation Advisory Committee will meet on Monday, February 22, 1992 in room 6103 at 0930 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. Following the Subcommittee meeting, the Subcommittee's working groups will meet as follows. The Cargo Classification Working Group and the Construction, Design and Equipment Working Group will meet in rooms 6103 and 6319, respectively, until 12 noon. The Liquefied Flammable Gases Working Group and the Operations, Administrative and Inspection Working Group will meet in Rooms 6103 and 6319, respectively, from 12:30 a.m. until 3:30 p.m. The purpose of these meetings is to continue work to fulfill the tasking of the Subcommittee which is to review 46 CFR part 151, determine areas in need of updating and revision, and make recommended changes.

Attendance at the above meetings is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meetings. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Commander K. J. Eldridge or Mr. F. K. Thompson, U.S. Coast Guard Headquarters (G-MTH-1), 2100 2nd Street, SW., Washington, DC 20593, (202) 267-1217.

Dated: December 29, 1992.

A. E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93-85 Filed 1-4-93; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Advisory Circulars: Small Airplanes Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of Advisory Circulars; part 21 (Airships) and part 23 Airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars (AC's) issued by the Small Airplane Directorate since January 1992. The AC's listed below relate to part 21 of the Federal Aviation Regulations (FAR) regarding Airships, part 23 of the FAR, and/or part 3 of the Civil Air Regulations (CAR). They were issued to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature.

FOR FURTHER INFORMATION CONTACT: Ms. Julea Bell, Standards Staff (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426-6941.

SUPPLEMENTARY INFORMATION:

Background

These AC's were developed to update existing policy information for small airplane certification programs.

Comments

Interested parties were given the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the **Federal Register** to announce the availability of, and request written comments, to each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Distribution

The published AC's are available upon request through the U.S. Department of Transportation, Utilization and Storage Section, M-443.2, Washington, DC 20590.

ADVISORY CIRCULARS PUBLISHED

AC number	Date	Title
23.1419-2	1/3/92	Certification of Part 23 Airplanes for Flight in Icing Conditions.
23.1309-1A	6/3/92	Equipment, Systems, and Installations in Part 23 Airplanes.
23.1309-1A, CHG 1	8/5/92	Equipment, Systems, and Installations in Part 23 Airplanes.
21.17-1A	9/25/92	Type Certification—Airships.
21.17-1A, CHG 1	10/30/92	Type Certification—Airships.
23.701-1	11/13/92	Flap Interconnections in Part 23 Airplanes.
23.11	12/2/92	Type Certification of Very Light Airplanes with Powerplants and Propellers Certificated to Parts 33 and 35 of the Federal Aviation Regulations.

In addition to the AC's listed above, change 1 to FAA Report FAA P-8110-2, Airship Design Criteria, was issued 7/24/92. This change updated the design criteria for type certification of airships.

Note: Appendix 3 to AC 23-11 contains the Joint Aviation Requirements for Very Light Airplanes (JAR-VLA). For recipients of this AC to keep abreast of changes to the JAR-VLA, subscriptions may be forwarded to: Printing & Publishing Services, Civil

Aviation Authority, 37 Gratton Road, Cheltenham GL50 2BN England.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

Federal Highway Administration

[FHWA Docket No. MC–92–5]

Parts and Accessories Necessary for Safe Operation; Limited Waiver for Domino's Pizza Distribution Co.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Grant of petition of waiver.

SUMMARY: The FHWA is granting, in part, Domino's Pizza Distribution Corporation's petition for a waiver from the requirements of 49 CFR 393.25(e) of the Federal Motor Carrier Safety Regulations (FMCSRs). This waiver will permit Domino's Pizza Distribution Corporation to use a strobe warning lamp on the rear of its semi-trailers, which would be operated when the vehicle is being driven in reverse and when the vehicle is being unloaded. The FHWA is granting the waiver to permit Domino's Pizza to use the strobe lamps on certain of its semi-trailer fleet during a 3-year trial period, subject to the conditions imposed by the FHWA in this notice.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS–10, (202) 366–2981; or Mr. Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On January 21, 1992, the FHWA published a notice of petition in the **Federal Register** (57 FR 2308) requesting comments on a petition received from Domino's Pizza Distribution Corporation (Domino's Pizza). The petitioner uses tractor-semi-trailer combination vehicles to distribute supplies to its stores. Approximately 65 to 75 percent of the trailers in the Domino's Pizza fleet are navy blue, and most deliveries are made during night-time, non-business hours. Delivery locations are within or in close proximity to "highly marqueed" strip malls. Domino's Pizza has indicated that their vehicles are equipped with all lighting and reflective devices required under the Federal Motor Vehicle Safety Standards (FMVSSs) and the FMCSRs. However, Domino's Pizza has a problem with front-to-rear collisions; motorists are driving into the rear of their semi-trailers. Domino's Pizza believes that merchants' advertising methods and local weather conditions have an adverse effect on the visibility of its vehicles to drivers of other vehicles. The advertising methods include signs and lights which, depending on the position of the Domino's vehicle and the time of day, may decrease motorists' ability to recognize the presence of the semi-trailers. To address this problem, Domino's Pizza began studying the possibility of using auxiliary non-steady-burning lamps on the rear of its semi-trailers.

However, § 393.25(e) of the FMCSRs requires, in part, that all exterior lighting devices be steady-burning, except turn signals and stop lamps when used as turn signals. Strobe lamps are not included amount the lighting devices which are excepted from the steady-burning requirement (i.e., turn signals, warning lamps on service vehicles authorized by State and local authorities, or vehicular hazard warning flashers as required by § 392.22 or permitted by § 392.18). The noncompliance of the proposed lighting device necessitated that petition for a waiver.

The waiver is being granted under section 206(f) of the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2829, 2835, 49 U.S.C. app. 2505(f)) which authorizes waivers of any regulation issued under the authority of that Act upon a determination that the waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. In accordance with section 206(f), the FHWA published a notice seeking public comment on Domino's requires for a waiver on January 21, 1992 (57 FR 2308).

Discussion of Comments to the Docket

The FHWA received one comment to the notice of petition—from the Virginia State Police (State police). The State police were opposed to the waiver. "We feel the use of [retroreflective] material or reflex reflectors as proposed by [the National Highway Traffic Safety Administration (NHTSA) on December 4, 1991, (56 FR 63474)] would be far more likely to increase vehicle conspicuity and in turn reduce crashes than the use of a single warning lamp as Domino's Pizza suggests." The State police mentioned that the Virginia Department of Transportation is presently using retroreflective material on "a number of vehicles in its fleet" with favorable results.

The State police also indicated that "the intensity of the strobe warning lamp is much less than other lighting on the rear of such vehicles." Amber rear turn signals have an intensity of approximately 750 candela compared to an effective intensity of 165 candela for the strobe warning lamp.

The FHWA is familiar with the NHTSA's rulemaking on trailer conspicuity and does not believe the current rulemaking should serve as a basis for denying Domino's petition for a waiver. While the proposed conspicuity treatment has been proven effective in the NHTSA's fleet study, the 15 percent effectiveness in reducing accidents in which a trailer is struck by another vehicle is not sufficient to preclude the evaluation of other devices. The FHWA believes that a study on the use of strobe warning lamps may provide useful information concerning the prevention of collisions with trailers.

In response to the State police's comment on the effective intensity of the strobe lamp, the FHWA believes the 165-candela limit is appropriate. The 165-candela limit is within the range of photometric values allowed by FMVSS No. 108 for stop lamps and turn signals. Under a worst-case scenario, the effective intensity of the strobe lamp would be greater than the photometric values of stop lamps and turn signals with performance levels which are at or slightly above the minimum acceptable levels of FMVSS No. 108. The FHWA believes this restriction will ensure that the strobe lamp does not decrease the effectiveness of the required lighting devices.

Conditions of the Waiver

The conditions of the waiver listed below, with the exception of the removal of the requirement to submit a copy of the accident report form (MCS–50T) and the modification of the requirements for an annual report on the results of the use of the strobe lamp and the reporting of accidents within certain distances of Domino's vehicles, are as published in the January 21 notices. The decision to remove the requirement for the submittal of the MCS–50T is based on the FHWA's proposed elimination of the requirement that motor carriers submit accident reports (57 FR 33712, July 30, 1992).

The accident history monitoring requirement in the conditions of the waiver has been modified to include an annual assessment on the effectiveness of the strobe lamp. Although the annual assessment was implied by the wording proposed in the January 21, 1992, notice, the FHWA believes the

requirement should be clearly stated in the conditions of the waiver. Also, the requirement that Domino's Pizza provide information about motor vehicle accidents within 150 feet of the Domino's vehicles equipped with the strobe lamp has been modified to include only those accidents that occur within 25 feet to the rear of Domino's vehicles. The FHWA does not believe that information about all motor vehicle accidents occurring beyond 25 feet to the rear of the Domino's vehicle will provide meaningful data. The FHWA does not believe these changes will result in less stringent conditions than those proposed in the notice of petition.

I. Effective Intensity of the Strobe

The FHWA is limiting the maximum effective intensity of the strobe lamp to no more than 165 candela. The 165-candela limit for the strobe lamp allows for manufacturing tolerances in the production of the 150-candela strobe lamp. A measurement of effective intensity shall be made using the strobe lamp under operational conditions and the measurement procedure in "Emergency Vehicle Warning Lights: State of the Art," U.S. Department of Commerce, National Institute of Standards and Technology (formerly National Bureau of Standards), Special Publication 480–16, September 1978, pp. 100–105. Domino's Pizza Distribution Corporation is required to ensure that the effective intensity of the proposed strobe lamp is measured using the method prescribed or by comparable measurement procedures or obtain a written statement from the manufacturer of the strobe lamp indicating the lamp has been tested using comparable measurement procedures. The voltage to be used for the testing of the strobe lamp shall be equal to the maximum voltage to be used when the strobe lamp is mounted on the vehicle. Also, the strobe lamp's effective intensity shall be measured using an amber lens (the color of the lens to be used during the 3-year trial period). The effective color of the light emitted by the strobe lamp is required to conform to the definition of yellow (amber) found in the Society of Automotive Engineers (SAE) standard J578, Color Specification, May 1988. Domino's Pizza shall provide written notification to the FHWA that the measurement of the effective intensity of the proposed strobe lamp was made under operational conditions. Domino's Pizza shall also provide: the date(s) the measurement was performed; the location of the measurement; certification that the effective color of the strobe lamp conforms to the definition of yellow (amber) in SAE J578; the voltage used during testing and the effective intensity determined at that voltage; the individual(s) or company performing the measurement; and the measurement procedure used.

II. Installation of the Strobe

The strobe lamp shall be installed in such a way that it can only be operated when the transmission of the tractor is in the reverse or when the vehicle is parked. The strobe lamp shall be mounted approximately on the vertical centerline of the rear of the trailer, at a height between 35 and 60 inches above the surface of the road (measured with the vehicle unloaded). Domino's Pizza shall obtain the approval of the FHWA for the installation of the lamp in other locations on the rear of the trailer. The diameter of the lens shall not exceed 4 inches, and the color of the lens is restricted to amber. The flash rate for the strobe shall not exceed 80 flashes per minute.

III. Compliance With Lighting and Wiring Requirements of the FMCSRs

The installation of the strobe lights shall be in compliance with § 393.25, except paragraph (e); § 393.27, Wiring specifications; § 393.29, Grounds; § 393.31, Overload protective devices; and § 393.33, Wiring, installation.

IV. Duration of Waiver; Accident History Monitoring

The FHWA is granting the waiver for a 3-year period. The 3-year period begins with the publication of this notice in the **Federal Register** Domino's Pizza shall provide the FHWA with an annual report on the result of the use of the strobe lamps so that the accident history of the vehicles equipped with the strobe lamp and those vehicles which are not equipped with the lamp can be closely monitored. The annual report shall include an assessment, by Domino's Pizza, of the effectiveness of the strobe lamp in reducing accidents (distinguishing between accidents on private property versus public roads). The assessment shall make reference to any specific incidents in which Domino's Pizza believes the strobe lamp may have prevented an accident.

Domino's Pizza shall report accident information and data on all accidents that occur to the vehicles equipped with the strobe lamp, including those which do not involve front-to-rear collisions with Domino's vehicles. In addition, all motor vehicles accidents that occur within 25 feet to the rear of Domino's vehicles equipped with the strobe lamp, but not necessarily involving the Domino's vehicles, are to be reported. All front-to-rear collisions with Domino's vehicles which are not equipped with the strobe lamp are also to be reported. Three copies of the information listed below shall be forwarded to the Office of Motor Carrier Standards on a monthly basis:

1. The position of the vehicles engaged in the accident (description and diagram of the accident scene).
2. Color photographs of the surrounding environment.
3. Environmental conditions (i.e., background environment, time of day, light conditions, weather, roadway type).
4. Interview information with the driver/occupants of the striking vehicle (specifically, what the driver/occupants saw).
5. Copy of police report (if one is prepared) for the accident. In the case of motor vehicle accidents that occur within 25 feet to the rear of Dominos's vehicles equipped with the strobe lamp, but not necessarily involving the Domino's vehicles, the police report is not required.
6. Cost damage to each of the involved vehicles. In the case of accidents that occur within 25 feet to the rear of Domino's vehicles equipped with the strobe lamp, but not necessarily involving the Domino's vehicles, the cost of damage is not required.
7. Description of injuries/fatalities.

V. Maintenance History

As part of the periodic review of this waiver, Domino's Pizza Distribution Corporation shall develop a test and maintenance program to ensure that the operation of the strobes is consistent with the conditions of the waiver, and keep a maintenance history of the strobe lamps. A copy of the maintenance history shall be forwarded to the Office of Motor Carrier Standards on a quarterly basis, each year, for the duration of the waiver. In addition the maintenance history for the strobe lamps shall be maintained at the location at which the vehicles are garaged or maintained, or the principal place of business.

VI. State and Local Laws

The use of the strobe lamps must be in compliance with State and local safety regulations or must be approved by the State or local authorities in the jurisdictions in which the strobe lamp will be used. A list of States in which the vehicles will be operated and copies of State approvals shall be provided to the FHWA. The FHWA strongly encourages State and local authorities with safety regulations which would prohibit the use of the proposed lamps to accept the terms of the waiver. It is

not the intention of the FHWA to preempt State or local requirements which would preclude the use of the strobe lamps. For jurisdictions in which the safety regulations preclude the use of the strobe lamps, a copy of the approval granted by the States or local authorities shall be provided to the FHWA by Domino's Pizza.

VII. Number of Vehicles To Be Equipped With Strobe Lamps

The number of semi-trailers that may be equipped with the strobe lamps shall not exceed 50 percent of the number of semi-trailers per Domino's Pizza Distribution Corporation terminal. The total number of semi-trailers per terminal, along with the total number of vehicles equipped with the strobe lights, shall be provided to the FHWA.

VIII. Termination of Waiver

Domino's Pizza shall discontinue the use of the strobe lamps (1) upon the completion of the 3-year trial period or (20 when instructed to do so by the FHWA at either the completion of an annual review or at any time it is determined by the FHWA that the continued use of the strobe lamps decreases the safety of operation of the vehicles on which the lamps are used.

In consideration of the comments of the Virginia State police, and under the conditions provided above, the FHWA hereby grants Domino's Pizza Distribution Corporation's petition for a waiver from the requirements of § 393.25(e).

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: December 21, 1992.

T.D. Larson,

Administrator.

[FR Doc. 93–33 Filed 1–4–93 8:45 am]

BILLING CODE 4910–23–M

Federal Railroad Administration

[FRA Docket No. H–92–1]

Petition for Waiver for Test Program; National Railroad Passenger Corporation

On July 14, 1992, the Federal Railroad Administration (FRA) published in the **Federal Register** (57 FR 31228) notice of a petition from the National Railroad Passenger Corporation (Amtrak) and Metro North Commuter Railroad (MCNW) for waiver from FRA rail safety regulations for a program to conduct a test and provide a limited revenue service demonstration of a passenger trainset imported from Sweden, the "X2000".

By January 15, 1993, the test phase of this program will have been completed and the start of the limited revenue service demonstration will be imminent. Amtrak submitted an additional petition (to which MCNW is not a part) requesting waiver of compliance with § 213.9 of the Federal track safety standards in order to operate the X2000 trainset at speeds above 110 mph. For convenience sake, this new petition is included within the scope of the initial petition, Docket No. H–92–1.

Certain sections of the Northeast Corridor main tracks between Washington, DC and New York City are now approved for revenue passenger train speeds of up to 125 mph. The railroad has in effect for these track segments a rigorous inspection and maintenance program. Amtrak wants to operate the X2000 equipment at 135 mph over a portion of these high speed tracks. The demonstration period, commencing February 1, 1993, is scheduled to be not longer than four months.

Interested parties may submit written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request. All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket No. H–92–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before February 1, 1993 will be considered by FRA before final action is taken. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on December 28, 1992.

Edward R. English,

Acting Associate Administrator for Safety.

[FR Doc. 93–9 Filed 1–4–93; 8:45 am]

BILLING CODE 4910–06–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 2
Tuesday, January 5, 1993

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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Thursday, January 14, 1993.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Regulation of Hybrid Instruments—final rules
—Exemption of Certain Swap Agreements—final rules

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31449 Filed 12–31–92; 11:35 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, January 14, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean W. Webb,

Secretary of the Commission.

[FR Doc. 92–31950 Filed 12–31–92; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Thursday, January 21, 1993.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Floor Trader Registration and Ethics Training Rules—proposed rules.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31951 Filed 12–31–92; 11:35 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Thursday, January 26, 1993.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Contract Market Emergency Actions—proposed rules.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31952 Filed 12–31–92; 11:35 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, January 26, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31953 Filed 12–31–92; 11:35 am]

BILLING CODE 6351–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the continuation of the following meeting of the Board:

TIME AND DATE: 9 a.m., January 5, 1993.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW., Washington, DC 20004.

STATUS: Closed. Exemption 3. Portions of the meeting may also be closed under Exemption 1; Exemption 7; and Exemption 9.

MATTERS TO BE CONSIDERED: The Board will reconvene and continue the closed meeting conducted on December 17 to deliberate upon safety issues related to the HB-Line, Savannah River Site, South Carolina, including, but not limited to, consideration of testimony and documents received at the public meeting and public hearing conducted in Aiken, South Carolina, on December 15, 1992, regarding the Department of Energy's Operational Readiness Review and other matters related to the proposed restart of the HB-Line.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, or Carole J. Council, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (202) 208–6400.

SUPPLEMENTARY INFORMATION: The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers under the Atomic Energy Act of 1954, as amended.

Dated: December 30, 1992.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 92–31945 Filed 12–30–92; 4:35 pm]

BILLING CODE 6820–KD–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 11, 1993.

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.

Date: December 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–31955 Filed 12–31–92; 2:37 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 58, No. 2
Tuesday, January 5, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 91-295; RM-7182, FCC 92-534]

Private Land Mobile Radio Services; Additional 72-76 MHz Frequencies

Correction

In rule document 92-30727 beginning on page 60132 in the issue of Friday, December 18, 1992, make the following correction:

§ 90.63 [Corrected]

On page 60134, in the first column, in § 90.63(c), in the table, the last two entries, "73.37" and "73.39" should read "75.37" and "75.39".

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

Correction

In notice document 92-31111 beginning on page 61234 in the issue of Wednesday, December 23, 1992 make the following corrections:

1. On pages 61234—61238, in the heading for the table, "[Additions]" should be removed.

2. On page 61234, in the table, in the first column, "Additions:" should appear above "Alabama:".

3. Please make note of the following in the table:

a. "Additions" begin on page 61234 and continue through page 61235, ending with "Spokane—Shilo Inn".

b. "Corrections/Changes" begin on page 61235 and continue through page 61238, ending with "Innkeeper".

c. "Deletions" are on page 61238.

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1230

RIN 3095-AA22

Micrographic Records Management

Correction

In proposed rule document 92-28944 beginning on page 57042 in the issue of Wednesday, December 2, 1992, make the following correction:

§ 1230.14 [Corrected]

On page 57044, in § 1230.14, in the third column, the table should have appeared as follows:

Paragraph	Remove	Add
1230.14(c)	ANSI IT9.1-1989 MS23-1983.	ANSI IT9.1-1991 MS23-1991
1230.14(d)(1)(i)	ANSI/AIIM MS23-1983 ISO 3334-1989.	ANSI/AIIM MS23-1991 ISO 3334-1991
1230.14(d)(2)	ANSI/AIIM MS23-1983 ANSI/ISO 5/2-1985.	ANSI/AIIM MS23-1991 ANSI IT2.19-1990

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-92-37]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

Correction

In notice document 92-30879 beginning on page 60553 in the issue of Monday, December 21, 1992, make the following correction:

On page 60554, in the second column, in the seventh line, the *Docket No.:* should read "112CE.".

BILLING CODE 1505-01-D

federal register

Tuesday
January 5, 1993

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 103

Quality Standards for Foods With No Identity Standards; Bottled Water; Final Rule and Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 103

[Docket No. 89N-0469]

Quality Standards for Foods With No Identity Standards; Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the quality standards for bottled water by establishing allowable levels for the following seven synthetic volatile organic chemicals (VOC's): Benzene (not to exceed 0.005 milligrams per liter(mg/L); carbon tetrachloride (not to exceed 0.005 mg/L); 1,2-dichloroethane (not to exceed 0.005 mg/L); 1,1-dichloroethylene (not to exceed 0.007 mg/L); 1,1,1-trichloroethane (not to exceed 0.20 mg/L); trichloroethylene (TCE) (not to exceed 0.005 mg/L); and vinyl chloride (not to exceed 0.002 mg/L). FDA is taking this action to amend the quality standard for bottled water following rulemaking by the Environmental Protection Agency (EPA) that established maximum contaminant levels (MCL's) for these seven compounds in public drinking water. This rulemaking will ensure that the minimum quality of bottled water remains comparable with the quality of public drinking water meeting EPA standards.

DATES: Effective July 6, 1993. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 103.35(d)(3), effective July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

SUPPLEMENTARY INFORMATION:

I. Background

Section 410 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349) requires that whenever EPA prescribes interim or revised National Primary Drinking Water Regulations (NPDWR's) under the Safe Drinking Water Act (SDWA), FDA consult with EPA and either amend its regulations for bottled drinking water (21 CFR 103.35) or publish in the **Federal Register** its reasons for not making such amendments.

In the **Federal Register** of July 8, 1987 (52 FR 25690), EPA issued a final rule establishing NPDWR's consisting of MCL's for eight VOC's. In accordance with section 410 of the act, FDA published a proposal in the **Federal Register** of July 6, 1990 (55 FR 27831) announcing the agency's intent to adopt the MCL's of EPA as quality standards for seven of the VOC's addressed in EPA's final rule, as follows: benzene—0.005 mg/L; carbon tetrachloride—0.005 mg/L; 1,2-dichloroethane—0.005 mg/L; 1,1-dichloroethylene—0.007 mg/L; 1,1,1-trichloroethane—0.20 mg/L; trichloroethylene—0.005 mg/L; and vinyl chloride—0.002 mg/L. FDA summarized the toxicological evidence relied upon by EPA for each of the seven VOC's in establishing MCL's (55 FR 27831 and 27832) and discussed the reasons for the agency's tentative determination to adopt the MCL's as the allowable levels for these chemical contaminants in bottled water (55 FR 27832 through 27833). FDA did not propose to adopt an allowable level for the eighth VOC covered by EPA's proposal, *para*-dichlorobenzene (*p*-dichlorobenzene), because EPA was in the midst of a second rulemaking on this chemical contaminant, and FDA felt that it was appropriate to postpone action with respect to this substance (55 FR 27831).

Following publication of this proposal, FDA reopened the 60-day comment period for an additional 30 days by a notice published in the **Federal Register** of March 21, 1991 (56 FR 11979). That notice announced that: (1) The enactment on November 8, 1990, of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) removed the rulemaking procedures for quality standards for foods from the formal rulemaking provision of section 701(e) of the act (21 U.S.C. 371(e)), and (2) FDA was therefore redesignating the VOC rulemaking as a notice and comment rulemaking that would proceed under the provisions of section 701(a) of the act (21 U.S.C. 371(a)). As a result of the change announced by FDA on March 21, 1991, and in the interest of fairness, the comment period was reopened to provide an additional opportunity for public comment because the 701(a) procedures do not provide an opportunity to submit objections to the final rule as do the formal rulemaking provisions under which this action was initiated.

II. Summary of and Response to Comments

A. Summary of Comments

FDA received 13 comments in response to the July 6, 1990, proposal. The comments represented the views of a foreign government's office for General Agreement for Tariffs and Trade (GATT) Enquiry Point, a chemical supply company, three State water districts, a consortium of State water districts, four trade associations representing the interests of both public water and bottled water providers, a State health department, a bulk water company, and one individual. Eleven of the 13 comments agreed that FDA should adopt the proposed VOC levels based on EPA requirements for public drinking water and the public's expectation that bottled water should at least meet the standards set by EPA for public drinking water.

The comment from the foreign GATT Enquiry Point stated that their country had not set contaminant level standards for VOC's because they believe VOC contaminants are unacceptable in bottled water. The remaining comment, while concurring that FDA should consider MCL's when adopting quality standards, stated that FDA should establish maximum VOC levels on the basis of its own toxicological assessment of appropriate and permissible levels of contaminants in drinking water.

B. Response to Comments

1. In response to the foreign government's comment objecting to the acceptability of VOC contaminants in bottled water, the agency notes that FDA and EPA recognize that in certain instances, the presence of VOC's and other undesirable substances in drinking water sources may be unavoidable. These substances are widely dispersed in the environment and have been found in some public and bottled water sources. The legally prescribed course of action under the SDWA and the act with respect to such contaminants is for EPA to establish limits for them that provide for the protection of the public health and, when appropriate, for FDA to adopt limits for these contaminants in bottled water. It has been FDA's policy to fulfill its legal obligation under the act by amending the quality standard for bottled water to include allowable limits for contaminants that EPA has regulated under the SDWA.

Acceptable, health-based limits for such substances in public drinking water are set by EPA by determining a lifetime exposure level at which no known or anticipated adverse health

effects occur and that will provide an adequate margin of safety. EPA uses these criteria to establish maximum contaminant level goals (MCLG's) and then sets the MCL's as close as feasible to the MCLG's.

Under the SDWA, "feasible" means possible with the use of the best technology, treatment techniques, and other means that are found to be practical under actual field conditions for removal or reduction of the contaminant to a level that protects the public health (52 FR 25690 at 25097). For example, EPA set the MCL's for the carcinogenic VOC's addressed in this rulemaking (0.002 mg/L for vinyl chloride and 0.005 mg/L for benzene, carbon tetrachloride, 1,1-dichloroethane, and trichloroethylene) as close as is feasible to the MCLG's of zero, that is, at the practical quantitation limits (PQL's) of the analytical methods used to measure each of these contaminants (52 FR 25690 at 25700).

Given these considerations, FDA believes that the MCL's for these seven VOC's are appropriate as maximum allowable levels for these contaminants in bottled drinking water. By adopting limits on these VOC's, FDA is not condoning their presence in bottled water, as implied by the comment, but is instead acting to protect the public by limiting potentially harmful levels of exposure to these contaminants that may occur.

2. The comment that suggested that FDA should conduct its own assessment of drinking water contaminant levels argued that such an assessment was especially important because the MCLG's set by EPA for the substances that are the subject of this rulemaking were based on EPA policy and not on the science at issue. This comment questioned the scientific basis upon which EPA assigned MCLG's of zero to all carcinogens which EPA categorized as Group B (Probable Human), because B2 substances, that is, substances that have been shown to be carcinogens in animal testing but for which there is no evidence of human cancer risk, should not be assigned MCLG's of zero. In particular, the comment contended, and provided documents to support its contention, that TCE was misclassified by EPA as a B2-probable human carcinogen. The comment concluded that FDA should review the scientific basis for EPA's drinking water standards and reevaluate the proposed bottled water quality standard for TCE, considering that it should be classified as a Group C-possible human carcinogen.

To avoid any misunderstanding, FDA notes that it does not have authority to set standards for public drinking water. Under the provisions of the SDWA of 1974, EPA is charged with ensuring that the public is provided with safe drinking water and with establishing standards for contaminants (as MCL's) in public drinking water sources. FDA, under a memorandum of understanding between EPA and FDA (44 FR 42775, July 20, 1979), is responsible for water, and substances in water, used in food and for food processing and for bottled drinking water.

In the case of bottled water, it has been FDA's policy to fulfill its charge under section 410 of the act by adopting EPA drinking water standards as maximum allowable levels for contaminants in bottled water unless there exist reasons for FDA to conclude that certain EPA standards are not applicable to bottled water. For example, an EPA standard for drinking water may be inappropriate as an allowable level for a contaminant in bottled water if it is reasonable to expect that lower levels of the contaminant will be present in bottled water because the presence of the contaminant in drinking water is the result of circumstances peculiar to public water systems that can be avoided by bottlers, e.g., lead in pipes, solder, or brass fittings.

As explained in the July 6, 1990, proposal, FDA tentatively decided to adopt the EPA's health-based MCL's for seven of the eight VOC's under section 410 of the act because some sources for bottled drinking water may be expected to contain these VOC contaminants. In addition, the agency noted that in some cases bottled water may be consumed daily in amounts similar to the consumption of water from public water supplies. In cases where bottled water is subject to the same source contaminants as public water supplies, FDA believes that to ensure the quality of bottled water, the allowable levels for contaminants should normally correspond to the levels set by EPA as the MCL's for public water supplies. FDA proposals that respond to EPA rulemaking under the SDWA generally have not duplicated the efforts of EPA in judging the adequacy of NPDWR's for the protection of the public health. In most cases, (except as noted in the previous paragraph) FDA will propose to adopt EPA's MCL's as quality standards for bottled water.

It would clearly be inappropriate for FDA to reevaluate or revise the drinking water standards duly prescribed by another Federal agency. For FDA to reexamine, as suggested in the comment, the full scope of the toxicological issues for each contaminant after EPA has done so, and after EPA has established MCL's under notice and comment rulemaking procedures, would be redundant and inconsistent with the intent of section 410 of the act.

However, before proposing to adopt the MCL's for the seven VOC's, FDA did in fact review the overall results of the toxicological studies conducted with the VOC's. As a result, FDA found that it agreed completely with EPA's conclusions. These conclusions were, in part, based on studies showing that TCE causes liver tumors in mice when administered orally at high doses over the lifetime of the animals. Considering these data and the possible chronic human exposure to this contaminant from daily water consumption, FDA believes that EPA's MCL for TCE is a reasonable health-based drinking water contaminant level limit. Therefore, FDA rejects the comment's suggestion that it conduct its own assessment of drinking water contaminant levels for bottled water and reevaluate the carcinogenic potential of TCE in humans and is adopting the 0.005 mg/L MCL for TCE as the allowable level for this substance in the quality standard for bottled water.

However, should new data or a reexamination of the toxicological status of TCE lead EPA to conclude that TCE is not a potential human carcinogen, or that it has otherwise misclassified this substance, FDA will consider amending the bottled water quality standards to reflect any significant revision in the MCL by EPA.

3. The comments received from trade associations and State water officials uniformly urged that FDA adopt the VOC standards as proposed and stressed a need for more stringent regulation of the bottled water industry. The comments called for more frequent inspections and analyses of water samples, better coordination of recalls, labeling on bottled water products that identifies the source and purity of the water, a national registry for bottled waters, the use of only certified State or Federal testing laboratories for required water analyses, and limits for other organic and inorganic contaminants. One comment encouraged FDA to define the terms used in the labeling of bottled water, to adopt a program to provide guidance to States for approving and protecting bottled water sources, and to develop a regular testing and monitoring program to be funded by user fees based on production volume.

Other comments from State water officials cited recent experiences with bottled waters found to contain chlorodifluoromethane (a Freon), xylene, toluene, and lead contaminants and suggested that FDA regulate the

levels of these compounds in bottled water. These comments requested that FDA eliminate the current exemption for bottled mineral waters from compliance with the quality standard for bottled water, citing recent experience with contaminated mineral waters and noting that mineral water sources are subject to some of the same contaminants as are other bottled water sources. All of these comments requested that FDA adopt the MCL for p-dichlorobenzene. As noted above, FDA stated in the July 6, 1990, proposal that it would delay adoption of the allowable level of this chemical until EPA completes rulemaking on the secondary MCL that it proposed for this chemical on May 22, 1989 (54 FR 22062). EPA has since stated (56 FR 3526, January 30, 1991) that it is deferring promulgation of a secondary MCL for p-dichlorobenzene.

Most of the issues raised in these comments are outside the scope of this rulemaking, which addresses only the adoption of the quality standards for seven VOC's. It is inappropriate for FDA to respond here to issues that were not raised by the proposal. However, many of the concerns expressed in the comments either are the subject of separate rulemakings by the agency in response to EPA's promulgation of NPDWR's for 38 contaminants in drinking water, including toluene, xylenes, and p-dichlorobenzene (56 FR 3526, January 30, 1991 and 56 FR 30266, July 1, 1991), to EPA's promulgation of NPDWR's for lead and copper in drinking water (56 FR 26460, June 7, 1991), or to a petition filed by the International Bottled Water Association (IBWA) (see proposals published elsewhere in this issue of the **Federal Register**).

Revision of the agency's required frequency of testing for contaminants in bottled water, as advocated in the comments received from trade associations and State water officials, while not the subject of this rulemaking, was discussed in the proposal in relation to the required minimum annual testing for chemical contaminants in the source water and in bottled water products under the provisions of current good manufacturing practice (CGMP) regulations (21 CFR 129.35). FDA continues to believe that it is not necessary to revise the frequency requirements for the analysis of bottled water at this time. In particular, the agency reminds bottlers that they are responsible for ensuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard set forth in § 103.35. Bottled water that does not comply with a requirement in § 103.35 must bear a label statement that the water is of substandard quality (§ 103.35(f)). Moreover, any bottled water that contains a substance that presents a health concern may be subject to regulatory action under section 402(a)(1) of the act, even if the bottled water bears a label statement of substandard quality (§ 103.35(g)).

III. Conclusions

EPA's drinking water regulations promulgated under the SDWA are extensive and address several distinct types of chemical contaminants in drinking water. To facilitate the understanding and use of § 103.35 after FDA makes the anticipated extensive amendments to this regulation in response to EPA rulemakings, FDA has reorganized § 103.35(d) (the paragraph of the bottled water quality standard that contains allowable levels for individual chemical contaminants) by listing levels for chemical contaminants established pursuant to section 410 of the act in new paragraph (d)(3), which is divided to reflect the different categories of chemical contaminants addressed by EPA in its regulations. Specifically, paragraph (d)(3) contains: (1) The allowable levels for inorganic contaminants in § 103.35(d)(3)(i); (2) the allowable levels for VOC's in paragraph (d)(3)(ii); (3) the allowable levels for pesticides and other synthetic organic chemicals in paragraph (d)(3)(iii); and (4) the allowable levels for chemicals for which EPA has established secondary maximum contaminant levels in paragraph (d)(3)(iv). In addition, § 103.35(d)(3)(vi) contains provisions concerning analytical methodology to be used in determining compliance with the allowable levels.

Because this reorganization of § 103.35(d) is not a substantive change, under 5 U.S.C. 553(b) and 21 CFR 10.40(d), FDA finds that rulemaking is unnecessary. FDA is codifying the provisions of this final rule in the reorganized format for § 103.35(d). Specifically, FDA is listing the maximum allowable levels for the seven VOC's in bottled water in § 103.35(d)(3)(ii) and the methodologies for analyzing for these contaminants in § 103.35(d)(3)(vi). Furthermore, at this time, FDA is reserving sections of § 103.35(d)(3) that will list the allowable levels and appropriate methods for chemical contaminants other than VOC's (e.g., inorganic chemicals, pesticides, and synthetic organic chemicals).

Therefore, upon the effective date of this rule, July 6, 1993, any bottled water that contains an amount of any of these contaminants that exceeds the allowable levels will be misbranded under section 403(h)(1) of the act (21 U.S.C. 343(h)(1)) unless it bears a statement of substandard quality as provided by § 103.35(f)(2)(ii).

FDA has made two minor changes in the final rule concerning the analytical methods for the determination of the seven VOC's. First, the § 103.35(d)(3)(vi) of the final rule cites an updated version of the EPA publication that contains the analytical methods ("Methods for the Determination of Organic Compounds in Drinking Water," Office of Research and Development, Environmental Monitoring Systems Laboratory, EPA/600/4–88/039, December 1988) that are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Second, the source for these methods will be the National Technical Information Service rather than FDA. This change is consistent with the agency's practice of relying on readily available commercial sources for incorporated materials when possible.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (55 FR 27831, July 6, 1990). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Economic Impact

FDA has examined the economic implications of this final rule to amend 21 CFR part 103 as required by Executive Orders 12291 and 12612 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12291 compels agencies to use a cost-benefit analysis as a component of decisionmaking, and Executive Order 12612 requires Federal agencies to ensure that Federal solutions, rather than State or local solutions, are necessary. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. FDA has received no new information or comments that would alter its tentative finding in the proposal that there is no substantive economic issue, and that this rule is not a major rule as defined by either Executive Order 12291 or the Regulatory Flexibility Act. Finally, because this regulation applies to food

for interstate trade, and individual State regulations would hinder interstate trade, FDA finds that there is no substantial Federalism issue that would require an analysis under Executive Order 12612.

List of Subjects in 21 CFR Part 103

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 103 is amended as follows:

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR part 103 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 410, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 349, 371, 376).

2. Section 103.35 is amended by adding new paragraph (d)(3) to read as follows:

§ 103.35 Bottled water.

* * * * *

(d) * * *

(3) Having consulted with the U.S. Environmental Protection Agency (EPA) as required by section 410 of the Federal Food, Drug, and Cosmetic Act, the Food and Drug Administration has determined that bottled water, when a composite of analytical units of equal volume from a sample is examined by the methods listed in paragraph (d)(3)(vi) of this section, shall not contain the following chemical contaminants in excess of the concentrations specified in paragraph (d)(3)(ii) of this section.

(i) [Reserved]

(ii) The allowable levels for volatile organic chemicals (VOC's) are as follows:

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
Benzene (71-43-2)	0.005
Carbon tetrachloride (56-23-5)	0.005
1,2-Dichloroethane (107-06-2)	0.005
1,1-Dichloroethylene (75-35-4)	0.007
1,1,1-Trichloroethane (71-55-6)	0.20
Trichloroethylene (79-01-6)	0.005
Vinyl chloride (75-01-4)	0.002

(iii)—(v) [Reserved]

(vi) Analyses conducted to determine compliance with paragraph (d)(3)(ii) of this section shall be conducted in accordance with a relevant method contained in "Methods for the Determination of Organic Compounds in Drinking Water," Office of Research and Development, Environmental Monitoring Systems Laboratory, EPA/600/4-88/039, December 1988, and listed separately in paragraphs (d)(3)(vi)(A) through (d)(3)(vi)(E) of this section, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Except as otherwise indicated below, copies are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(A) Method 502.1—"Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography" (applicable to VOC's).

(B) Method 502.2—"Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series" (applicable to VOC's).

(C) Method 503.1—"Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography" (applicable to VOC's).

(D) Method 524.1—"Measurement of Purgeable Organic Compounds in Water by Purged Column Gas Chromatography/Mass Spectrometry" (applicable to VOC's).

(E) Method 524.2—"Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry" (applicable to VOC's).

(vii) [Reserved]

* * * * *

Dated: April 23, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

Editorial Note: This document was received in the Office of the Federal Register December 28, 1992.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 103

[Docket No. 91N-0141]

Quality Standards for Foods With No Identity Standards; Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its bottled water quality standard to establish or modify the allowable levels for 10 inorganic chemicals (IOC's) and 28 synthetic organic chemicals (SOC's), including 10 synthetic volatile organic chemicals (VOC's), 17 pesticides, and polychlorinated biphenyls (PCB's). FDA is also proposing to affirm the existing allowable levels in the bottled water quality standard for mercury and nitrate. These actions follow rulemakings by the Environmental Protection Agency (EPA) that resulted in the promulgation of regulations establishing maximum contaminant levels (MCL's) for the 28 SOC's and 8 IOC's, treatment techniques for 2 SOC's, and secondary maximum contaminant levels (SMCL's) for 2 IOC's. FDA is not proposing to establish allowable levels for the two SOC's for which EPA established treatment techniques because EPA determined that it was not feasible to establish MCL's for these substances. FDA is also proposing to adopt the current EPA MCL for *para*-dichlorobenzene (*p*-dichlorobenzene) as the allowable level for this chemical.

DATES: Written comments by March 8, 1993. The agency intends to make any final rule based upon this proposal effective 180 days following the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

SUPPLEMENTARY INFORMATION:

I. Background

National primary drinking water regulations (NPDWR's) are promulgated by EPA to protect the public health from the adverse effects of contaminants in drinking water. National secondary drinking water regulations (NSDWR's) are promulgated by EPA to protect the public welfare from the adverse aesthetic effects, such as odor, taste, and color, of contaminants in drinking water. In addition, at the time that it promulgates NPDWR's, EPA promulgates maximum contaminant level goals (MCLG's), which are health goals that are based solely on considerations of protecting the public from adverse effects of drinking water contamination.

In the **Federal Register** of January 30, 1991 (56 FR 3526), EPA published a final rule promulgating NPDWR's consisting of MCL's or treatment techniques for 26 SOC's and 7 IOC's. In that final rule EPA also established NSDWR's consisting of SMCL's for two IOC's. Also in the **Federal Register** of July 1, 1991 (56 FR 30266), EPA published a final rule promulgating NPDWR's consisting of MCL's for one IOC (barium) and four SOC's (aldicarb, aldicarb sulfoxide, aldicarb sulfone, and pentachlorophenol). EPA initiated these rulemakings with a proposal that it published in the **Federal Register** of May 22, 1989 (54 FR 22062). However, the MCL's for the 5 contaminants promulgated in EPA's July 1, 1991 final rule were reproposed by EPA on January 30, 1991 (56 FR 3600) at different levels based on information that EPA received or analyzed after it published its May 22, 1989 proposal.

Under section 410 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349), whenever EPA prescribes interim or revised NPDWR's under section 1412 of the Public Health Service Act (The Safe Drinking Water Act (SDWA) (42 U.S.C. 300f through 300j-9)), FDA is required to consult with EPA and, within 180 days after EPA promulgates the drinking water regulations, "* * * either promulgate amendments to regulations under this chapter applicable to bottled drinking water or publish in the **Federal Register** * * * reasons for not making such amendments." In accordance with section 410 of the act, FDA has consulted with EPA and is proposing to adopt as allowable levels in the quality standard for bottled water the MCL's that EPA established in the rulemakings of January 30, 1991 (56 FR 3526) and July 1, 1991 (56 FR 30266). FDA is also proposing to adopt as allowable levels the two SMCL's that EPA established in January 1991.

II. EPA Standards

Under section 1412(b) of the SDWA, as amended in 1986, EPA is required to promulgate NPDWR's for 83 contaminants, including those substances that were the subject of the final rules of January 30, 1991 (56 FR 3526) and July 1, 1991 (56 FR 30266). Further, EPA must regulate an additional 25 contaminants every 3 years after 1989 (54 FR 22062 at 22066, May 22, 1989). NPDWR's, which are enforceable standards, consist of either an MCL or a treatment technique regulation for each contaminant. EPA sets MCL's for contaminants as close as feasible (with the use of the best technology or other means available, taking costs into consideration) to the maximum contaminant level goal (MCLG), the level at which no known or anticipated adverse health effects occur and that provides an adequate margin of safety. When it is not feasible to establish an MCL for a specific contaminant, EPA can establish a treatment technique requirement to protect the public health from the adverse health effects of that contaminant.

EPA adopted treatment technique requirements, rather than MCL's, for the contaminants acrylamide and epichlorohydrin, because standardized analytical methods with adequate limits of detection were not available for analyzing drinking water for these contaminants. Both occur as residual monomers in polymers used as flocculents in water treatment and migrate to the water from the flocculating agents. EPA estimated that approximately 90 percent of the acrylamide and epichlorohydrin that is found in treated water gets into the water in this way.

Based on this fact, EPA in its final rule of January 30, 1991 (56 FR 3526), established a standard that requires certification by the public water system that flocculents containing residual amounts of these monomers are used only within specified levels to treat water, and that the levels of monomers in the flocculents do not exceed other specified levels.

EPA's January 30, 1991 final rule (56 FR 3526) established an SMCL of 0.1 milligram per liter (mg/L) for silver to protect the general public from the adverse cosmetic effect of argyria (a discoloration of the skin) from lifetime exposure to this metal. EPA considers argyria to be a cosmetic effect because it does not impair body function.

EPA's January 30, 1991 final rule (56 FR 3526) established an SMCL for aluminum as a range of from 0.05 to 0.2

mg/L. EPA based this SMCL on the possibility that the aluminum that remains in some drinking waters after treatment could increase the water's turbidity (cloudiness) and, when the aluminum level exceeds 0.1 mg/L, could discolor the water. While EPA encouraged water systems to meet a level of 0.05 mg/L, it recognized that some systems could experience difficulty in meeting this level in certain situations. Thus, EPA established a range for the SMCL of from 0.05 mg/L to 0.2 mg/L, with the appropriate level for each system determined by the state agency having primacy.

In EPA's May 22, 1989 proposal (54 FR 22062), it proposed SMCL's for seven organic chemicals, including *p*-dichlorobenzene. These organic chemicals could reportedly affect the taste or odor of the water at lower levels than those that EPA had either proposed or adopted as MCL's for these chemicals. EPA considered it appropriate to set SMCL's for these compounds because of their aesthetic effects.

In the final rule of January 30, 1991 (56 FR 3526), however, EPA announced that it had decided to defer promulgating SMCL's for these seven organic chemicals. Comments to EPA's proposal had opposed the SMCL's on the grounds that there was an inadequate experimental basis for such levels for four of the chemicals. The proposed SMCL's were based on a theoretical extrapolation from air odor thresholds. EPA stated that the determination of a level for a chemical that has a perceived aesthetic effect in drinking water presents a difficult and currently unresolved problem. EPA further stated that minimum detection levels, although different in different waters, could be identified, but that the point for each chemical, in different waters, at which consumers complain required more study and research. EPA stated that it may establish a national task force of experts to review and assess the data, information, and opinions available with respect to taste and odor problems in public water supplies, including development of one or more SMCL's. Even though it deferred adopting specific SMCL's for the seven organic chemicals, EPA pointed out that it was retaining the existing odor SMCL of 3 Total Odor Number, which is also the bottled water odor quality standard.

III. FDA Proposal

A. Introduction

FDA has traditionally fulfilled its obligation under section 410 of the act to respond to EPA's issuance of NPDWR's by amending the quality standard for bottled water introduced or delivered for introduction into interstate commerce to maintain compatibility with EPA's drinking water regulations. In general, FDA believes that, with few exceptions, the EPA standards for drinking water are appropriate as allowable levels for the chemicals in the quality standard for bottled water.

FDA proposals that respond to EPA rulemaking under the SDWA generally have not duplicated the efforts of EPA in judging the adequacy of NPDWR's for the protection of the public health, nor have they duplicated that agency's efforts in judging the adequacy of NSDWR's for control of aesthetic characteristics affecting consumer acceptance of drinking water. FDA does not intend to change this approach. Because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as a conservative estimate for the maximum expected consumption of bottled water. In cases where bottled water is subject to the same source contaminants as tap water (e.g., when obtained from the same sources used by public water systems), allowable levels for contaminants to ensure the safety of bottled water, and levels to ensure its aesthetic quality, should normally correspond to the levels set by EPA as the NPDWR's and NSDWR's for tap water. Therefore, FDA intends to rely on EPA's determinations that the MCL's or treatment technique requirements are adequate to protect the public health, and that the SMCL's are adequate to control other quality defects such as those of an aesthetic nature. In most cases, FDA will propose to adopt EPA's MCL's and SMCL's as allowable levels in the quality standard for bottled water. Furthermore, in most cases, FDA intends to rely on EPA's determinations as to the appropriate analytical methods for determining levels of these contaminants in water and to incorporate such methods by reference in the proposed amendment of its quality standard for bottled water (56 FR 3526, January 30, 1991; 54 FR 22062, May 22, 1989; 52 FR 25690, July 8, 1987; 52 FR 12876, April 17, 1987; 50 FR 46902, November 13, 1985).

FDA will, however, make its own determination as to whether it is appropriate to have an allowable level in the quality standard for bottled water for a chemical for which EPA has promulgated an NPDWR and, assuming that establishing an allowable level is appropriate, as to what amount it should be. For example, when EPA establishes or revises an NPDWR that includes an MCL for a particular contaminant, FDA will consider whether any quality defects (e.g., effects of an aesthetic nature) occur at levels below that at which EPA has established the MCL. FDA will also consider whether the contaminant is present in the source water or is added as a result of the production or distribution of the bottled water, and whether the contaminant is likely to be removed during bottled water manufacturing. If the presence of a contaminant is the result of circumstances peculiar to public water systems, for example, lead in pipes, solder, or brass fittings, and if it can be avoided by bottlers, FDA may decide to propose a lower allowable level than the MCL for that contaminant.

In the past, bottled water quality standard rulemakings have been subject to the formal rulemaking procedure in section 701(e) of the act (21 U.S.C. 371(e)). However, the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), enacted November 8, 1990, removed standard of quality rulemakings from the coverage of that section. FDA is therefore proposing these amendments to the quality standards under section 701(a) of the act, which involves notice and comment rulemaking.

B. Modifications in § 103.35 (21 CFR 103.35)

EPA's drinking water regulations promulgated under the SDWA are extensive and address several distinct types of chemical contaminants in drinking water. To facilitate the understanding and use of § 103.35 after FDA makes the anticipated extensive amendments to this regulation in response to EPA rulemakings, FDA, in a final rule establishing allowable levels for seven VOC's published elsewhere in this issue of the **Federal Register**, has reorganized § 103.35(d) (the paragraph of the bottled water quality standard that contains allowable levels for individual chemical contaminants) by listing levels for chemical contaminants established pursuant to section 410 of the act in new § 103.35(d)(3), which is divided to reflect the different categories of chemical contaminants addressed by EPA in regulations. Specifically, § 103.35(d)(3) contains: (1) The allowable levels for IOC's in paragraph (d)(3)(i); (2) the allowable levels for VOC's in paragraph (d)(3)(ii); (3) the allowable levels for pesticides and other SOC's in paragraph (d)(3)(iii); and (4) the allowable levels for chemicals for which EPA has established SMCL's in paragraph (d)(3)(iv). In addition,

§ 103.35(d)(3)(v) through (d)(3)(vii) contains provisions concerning analytical methodology to be used in determining compliance with the allowable levels. The amendments to the bottled water quality standard that FDA is proposing in this document follow the reorganized format for § 103.35(d).

Some of the IOC's and pesticides addressed in this proposal are the subject of previously established allowable levels listed in § 103.35(d)(1). FDA intends to delete the entries for these IOC's and pesticides from § 103.35(d)(1) and list the levels for these contaminants in § 103.35(d)(3).

FDA is proposing to establish or modify allowable levels for bottled water, based on the MCL's that EPA has established (January 30, 1991, 56 FR 3526 and July 1, 1991, 56 FR 30266), for the following six IOC contaminants in § 103.35(d)(3)(i): Asbestos, barium, cadmium, chromium, nitrite, and selenium. In § 103.35(d)(3)(v), FDA is proposing to adopt the methodologies for determining levels of these contaminants that EPA has adopted.

Although EPA evaluated the available toxicology data on mercury and nitrate, it determined that the existing MCL's were still appropriate. Based on EPA's determination, FDA is retaining the existing allowable levels for these chemicals. As noted above, the agency is transferring the listings for these chemicals to § 103.35(d)(3)(i) so that the allowable levels for mercury and nitrate are listed with those for the other inorganic contaminants. FDA is also proposing to adopt analytical methodologies that EPA has adopted for analyzing for mercury and nitrate, as listed in § 103.35(d)(3)(v).

In listing appropriate analytical methods for IOC's in its January 30, 1991 and July 1, 1991 rules, EPA, in many instances, cited its own developed version, and equivalent versions published by other organizations, of a specific method. (For example, for determining nitrate by the manual cadmium reduction method, EPA cited its own developed version, the version published by the American Society for Testing Materials, and the version published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.) To minimize the resource burden on FDA associated with periodic updating of methods incorporated by reference (as is required by 5 U.S.C. 552(a) and 1 CFR part 51), where an EPA version of a method exists for an IOC, FDA is proposing to incorporate by reference in § 103.35(d)(3)(v) only that version of the method. When conducting analyses for these IOC's in bottled water for compliance purposes, FDA will use the method incorporated by reference (i.e., the EPA version).

In § 103.35(d)(3)(ii), FDA is proposing to establish allowable levels for bottled water based upon the MCL's that EPA has established for the following 10 VOC's: *ortho*-dichlorobenzene (*o*-dichlorobenzene), *cis*-1,2-dichloroethylene, *trans*-1,2-dichloroethylene, 1,2-dichloropropane, ethylbenzene, monochlorobenzene, styrene, tetrachloroethylene, toluene, and xylenes. In § 103.35(d)(3)(vi), FDA is proposing to adopt methodologies that EPA has cited for determining levels of these contaminants.

In § 103.35(d)(3)(ii), FDA is also proposing to establish an allowable level of 0.075 mg/L for *para*-dichlorobenzene (*p*-dichlorobenzene) in bottled water. EPA established an MCL of 0.075 mg/L for this VOC in a final rule promulgating NPDWR's published in the **Federal Register** of July 8, 1987 (52 FR 25960). FDA had originally intended to adopt EPA's proposed SMCL of 0.005 mg/L for this contaminant (54 FR 22062 at 22138, May 22, 1989) based on a reported odor detection level of 0.003 mg/L. However, because EPA deferred establishing an SMCL for this chemical, FDA is proposing to adopt EPA's MCL for this chemical as an allowable level. In § 103.35(d)(3)(vi), FDA is proposing to adopt analytical methods that EPA has cited for determining the level of *p*-dichlorobenzene. FDA notes that although it is not proposing an odor-based quality standard for *p*-dichlorobenzene at this time, bottled water must still comply with the physical quality standards in § 103.35(c)(3), which provide that the odor shall not exceed threshold odor no. 3.

In § 103.35(d)(3)(iii), FDA is proposing to establish or modify allowable levels for polychlorinated biphenyls (PCB's) and for the following 17 pesticides: alachlor, aldicarb, aldicarb sulfoxide, aldicarb sulfone, atrazine, carbofuran, chlordane, 1,2-dibromo-3-chloropropane, 2,4–D, ethylene dibromide, heptachlor, heptachlor epoxide, lindane, methoxychlor, pentachlorophenol, toxaphene, and 2,4,5–TP (Silvex). The allowable levels are based on the MCL's that EPA has established for these contaminants. In § 103.35(d)(3)(vi), FDA is proposing to adopt the methodologies for determining levels of these contaminants that EPA has adopted.

FDA is not proposing to establish allowable levels for the two contaminants for which EPA established treatment techniques, acrylamide and epichlorohydrin. As discussed in Section II of this document, EPA's treatment techniques set limits on the use levels of flocculents containing acrylamide or epichlorohydrin polymers for treating drinking water and on residual acrylamide and epichlorohydrin monomer levels in the flocculents. However, flocculents may not be used in the manufacture of bottled water unless a food additive regulation or other appropriate authorization (such as a generally recognized as safe affirmation regulation) exists prescribing conditions under which such additives may be safely used. Similarly, food-contact materials, such as paints and adhesives, that may be used on equipment used in bottled water manufacturing processing must also be prescribed in food additive regulations or other appropriate authorizations unless there is no reasonable expectation of migration of components of such materials into the bottled water. Therefore, because EPA has determined that it is not feasible to establish MCL's for acrylamide and epichlorohydrin, and because it is unnecessary, and it would be duplicative to adopt EPA's treatment techniques when the Food Additives Amendment of 1958 (Pub. L. 85–929) and regulations that the agency has issued thereunder prohibit unsafe use of flocculents and other food-contact materials in the manufacture of bottled water, FDA has decided not to propose an allowable level for these chemicals in the quality standard for bottled water.

In § 103.35(d)(3)(iv), FDA is proposing to adopt allowable levels for silver (0.1 mg/L) and aluminum (0.2 mg/L) based on EPA's SMCL's for these contaminants. In § 103.35(d)(3)(vii), FDA is proposing to adopt analytical methodologies that EPA has cited for determining levels of these contaminants.

As discussed in section II above, EPA established an SMCL for aluminum that consisted of a range from 0.05 mg/L to 0.2 mg/L and allowed State water officials to decide the appropriate level for each water distribution system on a case-by-case basis.

Aluminum is a common constituent of ground water, which is used as source water both by bottled water manufacturers and by public water systems. Comments to the EPA rule of January 30, 1991 (56 FR 3256), cited a 1987 American Water Works Association Research Foundation Survey of more than 90 water utilities that found an average aluminum concentration of 0.09 mg/L in finished

water. Furthermore, the International Bottled Water Association (IBWA) found that: "* * * a review of literature shows ranges (of aluminum) from 0.07 mg/L to 0.13 mg/L with one sample at 0.70 mg/L. The information listed the products as spring water" (Ref. 2).

FDA has considered EPA's SMCL range and the reasons given by EPA for its approach and has tentatively determined that 0.2 mg/L is the appropriate allowable level for aluminum in the quality standard for bottled water for several reasons.

First, FDA believes that single values should be used as the allowable level for chemicals in the quality standard for bottled water because bottled water, unlike tap water, is a packaged food product that may be shipped far from where it is bottled. If a range were used with the applicable allowable level to be determined by the State agency having primacy, it could be difficult for authorities in localities where the bottled water is to be sold to determine whether it meets the applicable standards.

Secondly, FDA has considered that EPA's standard was set not to address adverse health effects but to address possible post-treatment precipitation discoloration of the water. Therefore, selection of the higher level as the quality standard for aluminum in bottled water would not pose a greater health risk than selection of the lower level.

Thirdly, because bottled water could have more than 0.05 mg/L aluminum and still be acceptable, it would be inappropriate to set the allowable level at that amount.

Finally, the World Health Organization has established a guideline level for aluminum in drinking water at 0.2 mg/L (56 FR 3526 at page 3573). Therefore, adoption of 0.2 mg/L as the allowable level would further international harmonization of food regulations.

Based on these four factors FDA is proposing 0.2 mg/L as the allowable level for aluminum in bottled water.

In Table 1, FDA is listing, for convenience, the chemical contaminants for which it is proposing to modify the allowable levels in the bottled water quality standard. The chart permits comparison of the existing and the proposed maximum allowable levels.

TABLE 1

Proposed Revisions to Existing Allowable Levels in Bottled Water Quality Standard

Contaminant	Existing level in milligrams per liter	Proposed level in milligrams per liter
Barium	1.0	2.0
Cadmium	0.01	0.005
Chromium	0.05	0.1
Selenium	0.01	0.05
Silver	0.05	0.1
Lindane	0.004	0.0002
Methoxychlor	0.1	0.04
Toxaphene	0.005	0.003
2,4–D	0.1	0.07
2,4,5–TP (Silvex)	0.01	0.05

FDA reminds water bottlers that they are responsible for ensuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard set forth in § 103.35. Bottled water that does not comply with any requirement in § 103.35 must bear a label statement that the water is of substandard quality (§ 103.35(f)). Moreover, any bottled water that contains a substance that presents a health concern may be subject to regulatory action under section 402(a)(1) of the act, even if the bottled water bears a label statement of substandard quality (§ 103.35(g)).

FDA has established current good manufacturing practice (CGMP) regulations for bottled water, including mineral water, in 21 CFR part 129. The CGMP regulations require sampling and analysis of source water, and of each bottled water product, for chemical contaminants at least once each year. The CGMP regulations also provide for the sampling and analysis, as often as necessary, of water taken after processing but before bottling, to assure uniformity and effectiveness of the processing performed by the plant.

These CGMP regulations will apply to the contaminants that FDA is proposing to add to the list of chemical contaminants in § 103.35. However, compliance with CGMP requirements of 21 CFR part 129 does not exempt a firm from regulatory action if its bottled water products do not meet the quality standard for bottled water.

IV. Environmental Impact

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.

V. Economic Impact

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act and Executive Order 12291 and 12612. The Regulatory Flexibility Act requires relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking and Executive Order 12612 requires Federal agencies to ensure that Federal solutions, rather than State or local solutions, are necessary. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses. Finally, because this proposed regulation applies to food for interstate trade, and because State regulations would hinder interstate trade, FDA finds that there is no substantial federalism issue which would require an analysis under Executive Order 12612.

A. Costs

The bottled water industry consists of 475 bottling plants with 600 brands (Ref. 1). Of the 250 bottling plants that are members of the IBWA, about half are considered small, 113.5 L (30 gallons) per minute, 25 percent medium, 227.1 L (60 gallons) per minute, and 25 percent large, 378.5 L (100 gallons) per minute. Most bottlers who are not members of IBWA are probably small. For this analysis, FDA assumes that the bottled water industry consists of 295 small bottling plants, 120 medium bottling plants, and 60 large bottling plants. FDA also assumes that each small bottler markets one brand of water, each medium bottler markets an average of one and a half brands, and each large plant markets two different brands of water.

If this proposal becomes a final rule, bottlers will be required to test the source water and product water to ensure that the potential chemical contaminants in source and product water are below the allowable levels. Some of the testing that would be required is required by existing regulations. Thus, it is likely that the incremental testing cost of source and product water required by this regulation would be incurred by a relatively small proportion of the industry.

FDA estimates that between 9 and 40 brands of bottled water will be required to be tested for contaminants. The estimated incremental annual testing cost per brand of bottled water is $2,430. Therefore, the total incremental annual testing cost would be between $22,000 and $97,000.

In addition to these estimated testing costs, FDA assumes that all bottlers must incur an annual cost of $6 per brand to keep records of the testing for inspections. This results in a total industry cost of $3,600 per year ($6 multiplied by 600 brands).

Approximately 75 percent of the bottled water brands are from natural sources, either wells or natural springs (Ref. 1). It is highly unlikely that any of these natural sources would include levels of the chemical contaminants above the proposed allowable levels for bottled water because of the protected, proprietary nature of the sites of this source water. Therefore, waters from these sources are unlikely to require additional treatment to comply with the allowable levels that the agency has proposed.

Bottled waters produced from municipal water sources that are in compliance with EPA's MCL's for chemical contaminants in public drinking water should comply with most of the proposed allowable levels for chemical contaminants in bottled water. Bottlers using source waters that contain chemical contaminants above the proposed allowable levels could treat the water to reduce the contaminant, use an alternative water source, or revise product labels to bear a statement of substandard quality. If one or more bottlers are using source water from a municipal system that does not comply with the allowable levels stated in the proposed regulation, it may be necessary for the bottler to temporarily use an alternative water source or treat the water to achieve compliance until the municipal water system fully complies with EPA drinking water regulations. The estimated incremental one-time cost to bottlers of treating source water that is out of compliance would range from $25,300 to $109,200. Annual incremental treatment costs are expected to range between $13,400 and $36,200.

B. Benefits

FDA has no information to quantify the benefits of this proposed regulation. However, as the costs are minimal, FDA expects that benefits will exceed costs.

C. Summary

FDA has determined that this proposed rule is not a major rule as defined by Executive Order 12291. The establishment of allowable levels for 39 chemical contaminants in bottled water would result in a one-time treatment cost of between $25,000 to $109,000. Annual treatment, testing, and record keeping costs are estimated to be between $39,000 and $136,000. Therefore, total costs of this proposed regulation, if it becomes a final rule, are estimated to be between $64,000 and $245,000. Although FDA is not able to quantify the benefits of this regulation, benefits are expected to exceed costs.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Twenty Questions Concerning Bottled Water," International Bottled Water Association, 1990.

2. IBWA letter dated February 16, 1991.

VII. Comments

Interested persons may, on or before March 8, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Effective Date

The agency intends to make any final rule based upon this proposal effective 180 days following the date of publication of the final rule. The agency is providing this time period to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule. The agency is requesting comments on the proposed effective date. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

List of Subjects in 21 CFR Part 103

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

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 103 be amended as follows:

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR part 103 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 410, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 349, 371, 376).

2. Section 103.35 is amended in the table in paragraph (d)(1)(i) by removing the entries for "Barium," "Cadmium," "Chromium," "Mercury," "Nitrate (N)," "Selenium," "Silver," and under "Organics:" by removing the entries "Lindane * * *," "Methoxychlor * * *," "Toxaphene * * *," "2,4-D (2,4-dichlorophenoxyacetic acid)," and "2,4,5–TP (Silvex) * * *," and in paragraph (d)(3) by adding new paragraphs (d)(3)(i), (d)(3)(iii), (d)(3)(iv), (d)(3)(v), and (d)(3)(vii), by adding new entries in the table in paragraph (d)(3)(ii), and by revising paragraph (d)(3)(vi) to read as follows:

§ 103.35 Bottled water.

* * * * *

(d) * * *

(3) * * *

(i) The allowable levels for inorganic substances are as follows:

Contaminant	Concentration in milligrams per liter (or as specified)
Asbestos	7X10⁶ fibers/L (longer than 10 μM)
Barium	2.0
Cadmium	0.005
Chromium	0.1
Mercury	0.002
Nitrate	10 (as nitrogen)
Nitrite	1 (as nitrogen)
Total Nitrate and Nitrite	10 (as nitrogen)
Selenium	0.05

(ii) The allowable levels for volatile organic chemicals are as follows:

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
* * * * * * *	
o-Dichlorobenzene (95-50-1)	0.6
p-Dichlorobenzene (106-46-7)	0.075
* * * * *	
cis-1,2-Dichloroethylene (156-59-2)	0.07
trans-1,2-Dichloroethylene (156-60-5)	0.1
1,2-Dichloropropane (78-87-5)	0.005
Ethylbenzene (100-41-4)	0.7
Monochlorobenzene (108-90-7)	0.1
Styrene (100-42-5)	0.1
* * * * * * *	
Tetrachloroethylene (127-18-4)	0.005
* * * * * * *	
Toluene (108-88-3)	1
* * * * * * *	
Xylenes (1330-20-7)	10

(iii) The allowable levels for pesticides and other synthetic organic chemicals are as follows:

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
Alachlor (15972-60-8)	0.002
Aldicarb (116-06-3)	0.003
Aldicarb sulfoxide (1646-87-3)	0.004
Aldicarb sulfone (1646-87-4)	0.002
Atrazine (1912-24-9)	0.003
Carbofuran (1563-66-2)	0.04
Chlordane (57-74-9)	0.002
1,2-Dibromo-3-chloropropane (96-12-8)	0.0002
2,4-D (94-75-7)	0.07
Ethylene dibromide (106-93-4)	0.00005
Heptachlor (76-44-8)	0.0004
Heptachlor epoxide (1024-57-3)	0.0002
Lindane (58-89-9)	0.0002
Methoxychlor (72-43-5)	0.04
Pentachlorophenol (87-86-5)	0.001
PCB's (as decachlorbiphenyl) (1336-36-3)	0.0005
Toxaphene (8001-35-2)	0.003
2,4,5-TP (Silvex) (93-72-1)	0.05

(iv) The allowable levels for certain chemicals for which EPA has established secondary maximum contaminant levels in its drinking water regulations are as follows:

Contaminant	Concentration in milligrams per liter
Aluminum	0.2
Silver	0.1

(v) Analyses to determine compliance with the requirements of paragraph (d)(3)(i) of this section shall be conducted in accordance with an applicable method or applicable revisions to the methods listed in paragraphs (d)(3)(v)(A) through (d)(3)(v)(G) of this section and described (unless otherwise noted) in "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268 (EPA-600/4-79-020), March 1983, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Except as otherwise indicated below, copies are available from ORD Publications, CERI, EPA, Cincinnati, OH 45268, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(A) Asbestos—"Analytical Method for Determination of Asbestos Fibers in Water" EPA-600/4-83-043, available from the EPA Environmental Research Laboratory, Athens, GA 30613.

(B) Barium—The following methods are from "Methods of Chemical Analysis of Water and Wastes."

(*1*) Method 208.2—Atomic absorption; furnace technique.

(*2*) Method 208.1—Atomic absorption; direct aspiration, and

(*3*) Method 207—Inductively coupled plasma with Method 200.7A—"Inductively Coupled Plasma Atomic Emission Analysis of Drinking Water," Appendix to Method 200.7, March 1987, available from the EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268.

(C) Cadmium—The following methods are from "Methods of Chemical Analysis of Water and Wastes."

(*1*) Method 213.2—Atomic absorption; furnace technique, and

(*2*) Method 200.7A—"Inductively Coupled Plasma Atomic Emission Analysis of Drinking Water," Appendix to Method 200.7, March 1987, available from the EPA, Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268.

(D) Chromium—The following methods are from "Methods of Chemical Analysis of Water and Wastes."

(*1*) Method 218.2—Atomic absorption; furnace technique.

(*2*) Method 207—Inductively coupled plasma with Method 200.7A—"Inductively Coupled Plasma Atomic Emission Analysis of Drinking Water," Appendix to Method 200.7, March 1987 available from the EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268.

(E) Mercury—The following methods are from "Methods of Chemical Analysis of Water and Wastes."

(*1*) Method 245.1—Manual cold vapor technique.

(*2*) Method 245.2—Automated cold vapor technique.

(F) Nitrate and/or nitrite—The following methods are from "Methods of Chemical Analysis of Water and Wastes."

(*1*) Method 353.3—Manual cadmium reduction, for both nitrate and nitrite.

(*2*) Method 353.2—Automated cadmium reduction, for both nitrate and nitrite.

(*3*) Method 300.0—Ion chromatography, for both nitrate and nitrite.

(*4*) Method 353.1—Automated hydrazine reduction, for nitrate only, and

(*5*) Method from "Orion Guide to Water and Wastewater Analysis", Form WeWWG/5880, p. 5, 1985. Orion Research, Inc., Cambridge, MA, nitrate only.

(G) Selenium—The following methods are from "Methods of Chemical Analysis of Water and Wastes."

(1) Method 270.2—Atomic absorption; furnace technique.

(2) Method 270.3—Atomic absorption; gaseous hydride.

(vi) Analyses conducted to determine compliance with paragraphs (d)(3)(ii) and (d)(3)(iii) of this section shall be conducted in accordance with a relevant method contained in "Methods for the Determination of Organic Compounds in Drinking Water," Office of Research and Development, Environmental Monitoring Systems Laboratory, EPA/600/4–88/039, December 1988, and listed separately in paragraphs (d)(3)(vi)(A) through (d)(3)(vi)(M) of this section, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Except as otherwise indicated below, copies are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(A) Method 502.1—"Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography" (applicable to VOC's).

(B) Method 502.2—"Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series" (applicable to VOC's).

(C) Method 503.1—"Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography" (applicable to VOC's).

(D) Method 524.1—"Measurement of Purgeable Organic Compounds in Water by Purged Column Gas Chromatography/Mass Spectrometry" (applicable to VOC's).

(E) Method 524.2—"Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry" (applicable to VOC's).

(F) Method 504—"1,2-Dibromoethane (EDB) and 1,2-Dibromo-3-Chloropropane (DBCP) in Water by Microextraction and Gas Chromatography" (applicable to dibromochloropropane (DBCP) and ethylene dibromide (EDB)).

(G) Method 505—"Analysis of Organohalide Pesticides and Commercial Polychlorinated Biphenyl Products in Water by Micro-Extraction and Gas Chromatography" (applicable to alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene and as a screen for PCB's).

(H) Method 507—"Determination of Nitrogen- and Phosphorus-Containing Pesticides in Ground Water by Gas Chromatography with a Nitrogen-Phosphorus Detector" (applicable to alachlor and atrazine).

(I) Method 508—"Determination of Chlorinated Pesticides in Water by Gas Chromatography with an Electron Capture Detector" (applicable to chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene, and as a screen for PCB's).

(J) Method 508A—"Screening for Polychlorinated Biphenyls by Perchlorination and Gas Chromatography." (used to quantitate PCB's as decachlorobiphenyl if detected in methods 505 or 508).

(K) Method 515.1, Revision 5.0—"Determination of Chlorinated Acids in Water by Gas Chromatography with an Electron Capture Detector" as revised May 1991 (applicable to 2,4–D, 2,4,5–TP (Silvex) and pentachlorophenol).

(L) Method 525.1, Revision 3.0—"Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry" as revised May 1991 (applicable to alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, and pentachlorophenol).

(M) Method 531.1—"Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Water by Direct Aqueous Injection HPLC with Post Column Derivatization" (applicable to aldicarb, aldicarb sulfoxide, aldicarb sulfone, and carbofuran).

(vii) Analyses to determine compliance with the requirements of paragraph (d)(3)(iv) of this section shall be conducted in accordance with an applicable method listed in this paragraph and described (unless otherwise noted) in "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268 (EPA–600/4–79–020), March 1983. The "Methods of Chemical Analysis of Water and Wastes," other analytical methods, and applicable revisions to the methods described in "Methods of Chemical Analysis of Water and Wastes," listed in this paragraph are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Except as otherwise indicated below, copies are available from ORD Publications, CERI, EPA, Cincinnati, OH 45268 or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(A) Aluminum—The following methods are from "Methods of Chemical Analysis of Water and Wastes."

(1) Method 202.1—Atomic absorption technique; direct aspiration.

(2) Method 200.2—Atomic absorption; graphite furnace technique, and

(3) Method 200.7—"Determination of Metals and Trace Elements by Inductively Coupled Plasma-Atomic Emission Spectrometry," version 3.2, August 1990, available from the EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268, and

(4) Method 200.8—"Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry," version 4.3, August 1990, EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268, available from ORD Publications, CERI, EPA, Cincinnati, OH 45268, and

(5) Method 200.9—"Determination of Metals and Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," version 1.1, August 1990, available from EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268.

(B) Silver—The following method from "Methods of Chemical Analysis of Water and Wastes."

(1) Method 272.1—Atomic absorption technique; direct aspiration.

(2) Method 272.2—Atomic absorption; graphite furnace technique, and

(3) Method 200.7—"Determination of Metals and Trace Elements by Inductively Coupled Plasma-Atomic Emission Spectrometry," version 3.2, August 1990, available from the EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268, and

(4) Method 200.8—"Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry," version 4.3, August 1990, EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268, available from ORD Publications, CERI, EPA, Cincinnati, OH 45268, and

(5) Method 200.9—"Determination of Metals and Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," version 1.1, August 1990, available from EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268.

Dated: April 23, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 103

[Docket No. 92N-0059]

Quality Standards for Foods With No Identity Standards; Bottled Water; Chemical Quality Standards for Copper and Lead

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its standard of quality regulations for bottled water to establish a maximum level of 0.005 milligram per liter (mg/L) as the quality standard for lead in bottled water. FDA also is proposing to retain the existing quality standard for copper in bottled water that specifies a maximum level for this contaminant of 1.0 mg/L. These proposed actions, in accordance with section 410 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 349) (the act), are in response to rulemakings by the Environmental Protection Agency (EPA) that resulted in the promulgation of regulations that established treatment technique requirements for controlling lead and copper contamination of public drinking water.

DATES: Written comments by March 8, 1993. The agency intends to make any final rule based upon this proposal effective 180 days following the date of publication of the final rule in the Federal Register.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

SUPPLEMENTARY INFORMATION:

I. Background

National primary drinking water regulations (NPDWR's) are promulgated by EPA to protect the public health from the adverse effects of contaminants in public drinking water. In the Federal Register of June 7, 1991 (56 FR 26460), EPA published a final rule promulgating NPDWR's consisting of required treatment techniques for controlling copper and lead contamination. In establishing the NPDWR's for copper and lead, EPA stated that source waters used for public drinking water systems were not the primary source of copper and lead contamination. Rather, EPA said lead contamination results primarily from the corrosion of lead-containing materials located throughout public water distribution systems, while copper contamination results primarily from the corrosion of copper pipes used for interior plumbing in residences and buildings in the United States. At the same time that it established NPDWR's for copper and lead, EPA also established maximum contaminant level goals (MCLG's) for both substances in public drinking water.

Under section 410 of the act, whenever EPA prescribes an interim or revised NPDWR under section 1412 of title XIV of the Public Health Service Act (The Safe Drinking Water Act (SDWA) (42 U.S.C. 300f-300j-9)), FDA is required to consult with EPA and within 180 days after the promulgation of such drinking water regulations "* * * either promulgate amendments to regulations under this chapter applicable to bottled drinking water or publish in the Federal Register * * * reasons for not making such amendments." FDA has consulted with EPA and is proposing to amend the quality standard for lead in bottled water. The quality standard that FDA is proposing to establish for lead represents a level for this contaminant that the agency expects will not be exceeded in source waters that have not been exposed to the significant lead contamination that results from corrosion of materials in public water distribution systems. FDA also has consulted with EPA and has determined, for the reasons stated below, that it will retain the existing quality standard for copper in bottled water.

II. EPA Standards

Under section 1412(b) of the SDWA, as amended in 1986, EPA is required to promulgate NPDWR's for 83 contaminants, including lead and copper. Further, EPA must regulate an additional 25 contaminants every 3 years after 1989 (54 FR 22062 at 22066, May 22, 1989). NPDWR's, which are enforceable standards, consist of either a maximum contaminant level (MCL) or a treatment technique requirement for each contaminant. EPA sets MCL's for contaminants as close as feasible to the MCLG, the level at which no known or anticipated adverse health effects occur and that provides an adequate margin of safety. When it is not feasible to establish an MCL for a specific contaminant, EPA can establish a treatment technique requirement to reduce the level of the contaminant and thus protect the public from the adverse health effects of the contaminant.

The SDWA requires that EPA promulgate MCLG's at the time that it promulgates NPDWR's. However, MCLG's do not constitute regulatory requirements but rather are health goals that are based solely on considerations of protecting the public from adverse health effects of drinking water contamination.

EPA also establishes National Secondary Drinking Water Regulations (NSDWR's), consisting of secondary maximum contaminant levels (SMCL's) under the SDWA. SMCL's are established to control water color, odor, appearance, and other characteristics affecting consumer acceptance of drinking water. NSDWR's are not federally enforceable but are considered to be guidelines for the States (section 1401(2) of the SDWA).

EPA has established MCLG's of zero and 1.3 mg/L for lead and copper, respectively (56 FR 26460, June 7, 1991). The MCLG for lead was based upon: (1) The occurrence of a variety of low level health effects for which it is currently difficult to identify clear threshold exposure levels below which these effects do not occur, (2) EPA's policy that drinking water should contribute minimal lead to total lead exposures because a substantial portion of the sensitive population already exceeds acceptable blood lead levels, and (3) EPA's classification of lead as a probable human carcinogen. The MCLG for copper was based upon the protection of the public from gastrointestinal effects such as nausea and diarrhea resulting from acute exposure to copper.

However, EPA concluded that setting MCL's for lead and copper would not be feasible under the SDWA because such action could result in a large number of public water systems being out of compliance with these levels because of circumstances beyond the direct control of the system, e.g., corrosion in service lines not owned by the system and in the plumbing of residences and buildings. Instead, EPA chose to establish treatment technique requirements rather than MCL's as the enforceable standards for achieving the objective of the SDWA (i.e., reducing consumers' exposure to drinking water contaminants to the maximum extent feasible) because it found treatment techniques to be more appropriate when contamination was largely the result of circumstances beyond the direct control of the system (56 FR 26460 at 26477

EPA's treatment technique requirements consist of corrosion control, source water treatment, lead service line replacement, and public education. These requirements are triggered in large part if the 90th percentile lead or copper levels of the targeted tap water samples exceed 0.015 mg/L for lead and 1.3 mg/L for copper (except that large systems may be required to install optimal corrosion control even if initial levels at the tap do not exceed these trigger levels). In its final rule, EPA noted that its trigger level for lead of 0.015 mg/L at the 90th percentile corresponds to an average level of 0.005 mg/L lead in water, is associated with substantial public health protection, and is expected to trigger treatment among large numbers of systems nationwide, thereby substantially reducing public exposure to lead from drinking water.

III. Reorganization of Quality Standard for Chemical Contaminants

EPA's drinking water regulations promulgated under the SDWA are extensive and address several distinct types of chemical contaminants in drinking water. To facilitate the understanding and use of § 103.35 (21 CFR 103.35) after FDA makes the anticipated extensive amendments to this regulation in response to EPA rulemakings, FDA, in a final rule establishing allowable levels for seven volatile organic chemicals (VOC's) published elsewhere in this issue of the **Federal Register**, has reorganized § 103.35(d) (the paragraph of the bottled water quality standard that contains allowable levels for individual chemical contaminants) by listing levels for chemical contaminants established pursuant to section 410 of the act in new § 103.35(d)(3), which is divided to reflect the different categories of chemical contaminants addressed by EPA in regulations. Specifically, § 103.35(d)(3) contains: (1) The allowable levels for inorganic chemicals in § 103.35(d)(3)(i); (2) the allowable levels for VOC's in paragraph (d)(3)(ii); (3) the allowable levels for pesticides and other synthetic organic chemicals in paragraph (d)(3)(iii); and (4) the allowable levels for chemicals for which EPA has established SMCL's in paragraph (d)(3)(iv). In addition, § 103.35(d)(3)(v) through (d)(3)(vii) contains provisions concerning analytical methodology to be used in determining compliance with the allowable levels. The amendments to the bottled water quality standard that FDA is proposing in this document follow the reorganized format for § 103.35(d).

IV. FDA Proposal

A. Agency Approach to Bottled Water Quality Standards Established Under Section 410 of the Act

Under section 401 of the act (21 U.S.C. 341), the agency may promulgate a regulation establishing a standard of quality for a food under its common or usual name, when in the judgment of the agency such action will promote honesty and fair dealing in the interest of consumers. The current quality standard for bottled water is set forth in § 103.35. Producers of bottled water are responsible for assuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard. Bottled water that is of a quality that is below the prescribed standard is required by § 103.35(f) to be labeled with a statement of substandard quality. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402 of the act (21 U.S.C. 342) is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.

FDA has traditionally fulfilled its obligation under section 410 of the act to respond to EPA's issuance of NPDWR's by amending the quality standard regulations for bottled water introduced or delivered for introduction into interstate commerce to maintain compatibility with EPA's drinking water regulations. In general, FDA believes that EPA's standards for chemical contaminants in drinking water are appropriate as allowable levels for chemicals in the quality standard for bottled water when bottled water may be expected to contain the same contaminants.

FDA proposals that respond to EPA rulemaking under the SDWA generally have not duplicated the efforts of EPA in judging the adequacy of NPDWR's for the protection of the public health, nor have they duplicated EPA's efforts in judging the adequacy of NSDWR's for control of other characteristics affecting consumer acceptance of drinking water. FDA does not intend to change this approach. Because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as a conservative estimate for the maximum expected consumption of bottled water. In cases where bottled water is subject to the same source contaminants as tap water (e.g., when obtained from the same sources used by public water systems), allowable levels for contaminants to ensure the safety of bottled water, and levels to ensure its aesthetic quality, should normally correspond to the levels set by EPA as the NPDWR's and NSDWR's for tap water. Therefore, FDA intends to rely on EPA's determinations that the MCL's or treatment technique requirements are adequate to protect the public health, and that the SMCL's are adequate to control other quality defects such as those of an aesthetic nature. In most cases, FDA will adopt EPA's MCL's and SMCL's as quality standards for bottled water. Furthermore, FDA intends to rely, in most cases, on EPA's determinations as to the appropriate analytical methods for testing for these contaminants in water and to incorporate those methods by reference in proposed amendments of its quality standard for bottled water (56 FR 3526, January 30, 1991; 54 FR 22062, May 22, 1989; 52 FR 25690, July 8, 1987; 52 FR 12876, April 17, 1987; 50 FR 46902, November 13, 1985).

FDA will, however, make its own determination as to whether it is appropriate to have an allowable level in the quality standard for bottled water for a chemical for which EPA has promulgated an NPDWR and, assuming that establishing an allowable level is appropriate, as to what amount it should be. For example, when EPA establishes or revises an NPDWR for a particular contaminant, FDA will consider whether the contaminant is present in the source water or is added as a result of the production or distribution of the bottled water. If the contaminant is present in the source water, when FDA establishes a quality standard for the contaminant, it will consider whether the contaminant is likely to be removed during bottled water processing. Further, if the presence of a contaminant in tap water is the result of circumstances peculiar to public water systems, for example, lead derived from service lines, plumbing pipes, solder, or fixtures encountered in drinking water distribution systems, and if it can be avoided by bottlers, FDA may decide to propose a lower allowable level than the MCL for that contaminant.

B. Quality Standards for Lead and Copper

The current quality standard for bottled water as set forth in § 103.35 prescribes that bottled water shall not contain lead in excess of 0.05 mg/L and shall not contain copper in excess of 1.0 mg/L. FDA has reviewed these levels in light of EPA's recent action.

1. Lead

FDA has evaluated the NPDWR that EPA has promulgated for controlling lead contamination in public drinking water and has tentatively decided not to adopt the trigger level at which EPA requires initiation of treatments, 0.015 mg/L, as an allowable level for lead in bottled water.

The EPA treatment technique requirements, which seek to attain a level of lead in public drinking water as close to the MCLG of zero as is feasible, are primarily intended to control the significant lead contamination that can occur in public water distribution systems because of corrosion of lead containing materials such as service lines, pipes, solder, and fixtures. However, EPA stated that source waters generally contain much less than 0.015 mg/L of lead. In fact, EPA estimates that only 1 percent of all public water systems have lead levels in their source water exceeding 0.005 mg/L.

In a 1990 survey of bottled water conducted by FDA (Ref. 1), 48 domestic and 58 imported bottled water samples were analyzed for their lead content using a method with a practical quantitation limit of 0.005 mg/L. The results revealed that the average lead level was substantially below 0.005 mg/L, with only eight samples (two domestic and six imported) above 0.005 mg/L. FDA's 1990 bottled water survey was limited in scope and was not designed to obtain results that are statistically representative of the entire bottled water industry. Nevertheless, FDA believes that the survey evidences that bottlers are generally using sources of water that are free of significant lead contamination. Thus, FDA tentatively concludes that it is both reasonable and desirable, for quality as well as for public health purposes, to establish a standard that ensures that bottlers will continue to use sources of water that are free of significant lead contamination. FDA requests comments on whether bottlers can readily produce bottled water with lead levels below the proposed allowable level of 0.005 mg/L, or whether bottlers will experience undue hardship in complying with the proposed standard. If the comments provide convincing evidence that complying with the proposed allowable level for lead in bottled water will cause undue hardship for bottlers, the agency may then consider establishing a higher allowable level for lead in its final rule. FDA requests comments on what that higher level should be.

When FDA proposes to establish a quality standard for a chemical contaminant, as a practical matter, it must also consider the reliable quantitation capabilities of the methods it proposes to use for determining compliance with the standard. FDA concurs with EPA (56 FR 26460, June 7, 1991) that the best methods available for the determination of lead in water have 0.005 mg/L as their practical quantitation limit (Ref. 2). Thus 0.005 mg/L is the lowest level at which FDA could enforce an allowable level for lead in bottled water. FDA believes that a quality standard specifying that the concentration of lead in bottled water shall not exceed 0.005 mg/L would be appropriate because it would provide public health protection at least equivalent to that provided by EPA's NPDWR and ensure that bottlers produce water that is free of significant lead contamination. Therefore, FDA is proposing in § 103.35(d)(3)(i) to establish 0.005 mg/L as the allowable level for lead in bottled water.

2. Copper

As noted above, the current allowable level for copper in bottled water is 1.0 mg/L. In addition, EPA has established a SMCL for copper in 40 CFR 143.3 of 1.0 mg/L (44 FR 42198, July 19, 1979). Therefore, FDA's existing allowable level for copper in bottled water is below EPA's MCLG for this contaminant of 1.3 mg/L and is equivalent to EPA's SMCL. On the basis of EPA's MCLG of 1.3 mg/L (which constitutes a level that will protect the public from adverse health effects with an adequate margin of safety) and its SMCL of 1.0 mg/L (which constitutes a level that will protect the public from aesthetic defects), FDA tentatively concludes that it will retain the existing allowable level for copper in bottled water of 1.0 mg/L. By doing so, the levels of copper in bottled water will meet both the safety and aesthetic criteria that EPA has established for public drinking water. However, FDA will move the existing quality standard for copper from § 103.35(d)(1) to § 103.35(d)(3)(i), consistent with the reorganization of § 103.35 discussed above.

3. Analytical Methods for Lead and Copper

In its final NPDWR's for lead and copper, EPA provided in 40 CFR 141.89 that analyses for these contaminants in drinking water shall be performed by any of three basic methods that it judged to be suitable for the analysis of lead, and by any of five basic methods that it judged to be suitable for the analysis of copper. FDA concurs that the eight analytical methods cited by EPA (56 FR 26460 at 26510, June 7, 1991) are appropriate for the analysis of lead and copper in water, and it has incorporated the versions of these methods that are available through EPA in the proposed rule for testing for these contaminants in bottled water. Thus, when conducting analyses for compliance purposes, FDA may use any of the incorporated methods.

C. Informal Rulemaking Procedure

In the past, bottled water quality standard rulemakings have been subject to the formal rulemaking procedure in section 701(e) of the act (21 U.S.C. 371(e)). However, the Nutrition Labeling and Education Act of 1990, enacted November 8, 1990, removed standard of quality rulemakings from the coverage of that section. FDA is therefore proposing these amendments to the quality standards under section 701(a) of the act, which involves notice and comment rulemaking.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA FY 90 Bottled Water Survey, 1990.

2. FDA internal memorandum of meeting, Discussions on the Analytical Methods for Determination of Lead in Bottled Water, December 26, 1991.

3. "Twenty Questions Concerning Bottled Water," International Bottled Water Association, 1990.

VI. Environmental Impact

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.

VII. Economic Impact

FDA has examined the economic implications of the proposed rule amending 21 CFR part 103 as required by the Regulatory Flexibility Act and Executive Orders 12291 and 12612. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking and Executive Order 12612 requires Federal agencies to

ensure that Federal solutions, rather than State or local solutions, are necessary. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses. Finally, because this proposed regulation applies to food for interstate trade, and because State regulations would hinder interstate trade, FDA finds that there is no substantial federalism issue which would require an analysis under Executive Order 12612.

A. Costs

FDA's proposal to retain the existing quality standard for copper in bottled water has little economic impact on the bottled water industry because no change in processing will be needed to meet the existing quality standard. Therefore, the remainder of this economic assessment will focus on the potential economic impact of the proposal to amend the quality standard for lead in bottled water.

FDA believes that the costs of meeting the proposed allowable level of 0.005 mg/L for lead in bottled water will be minimal because most bottled waters (excluding mineral water) already meet the proposed allowable level. Approximately 75 percent of domestic bottled water is produced from private water sources (Ref. 3). Such sources are protected and are not exposed to distribution systems (such as residential plumbing) which are the major source for lead contamination in public drinking water. FDA data from the 1990 bottled water survey (Ref. 1) showed that approximately 4 percent of domestic bottled water (excluding mineral water) samples exceeded the proposed limit of 0.005 mg/L.

If this proposal becomes a final rule, bottlers will be required to test each lot of bottled water to ensure that their respective lead levels are below 0.005 mg/L. Testing and treatment is currently being conducted by most of the industry in order to meet present FDA standards. Thus, it is likely that the incremental testing cost required by this proposed rule would be incurred by a relatively small proportion of the industry.

B. International Impact

According to data from the International Bottled Water Association, the 75 brands of imported bottled water are mostly mineral water and constitute only 3.6 percent of all bottled water consumed in the United States. Mineral water is not subject to this proposed quality standard. Thus, imported water will not be considered in this analysis.

C. Benefits

FDA has no information to quantify the benefits of this proposed regulation. However, as the costs are minimal, FDA expects that benefits, which are also small, will be greater than costs.

D. Summary

FDA has determined that this proposed rule is not a major rule as defined by Executive Order 12291. Little additional costs are expected from establishing a maximum allowable level of 0.005 mg/L for lead in bottled water. Although FDA is not able to quantify the benefits of this regulation, benefits are expected to exceed costs.

VIII. Comments

Interested persons may, on or before March 8, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. Effective Date

The agency is proposing to make any final rule based on this proposal effective 180 days following the date of publication of the final rule in the **Federal Register**. The agency is providing this time period to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule. The agency is requesting comments on the proposed effective date. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

List of Subjects in 21 CFR Part 103

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

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 103 be amended as follows:

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR part 103 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 410, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 349, 371, 376).

2. Section 103.35 is amended by removing the entries for "Copper" and "Lead" from the table in paragraph (d)(1)(i), by adding them alphabetically to the table in paragraph (d)(3)(i) (which is proposed to be added in a document published elsewhere in this separate part), and by adding new paragraphs (d)(3)(v)(H) and (d)(3)(v)(I) to read as follows:

§ 103.35 Bottled water.

* * * * *

(d) * * *

(3) * * *

(i) The allowable levels for inorganic substances are as follows:

Contaminant	Concentration in milligrams per liter (or as specified)
* * * * *	
Copper	1.0
Lead	0.005
* * * * *	

* * * * *

(v) * * *

* * * * *

(H) Copper shall be measured as total recoverable metal without filtration using the following methods from "Methods of Chemical Analysis of Water and Wastes."

(*1*) Method 220.2—Atomic absorption; furnace technique.

(*2*) Method 220.1—Atomic absorption; direct aspiration.

(*3*) Method 200.7—Inductively coupled plasma, with "Determination of Metals and Trace Elements in Water and Wastes by Inductively-Coupled Plasma Atomic Emission Spectrometry," Revision 3.3, April 1991, U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory (EMSL). The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the manual are available from U.S. Environmental Protection Agency, EMSL, Cincinnati, OH 45268, or available for inspection at the Office of

the Federal Register, 1100 L St. NW., Washington, DC.

(4) Method 200.8—Inductively coupled plasma; mass spectrometry, with "Determination of Trace Elements in Water and Wastes by Inductively-Coupled Plasma-Mass Spectrometry," Method 200.8, April 1991, Revision 4.4, U.S. Environmental Protection Agency, EMSL. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the manual are available from U.S. Environmental Protection Agency, EMSL, Cincinnati, OH 45268, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(5) Method 200.9—Atomic absorption; platform furnace, with "Determination of Trace Elements in Stabilized Temperature Graphite Furnace Atomic Absorption, Spectrometry," Method 200.9, April 1991, Revision 1.2, U.S. Environmental Protection Agency, EMSL. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the manual are available from U.S. EPA, EMSL, Cincinnati, OH 45268, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(l) Lead shall be measured as total recoverable metal without filtration using the following method from "Methods of Chemical Analysis of Water and Wastes."

(1) Method 239.2—Atomic absorption; furnace technique.

(2) Method 200.8—Inductively coupled plasma; mass spectrometry, with "Determination of Trace Elements in Water and Wastes by Inductively-Coupled Plasma-Mass Spectrometry," Method 200.8, April 1991, Revision 4.4, U.S. Environmental Protection Agency, EMSL. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the manual are available from U.S. EPA, EMSL, Cincinnati, OH 45268, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(3) Method 200.9—Atomic absorption; platform furnace, with "Determination of Trace Elements in Stabilized Temperature Graphite Furnace Atomic Absorption, Spectrometry," Method 200.9, April 1991, Revision 1.2, U.S. Environmental Protection Agency, EMSL. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the manual are available from U.S. EPA, EMSL, Cincinnati, OH 45268, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

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Dated: April 23, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

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21 CFR Parts 103, 129, 165, and 184

[Docket No. 88P–0030]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to: Establish a standard of identity for bottled water; recodify the standard of quality for bottled water; revise the definition for bottled water in the quality standard to include mineral water and ingredient uses of this product; and define "artesian water," "distilled water," "mineral water," "purified water," "spring water," and "well water." As proposed, the regulations will exempt mineral water from certain maximum allowable levels of physical and chemical contaminants if the mineral water contains total dissolved solids (TDS) in excess of 500 parts per million (ppm). These actions are being proposed, in part, in response to a petition submitted by the International Bottled Water Association (IBWA). Moreover, FDA believes that the proposed regulations will promote honesty and fair dealing in the interest of consumers, as well as the interests of the regulated industry.

DATES: Written comments by March 8, 1993. The agency is proposing that any final rule that may issue based upon this proposal become effective 180 days following the date of publication of the final rule.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5112.

SUPPLEMENTARY INFORMATION:

I. Background

A. FDA's Regulatory Scheme

FDA regulations pertaining to bottled water appear in parts 103 and 129 (21 CFR parts 103 and 129). Section 103.35 sets forth microbiological, physical, chemical, and radiological quality standards for bottled water. In § 103.35(a)(1), "bottled water" is defined as "water that is sealed in bottles or other containers and intended for human consumption." However, specifically excluded from this definition are mineral water and any type of soft drink, including that commonly known as "soda water," that is made by absorbing carbon dioxide into potable water.

Generally, the bottled water quality standards, where practicable, follow the Environmental Protection Agency's (EPA's) requirements for drinking water. Section 410 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349) obligates FDA, whenever EPA prescribes interim or revised national primary drinking water regulations under section 1412 of the Public Health Service Act (the Safe Drinking Water Act (42 U.S.C. 300f through 300j–9)), to consult with EPA concerning those regulations. In 21 U.S.C. 349, the act further requires that within 180 days after EPA promulgates the drinking water regulations, FDA either promulgate amendments to its regulations applicable to bottled water or publish in the **Federal Register** its reasons for not amending the regulations. To comply with 21 U.S.C. 349, FDA reviews new EPA regulations and determines whether the new or revised primary drinking water regulations (issued by EPA as maximum contaminant levels (MCL's) or treatment

technology regulations) can be incorporated into FDA's quality standards without further modification.

Part 129 contains current good manufacturing practice (CGMP) requirements for the processing and bottling of "bottled drinking water." In § 129.3(b), FDA defines bottled drinking water to include "all water which is sealed in bottles, packages, or other containers and offered for sale for human consumption, including [in a departure from § 103.35(a)(1)] bottled mineral water." (Emphasis added.)

B. The International Bottled Water Association Petition

On January 20, 1988, IBWA submitted a petition under § 10.30 (21 CFR 10.30), requesting that FDA revise the standards of quality for bottled water in § 103.35 and the bottled water CGMP regulations in part 129 to expand the scope of these regulations to include mineral water in the standards of quality and to more closely regulate the labeling, production, and distribution of bottled water. IBWA subsequently amended its petition through submissions of March 25, 1988, September 12, 1990, and May 17, 1991. (The IBWA petition and its supplements will hereinafter be referred to as "the IBWA petition.")

At the time that IBWA submitted its petition, the quality standards for bottled water were subject to the formal rulemaking procedures of section 701(e) of the act (21 U.S.C. 371(e)). However, in November of 1990, the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) was signed into law. The 1990 amendments removed rulemaking under the authority of section 401 of the act (21 U.S.C. 341), including standards of quality, from the procedural requirements of 21 U.S.C. 371(e) with the exception of rulemaking for the amendment or repeal of food standards of identity for dairy products or maple syrup. Therefore, any action on the IBWA petition is subject to informal, notice and comment rulemaking under 21 U.S.C. 371(a) instead of the formal rulemaking procedures of 21 U.S.C. 371(e).

FDA has completed a thorough review of the IBWA petition in accordance with 21 CFR part 10 and has reached a number of tentative conclusions concerning the requested revisions of agency regulations. A complete discussion of the requested revisions and the agency's tentative conclusions follow.

II. The Standard of Identity

A. Justification

In its petition, IBWA requested that FDA amend the standard of quality for bottled water in § 103.35 to include mineral water and to provide definitions for "artesian water," "distilled water," "mineral water," "purified water," "spring water," and "well water." IBWA stated that given the steady increases in the types and brands of bottled drinking water, the American public should be made aware of the various distinctions in the types of bottled water. It stated that labels complying with precise definitions for bottle contents would foster public awareness. IBWA stated that the public deserves to be able to make an informed decision regarding the purchase of bottled drinking water.

On January 6, 1989 (54 FR 398), FDA published a final rule repealing the soda water standard of identity. In response to a comment that requested that FDA amend § 103.35 to include definitions for "carbonated spring water," "artesian water," and "mineral water" as a means of distinguishing various bottled waters, FDA stated:

> The agency does not believe it necessary to include definitions for bottled waters from various water sources and produced by different treatments in the standard of quality for bottled water at this time. Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) provides that a food will be deemed to be misbranded if its labeling is false or misleading in any particular. Accordingly, if a manufacturer decides to provide information in the labeling regarding the source of the water or special treatment that the water has received, such information must be truthful, factual, and not misleading in any respect. For example, a product labeled "carbonated spring water" would have to have been obtained from a spring and had carbonation added in some form. FDA concludes that existing statutory authority is sufficient to provide for regulatory action in instances where false and misleading statements concerning the source or treatment of the bottled water are made, and that it is not necessary to include specific statements to this effect in § 103.35.

However, FDA no longer believes that the position in this comment is appropriate. Based on the information that has become available to it over the last 3 years, FDA has tentatively concluded that it will promote honesty and fair dealing in the interest of consumers, as well as the interests of the regulated industry, if the agency adopts a standard of identity for bottled water as well as definitions for the various types of bottled water products.

FDA recognizes that standards of identity are often viewed as discouraging innovation. However, as discussed in greater detail below, a number of States have established differing labeling definitions for bottled water. A Federal standard of identity would provide a uniform definition for bottled water products, and it would provide an established framework in which innovation could occur. Thus, given the current state of the regulation of bottled water, the agency finds that innovation is more likely if the agency acts in the way that it is proposing than if the current situation is allowed to persist.

FDA's tentative conclusion is based in part on several reports that it has received. The first is a report from the Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences (IOM). In response to section 6 of the 1990 amendments, FDA contracted with IOM to conduct a study of State and local laws that require food labeling of the type required by certain misbranding provisions of the act. The study was to consider whether FDA has adequately implemented these sections. After an information-gathering process that included a public meeting, requests to the States, and communications with several organizations representing food and drug officials, IOM issued a report (Ref. 1).

This report noted that the Attorneys General of 7 States (California, Iowa, Minnesota, Missouri, New York, Texas, and Wisconsin) suggested in their submission to the IOM that States often respond to the public's needs well in advance of the Federal government. They stated that the States' actions ultimately stimulate the Federal government to act and provide a template for any national standard. One of the examples cited by the Attorneys General of matters on which the States have provided leadership was the labeling of bottled water.

In communications with IOM during the preparation of the report, a number of States expressed discontent with FDA's inaction in the face of false and misleading labeling claims for bottled water products. IOM reported that a total of 23 States have expressed their dissatisfaction with FDA's regulation of bottled water by adopting laws or regulations to provide additional controls. While these State laws vary, one of the main problems that they address is the nomenclature for various types of bottled water. For example, nearly half the States have established definitions for the different types of bottled and mineral water on the market.

IOM also reported that many States expressed particular concern that the

opportunity for public confusion has been increased by virtue of the increased number of products on the market and the increasingly aggressive claims made for these products. For example, even though FDA stated in the **Federal Register** of January 8, 1973 (38 FR 1019), that bottled water was not any better or purer than tap water, and that there is reason to believe that this is still the case, IOM found that it is questionable whether that view is held by consumers after years of exposure to advertising that claimed superiority for bottled and mineral water.

Thus, the IOM has described a situation in which in response to proliferating claims and statements on bottled water, the States are responding with proliferating regulations. In such a situation, the possibility of inconsistent State regulation grows, and the IBWA petition makes clear that such inconsistency is in fact what has occurred.

The bottled water industry has stated that there is a need for uniform labeling standards to prevent or eliminate inconsistent State labeling requirements that significantly limit interstate commerce in bottled water (Ref. 2). For example, North Carolina (Ref. 3) defines "spring water" as water taken from "a natural orifice in the earth's surface through which water freely flows without the aid of mechanical means." California (Ref. 4), on the other hand, defines "spring water" as water that issues by natural forces out of the earth at a particular place. According to the California definition, however, spring water may be derived from the natural orifice or from a bore hole adjacent to the natural orifice. Therefore, water collected from a bore hole adjacent to the spring could be called "spring water" in California but could not be called "spring water" in North Carolina.

FDA has received comments from bottled water manufacturers who are not members of IBWA that urge the agency to enact labeling requirements for bottled water (Refs. 5 and 6) that will supersede State requirements. One of these manufacturers stated that it spent approximately $80,000 for label changes in 1990 because of requests from various States concerning labeling requirements (Ref. 6).

The bottled water segment of the beverage industry is growing at a strong pace. In 1981, bottled water had a comparative market share of 1.8 percent. In 1991, the comparative market share had tripled to 5.4 percent. In 1981, the per capita consumption of bottled water did not exceed that of juices, tea, or powdered drinks. However, in 1991, bottled water consumption exceeded that of each of these drinks (Ref. 7).

The agency realizes that there is an increasing number of bottled water products on the market, and that the labels on these products may be misleading to consumers (Ref. 8). FDA also realizes that there may be a significant difference in price for bottled water products depending on the representations made or implied by the product labeling. Often marketing and advertising associated with bottled water suggest that the "water comes from a tranquil, distant, utopian source" (Ref. 9). For example, a picture of a blue-green mountain spring on a label of a bottled water product may indicate to consumers that the water comes from a mountain spring. Such a label is misleading to consumers if the water actually comes from the municipal water supply of an urban area located far from any mountains.

Therefore, FDA agrees that there is a need to define the various types of bottled water products because such information is of material interest to consumers. FDA tentatively concludes that defining the bottled water sources, as IBWA requested in its petition, will provide a definition and standard of identity for bottled water products that will promote honesty and fair dealing in the interest of consumers.

For the reasons set forth above, FDA tentatively concludes that the different State requirements for labeling and testing bottled water impose a significant burden on interstate commerce. A uniform Federal definition will ensure that consumers will be able to purchase bottled water products that are informatively and consistently labeled throughout the country. Therefore, FDA is proposing to establish a standard of identity for bottled water in proposed § 165.110(a). Under the 1990 amendments, such a standard will preempt any State standards that are not identical to it (21 U.S.C. 343A(a)(1)).

Section 103.5(c) (21 CFR 103.5(c)) of FDA's regulations states that should a standard of identity be established for any of the foods defined by a standard of quality in Part 103, the standard of quality will be recodified to appear in the same part of the regulations as the standard of identity. Therefore, the agency is proposing to move the standard of quality for bottled water from § 103.35 to proposed § 165.110.

B. Coverage

The common or usual name of a food that has been defined by a standard of identity under 21 U.S.C. 341 is the name prescribed by the standard. Whenever an ingredient in a food purports to be a standardized food, the ingredient must conform to the standard of identity even though the finished food is not a standardized product (21 U.S.C. 343(g)). In addition, if a standard of quality exists for a food, the food also must conform to that quality standard when used as an ingredient or must be labeled as substandard (21 U.S.C. 343(h)).

Specialty waters are significant ingredients in some types of beverages such as flavored waters and diluted juice drinks. For example, there are numerous flavored water products that claim to use spring or mineral water as the water ingredient and that include this information on their label. Other beverages are labeled to indicate that the water ingredient possesses a specific characteristic or has received a specific treatment (e.g., "sparkling" water).

FDA believes that highlighting the water component of these products in this manner is effectively a claim that the water ingredient in the beverage has particular value, and that consumers are likely to purchase these beverages in large measure because of the claim concerning the water ingredient. Therefore, these products should be treated as part of the general category of bottled water products, and the quality of the water ingredient in these beverages should be at least as good as the quality of bottled water. Consequently, FDA is proposing to include water used as an ingredient in these types of beverages (e.g., flavored bottled waters) in the definition for "bottled water" (proposed § 165.110(a)(1)).

The same type of claim is not made, however, on beverages labeled as containing "carbonated water," "seltzer water," "soda water," and "tonic water." These beverages have historically been considered to be soft drinks and not bottled water. Moreover, labels of foods that claim to contain "water" as an ingredient do not claim or imply any particular properties or characteristics for that ingredient.

Use of the terms "disinfected" and "filtered" in describing the water ingredient in beverages also does not imply any particular characteristic of the water other than that it has been subjected to a commonly used treatment. Municipal water is subject to these processes. Therefore, FDA tentatively concludes that consumers understand that these terms do not make a special claim about the water ingredient, and that they will not confuse water described in these ways with bottled water.

Accordingly, FDA is proposing in § 165.110(a)(1) to exempt an ingredient from the definition of bottled water if it

is declared in the ingredient listing using the terms "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," or "tonic water." FDA is requesting comments from interested persons concerning the appropriateness of the proposed exemption, and whether there are other water ingredients that should also be exempted.

C. Mineral Water

1. Inclusion of Mineral Water in the Coverage of the Standard of Identity

In the **Federal Register** of January 8, 1973 (38 FR 1019), FDA published a proposed rule to establish bottled water quality standards. In that proposal, FDA defined "bottled water" as water that is sealed in bottles or other containers and intended for human consumption but excluded mineral water and soda water from the definition. FDA received several comments in response to the proposal suggesting that the standard of quality should also apply to bottled mineral water. The agency concluded in the final rule (38 FR 32558, November 26, 1973) that mineral water was a product inherently different from bottled water. FDA stated that it intended to develop a separate standard of quality for mineral water. However, the agency has not issued such a standard.

IBWA requested in its petition that the definition for "bottled water" in § 103.35(a)(1) be amended to delete the exemption for mineral water.

FDA believes that the significance of the differences between water subject to the provisions of the quality standards and mineral water has been lessened by the wide diversity of the mineral water products that are now found in the marketplace. Bottled water and mineral water may be displayed for sale side by side, and water with lower mineral content than many tap waters is sometimes labeled as "mineral water." In recent years, the production of bottled mineral water has so dramatically increased that the agency believes that this product may be replacing tap water consumption for some consumers. In response to increased marketing of bottled mineral water products, many States have established definitions for "mineral water."

Accordingly, FDA has tentatively concluded that mineral water should be included in the standard for bottled water. Including mineral water in the standard for bottled water will subject it to the requirements of the quality standard for bottled water. FDA is proposing to delete the exclusion for mineral water from the definition of "bottled water" in § 165.110(a)(1).

FDA is proposing this action because mineral water is now being as widely consumed as other bottled waters. This action will ensure that consumers who drink mineral water will be afforded the same level of protection as those who drink other bottled water products or tap water. If the mineral water is substandard, that information will be presented on the label of the product, just as it is presented on the label of other bottled water products if they are substandard. Therefore, FDA tentatively finds that it will promote honesty and fair dealing in the interest of consumers to include mineral water in the definition for "bottled water."

2. Definition of Mineral Water

FDA has also tentatively decided to define "mineral water."

IBWA originally defined "mineral water" in its January 20, 1988, petition as bottled water that contains not less than 500 ppm TDS. In an amendment to its petition, dated May 17, 1991, IBWA redefined "mineral water" as bottled water coming from an approved source tapped at one or more bore holes or natural springs, originating from a geologically and physically protected underground water source. IBWA stated that the definition of "mineral water" should provide that it is clearly distinguishable from other types of water because of the constant level of minerals and trace elements in the water as it emerges from its source. However, IBWA did not include a minimum mineral content in its amended definition.

The European Regional Codex Standard (Ref. 10) defines "natural mineral water" as a water clearly distinguishable from ordinary drinking water because

(1) It is characterized by its content of certain mineral salts and their relative proportions and by the presence of trace elements or of other constituents;

(2) It is obtained directly from natural or drilled sources from underground water bearing strata;

(3) Of the constancy of its composition, the stability of its discharge, and its temperature, due account being taken of the cycles of natural fluctuations;

(4) It is collected under conditions that guarantee the original bacteriological purity;

(5) It is bottled close to the point of emergence of the source with particular hygienic precautions;

(6) It is not subjected to any treatment other than that permitted by the standard; and

(7) It is in conformity with all the provisions laid down in the standard.

Several States have adopted standards for mineral water. For example, Texas' standard (Ref. 11) states that mineral water is not derived from a public system and is unmodified by blending with water from another source or by mineral addition or deletion, except as it relates to ozonation or equivalent disinfection and filtration. Texas' standard does not include a minimum mineral content.

California (Ref. 4) defines "mineral water" as containing more than 500 ppm TDS and originating entirely from an underground source, which may be a well, artesian well, or spring. California regulations further state that mineral water may not be altered by the addition or deletion of minerals or by blending with water from another source, except that mineral water may be filtered and shall be treated with ozone or an equivalent disinfection process approved by the appropriate regulatory agency.

The Association of Food and Drug Officials (AFDO) (Ref. 12) defines "mineral water" as water that is impregnated with mineral solids and that has been obtained entirely from an approved source. AFDO has defined "light mineral water" as containing not less than 250 ppm nor more than 500 ppm of dissolved solids and "mineral water" as containing not less than 500 ppm of dissolved mineral solids. AFDO defines "mineralized water" as water that meets the requirements for mineral water, except that the water contains added mineral solids.

FDA received several comments on the IBWA petition that maintained that the originally suggested level of 500 ppm TDS would be inappropriate because there are many mineral waters being marketed that have less than 500 ppm TDS. The comments maintained that these waters should not be prohibited from using the term "mineral water" in their statements of identity. One comment discussed various classifications of mineral water using the following criteria: (1) Up to 500 ppm for "mineral light," (2) 500 to 1,000 ppm for "mineral water," and (3) 1,000 ppm and up for "heavy mineral water." The European Community (Ref. 13) has adopted the following labeling criteria: (1) Low mineral content—mineral salt content not greater than 500 ppm; (2) very low mineral content—mineral salt content not greater than 50 ppm; and (3) rich in mineral salts—mineral salt content greater than 1,500 ppm.

Mineral waters may have very different flavors depending on the mineral content and types of minerals

and trace elements present in the water (Ref. 14). Consumers may purchase a particular mineral water from a particular source because of the flavor contributed by the mineral content. It is important to consumers that the mineral content (e.g., flavor) of a particular source remain constant. Most international and State regulations concerning mineral water require that it come from an underground source, such as a spring or a well, and that it have a fairly stable mineral composition characteristic of the source. Based on these definitions, FDA considers that industry and consumers have come to expect that mineral water is from an underground source and has a fairly stable mineral composition. In addition, the IBWA definition for mineral water is to a large extent a geological definition.

FDA tentatively concludes that the IBWA amended definition for mineral water has merit, in part, because this definition (1) is what industry and consumers have come to expect in a product called "mineral water;" (2) agrees with other established definitions for mineral water (e.g., Texas' standard, the European Regional Codex Standard); (3) will not hinder international trade; and (4) will not exclude all water containing less than 500 ppm TDS that is currently being marketed as mineral water. Therefore, FDA is proposing in § 165.110(a)(2)(ii) that water coming from a source tapped at one or more bore holes or springs, originating from a geologically and physically protected underground water source, may be called "mineral water." FDA is further proposing in § 165.110(a)(2)(ii) that mineral water shall be distinguished from other types of water by its constant level of minerals and trace elements in the water as it emerges from its source.

All water contains some minerals unless it has been demineralized (Ref. 14). Thus, the agency surmises that consumers expect that a product identified as "mineral water" would contain a minimum level of minerals. As mentioned above, consumers may purchase a particular mineral water because of the flavor contributed by the mineral content. Therefore, FDA tentatively concludes that it would be contradictory for bottled water that has essentially no minerals and does not perform (e.g., taste) like mineral water to be labeled as mineral water. Consistent with this tentative conclusion, FDA is proposing in § 165.110(a)(2)(ii) that "mineral water" be defined as water containing not less than 250 ppm TDS. This level is in agreement with the AFDO definition (Ref. 12) for light mineral water and mineral water.

FDA is requesting comments on the proposed minimum level of 250 ppm TDS in mineral water. If FDA receives substantive data to support another minimum level, it will consider issuing a final rule with a different minimum level.

3. Mineral Content of Mineral Water

IBWA stated in its May 17, 1991, amendment to its petition that the TDS of mineral water should appear on a label of the bottle and be stated in milligrams per liter (mg/L).

FDA does not object to the optional label declaration of TDS because FDA believes that such information is useful to some consumers. However, many consumers may not understand the relevance of a specific TDS (Ref. 14). Therefore, FDA tentatively concludes that there is no substantive basis on which to require that this information appear on the label.

Because FDA is proposing a definition of mineral water that provides for a wide range of mineral contents of mineral water, and because the mineral content can change the character of the product by affecting the flavor and therefore the use of mineral water by consumers, FDA tentatively concludes that the listing of relative mineral content is useful to consumers to characterize a given mineral water product.

As discussed above, most definitions of "mineral water" describe mineral water that contains less than 500 ppm TDS as being low in mineral content. Therefore, to ensure that consumers are not misled as to the characteristics of the mineral water, FDA is proposing in § 165.110(a)(3)(i) to require that if the TDS is below 500 ppm, the statement "low mineral content" appear on the label.

A mineral content of more than 1,500 ppm greatly affects the flavor of the water. This level is consistent with the European Community definition of "mineral water—rich in mineral salts" (Ref. 13) and will not hinder international trade. Therefore, to ensure that consumers know that the product that they are purchasing is high in mineral content, FDA is also proposing in § 165.110(a)(3)(i) to require that the label of mineral water containing more than 1,500 ppm TDS include the statement "high mineral content."

FDA is not proposing to define the term "light" or other descriptive terms other than "low" and "high" as they apply to mineral water at this time. In the Federal Register of November 27, 1991 (56 FR 60421 at 60450), FDA stated that because of the potential for misuse of the term "light," its tentative view is that use of the term must be limited to foods that, compared to other products in their class, contribute substantially to the reduction of calories and, in certain circumstances, fat in the diet. Use of the term "light" on mineral water would refer to the mineral content and not to a reduction in calories. Use of this term with respect to mineral water could be confusing to consumers if, for example, the mineral water is used as an ingredient in a beverage that would not qualify for use of the caloric descriptor (e.g., mineral water flavored with fruit juice). Therefore, FDA tentatively concludes that the use of the statements "low mineral content" or "high mineral content," as applicable, instead of using terms such as "light" will be less confusing to consumers.

Under 21 U.S.C. 343(f), FDA is proposing to require that the statement of "low" or "high" mineral content appear on the label with such conspicuousness and in such terms as to render it likely to be read and understood by consumers under customary conditions of purchase and use. To ensure that consumers will know where to find this information, the statement needs to appear in the same area of the label as the statement "mineral water." Therefore, FDA is proposing in § 165.110(a)(3)(i) to require that the statement of mineral content appear on the principal display panel following the statement of identity in type at least one-half the size of the type used for the statement of identity but in no case of less than one-sixteenth of an inch.

The agency also tentatively concludes that the information about mineral content is a material fact under section 201(n) of the act (21 U.S.C. 321(n)) because it bears on the consequences of the use of the article. The mineral content can change the character of the product by affecting the flavor and therefore the use of mineral water by consumers. Accordingly, this information must be communicated to the consumer on the product label, or the labeling would be misleading. The product would consequently be misbranded under 21 U.S.C. 343(a). FDA is requesting comments concerning the proposed levels defining high or low mineral content.

D. Nomenclature for Other Types of Bottled Water

FDA is proposing in § 165.110(a)(2) that the name of the standardized food is "bottled water." However, as discussed previously concerning the need to establish a standard of identity for bottled water, FDA believes that certain types of bottled water need to be

defined. Therefore, in addition to "mineral water," FDA is proposing to define "artesian water," "distilled water," "purified water," "spring water," and "well water" in proposed § 165.110(a)(2). The agency has considered State regulations, international regulations, and dictionary definitions in deriving these proposed definitions. In this manner, FDA has attempted to ensure that the proposed definitions comport with consumers' understanding of these terms. Therefore, the agency views this action as one that will promote honesty and fair dealing in the interest of consumers. FDA is requesting comments from interested persons on these definitions and on other terms that need to be defined.

1. Artesian Water

The IBWA petition states that "artesian water" means bottled water from a well tapping a confined aquifer in which the water level stands above the natural table. AFDO (Ref. 12) defines "artesian water" in its model bottled water regulation as water that is forced from below the ground to the surface through a well by natural underground pressure.

The U.S. Geological Survey (USGS) (Ref. 15) defines "confined aquifers" as geological units (aquifers) completely filled with water and overlain by a confining bed that restricts the movement of water either into or out of adjacent aquifers. USGS defines "artesian wells" as wells drilled into confined aquifers where the water level stands at some height above the top of the natural water table but not necessarily above the land surface. Therefore, water obtained from a drilled well tapping a confined aquifer located 300 feet below the surface with a natural hydraulic pressure that makes the water rise in the well to 150 feet below the surface could be called "artesian water" under the geological definition.

The IBWA definition for "artesian water" is thus in agreement with the geologic definition. It is also consistent with the definitions of this type of water that have been adopted by California (Ref. 4) and by Texas (Ref. 11), but it is less restrictive than the AFDO definition. Therefore, FDA is proposing in § 165.110(a)(2)(i) that bottled water that is drawn from a well tapping a confined aquifer in which the water level stands above the natural water table may be called "artesian water."

IBWA requested in its petition that § 129.20 (21 CFR 129.20) be amended by adding provisions addressing appropriate collection procedures for artesian waters. IBWA stated that artesian water may be collected with the assistance of external force to enhance the natural underground pressure so long as such measures do not alter the physical properties, composition, and quality of the water.

FDA agrees that it may be necessary to use external force to collect the water because the water may not reach the land surface. However, use of external force can alter the physical properties, composition, and quality of the water. The water obtained would then be different from artesian water from that particular artesian well. Consequently, FDA tentatively concludes that use of external force is acceptable only so long as such measures do not change the physical properties, composition, and quality of the water.

Therefore, FDA is proposing in § 165.110(a)(2)(i) to provide for the collection of artesian water with the assistance of external force to enhance the natural underground pressure so long as such measures do not alter the physical properties, composition, and quality of the water. FDA is including this provision in the definition of "artesian water" and, therefore, finds that an amendment of § 129.20 is not needed.

2. Purified Water

The IBWA petition defines "distilled water" as bottled water that has been produced by a process of distillation and "purified water" as bottled water produced by distillation, deionization, reverse osmosis, or other suitable process. IBWA stated that both terms refer to bottled water that meets the definition of "purified water" in the most recent edition of the United States Pharmacopeia (U.S.P.) (Ref. 16). IBWA further stated that distilled water may be alternatively named "purified water."

Purified water, as defined in the 21st revision of the U.S.P. (1985), is water obtained by distillation, ion-exchange treatment, reverse osmosis, or other suitable process and contains no added substance. U.S.P. specifications for purified water include pH, chloride, sulfate, ammonia, calcium, carbon dioxide, heavy metals, oxidizable substances, total solids, and bacteriological purity.

The IBWA definition for "purified water" is consistent with that established by AFDO (Ref. 12). AFDO has not established a definition for "distilled water." The IBWA definition for "distilled water" agrees with the definition established by the State of Texas (Ref. 11).

FDA believes that the IBWA definitions have merit because they agree with established U.S.P. standards, and consumers would be assured of purchasing a water product that has in fact been purified. Therefore, FDA is proposing in § 165.110(a)(2)(iii) that water that is produced by distillation, deionization, reverse osmosis, or other suitable processes, and that meets the definition of "purified water" in the most recent edition of the U.S.P., can be "purified water." If the water is produced by distillation and meets the U.S.P. standard, alternatively it may be called "distilled water."

3. Spring Water

In its petition, IBWA stated that "spring water" is water that is derived from an underground formation from which water flows naturally to the surface of the earth. IBWA asked FDA to provide that the water may be collected through a bore hole that is adjacent to the point of emergence but also to require that the water retain all the physical properties, and be of the same composition and quality, as the water that flows naturally to the surface of the earth. IBWA also requested that § 129.20 be amended by adding provisions addressing appropriate collection procedures for spring waters.

The AFDO definition of "spring water" (Ref. 12) permits the use of a bore hole. Some States have definitions of "spring water" similar to the definition submitted by IBWA, although others do not allow the use of a bore hole adjacent to the spring to collect the water. The California definition (Ref. 4) specifically states that if spring water is derived from the natural orifice by external force or from a bore hole adjacent to the natural orifice, the water shall be from the same underground stratum and be of the same quality and composition as the water derived from the natural orifice without external force.

A typical dictionary definition of a spring is "a flow of water from the ground" (Ref. 19).

Hydrogeologists and groundwater hydrologists generally consider that springs represent a natural discharge or flow of ground water at the land surface (Ref. 17). They do not consider ground water extracted from a well or bore hole to be water from a spring. Water is subject to higher pressures and temperatures underneath the ground, and consequently its composition may be significantly altered upon emerging at the surface (Ref. 18).

FDA realizes that some bottled water manufacturers currently collect spring water through a bore hole to avoid impurities at the surface of the earth (Ref. 5). The agency recognizes that the geological definition for spring water

does not provide for use of a bore hole. However, because use of a bore hole will reduce the possibility of contamination and is an aid in the sanitary bottling of the water, FDA is proposing to permit water collected by such means to be called "spring water" as long as such measures do not change the physical properties, composition, and quality of the water. When ground water reaches the surface its environment is greatly changed. Ground water may then be exposed to oxygen, algae and other organisms, and surface water of a different composition (Ref. 18). Therefore, FDA tentatively concludes that the definition for spring water should provide for the tapping of the source in a way that will ensure sanitation. FDA is proposing in § 165.110(a)(2)(iv) that bottled water derived from an underground formation from which water flows naturally to the surface of the earth, or would flow naturally to the surface of the earth if not for its collection below the earth's surface, may be called "spring water."

IBWA stated that the bore hole must be adjacent to the spring. FDA interprets this statement to mean that the definition for spring water should allow for the tapping of the source from a point near the mouth of the spring (Ref. 20).

Some States consider water derived from an underground source through use of a bore hole as well water. Thus, to avoid confusion there is a need to distinguish spring water obtained through use of a bore hole from well water. The California (Ref. 4) definition requires that for water to be called "spring water," it must be from the same underground stratum as the water derived from the natural orifice without external force. Water obtained through a bore hole tapping a different underground stratum is not spring water because it comes from a different underground source. Water that is different in composition from the spring water that flows to the surface or would flow naturally to the surface of the earth if not for its collection below the earth's surface is not "spring water" because use of the bore hole has altered the composition of the water.

Therefore, FDA is proposing in § 165.110(a)(2)(iv) to provide for the collection of spring water only at the spring or through a bore hole adjacent to the point of emergence. FDA is also proposing in § 165.110(a)(2)(iv) that spring water collected with the assistance of a bore hole to protect the water shall be from the same underground stratum as the spring and shall retain all the physical properties, and be of the same composition and quality, as the water that flows naturally to the surface of the earth or would flow naturally to the surface of the earth if not for its collection below the earth's surface. Because FDA is including this provision in the definition of spring water, it finds that an amendment of § 129.20 is not needed. FDA is requesting comments from interested persons concerning the definition for "spring water" and on the use of a bore hole adjacent to the point of emergence of the spring to facilitate collection of the water.

4. Well Water

IBWA stated in its petition that "well water" means water from a hole bored, drilled, or otherwise constructed in the ground that taps the water of an aquifer. The AFDO (Ref. 12) definition is similar to the IBWA definition.

A typical dictionary definition of a well is a hole sunk into the earth to get water (Ref. 19). Thus, the IBWA definition is descriptive of the common meaning of well water. Therefore, FDA is proposing in § 165.110(a)(2)(v) that the name of bottled water from a hole bored, drilled, or otherwise constructed in the ground that taps the water of an aquifer may alternatively be "well water."

E. Other Label Statements

1. Water from a Municipal Supply

IBWA stated in its petition that any bottler, distributor, or vendor of bottled water whose corporate name, brand name, or trademark contains the words "spring," "well," "artesian," "mineral," or any derivative of these terms should be required to label each bottle with the type of bottled water contained in the product, in typeface at least equal to the size of the typeface of the corporate name, brand name, or trademark, if the type of the bottled water is different from the type stated or implied in the corporate name, brand name, or trademark.

FDA agrees that the use of certain corporate names, brand names, and trademarks may be misleading to consumers if the source of the water is different from the source stated or implied. In 21 U.S.C. 343(a), the act specifically states that a food shall be deemed to be misbranded if its labeling is false or misleading in any particular. In addition, misleading labeling is not limited to use of the terms "artesian," "mineral," "spring," or "well" but may include other terms and vignettes as well. For example, a bottled water product labeled with a vignette showing water from a mountain spring would purport to be spring water and would be misleading unless the product met the definition for "spring water," or there was an appropriate qualifying statement that made clear that the product was not spring water.

In a significant number of situations, the labeling of products currently being marketed states or implies that the water originates from a source such as a spring or a well, when the water is actually obtained from a municipal source (Ref. 8). Such labeling is misleading.

Therefore, FDA is proposing to require in § 165.110(a)(3)(ii) that the phrase "from a municipal source" appear on the principal display panel or panels as a part of the name of the food if the water is obtained from a municipal water supply, except if the water has been treated to meet the definitions of distilled water or purified water and is labeled as such. Information about the actual source of a bottled water product is a material fact in light of the either explicit (e.g., use of terms such as "spring" or "well") or implied (the presentation of the product in a bottle) representation made by a bottled water product that it is not tap water. Information about the source of the water is necessary to ensure that consumers do not incorrectly assume that because water is sold in a bottle, it does not come from a municipal water supply.

FDA is exempting municipal water that has been treated to meet the definition of "purified" or "distilled water" and is labeled as such because consumers purchase this water because of its treatment and subsequent purity rather than because of its source. In addition, there are no significant compositional differences among purified and distilled waters, regardless of the source of the water.

Under 21 U.S.C. 343(f), FDA is proposing to require that the statement appear on the label with such conspicuousness and in such terms as to render it likely to be read and understood by consumers under customary conditions of purchase and use. FDA considers the statement as information necessary to ensure that the labeling is not misleading. To ensure that consumers will know where to find this information, the statement needs to appear in the same area of the label as the name of the food. The statement of identity is the most critical information on the package. Therefore, FDA is proposing to require in § 165.110(a)(3)(ii) that the statement "from a municipal source," appear on the principal display panel following the statement of identity in type at least one-half the size of the type in which the statement of identity appears but in no case of less than one-sixteenth of an

inch. The agency is proposing to require that the statement immediately and conspicuously precede or follow the name of the food without intervening written, printed, or graphic matter, other than statements required by proposed § 165.110(c).

2. Water for Infant Use

Bottled water is not free of all microorganisms unless it has been specifically treated to make it sterile and to maintain its sterility throughout its shelf-life. At this time, some bottled water products that are not sterile are being promoted for use in feeding infants. FDA conducted a limited survey of domestic bottled water manufacturers and imported bottled water products in 1990. FDA found that several firms specifically labeled their products for use in the preparation of infant formulas (Ref. 21). Other firms labeled their product as "nursery drinking water" or "infant drinking water." One firm provided a brochure indicating use of their product for "baby formulas (healthier)." The label of one imported product stated that the water "needs no filtering or sterilization," and that it was ideal for infant drinks. The label of another imported product stated that the product can be used for "baby feeding (very pure, ideal for use with powdered milk, straight from the bottle)." Analyses of this product showed a heterotrophic plate count of 8,200 organisms per milliliter (mL).

Representations of bottled water for infant use without further label instructions reasonably may be interpreted by consumers to mean that the product is ready to use in infant formula and needs no additional preparation. In fact, these products are not sterile and should be treated similarly to tap water before being used to reconstitute or dilute infant formula. Therefore, labeling that promotes bottled water products that are not sterile for infant use will misbrand the products under provisions of 21 U.S.C. 343(a)(1). Accordingly, FDA on its own initiative is proposing in § 165.110(a)(3)(iii) to require notice on the principal display panel of the bottled water products that are promoted for infant use that such products are not sterile (if such is in fact the case), and that they should be used as directed by a physician or by infant formula preparation instructions.

3. Method of Preparation of Purified Water

IBWA stated in their petition that the method of preparation of purified water should be stated on the label. As discussed above concerning the proposed definition for "purified water," purified water may be produced by distillation, deionization, reverse osmosis, or other suitable process as long as it meets U.S.P. purity specifications.

The IBWA petition did not provide any explanation for why the method of preparation should be required on the label of purified water. Although this information may be useful for some consumers, FDA tentatively concludes that there is no substantive basis on which to require that this information appear on the label. Therefore, FDA is not proposing to require that the method of preparation be stated on the label of purified water, although a manufacturer may include this information on the label if it so desires. FDA is requesting comments from interested persons on the need to include this information on the label.

III. Standard of Quality

A. General Changes

FDA is proposing to move the definition for bottled water from § 103.35(a)(1) to proposed § 165.110(a)(1). As discussed above, FDA is also proposing to move the standard of quality for bottled water from § 103.35 to proposed § 165.110. Section 103.35 will thus be recodified as follows:

Old section	New section
103.35(a)(1)	165.110(a)(1)
103.35(a)(2)	165.110(b)(1)(i)
103.35(a)(3)	165.110(b)(1)(ii)
103.35(b)	165.110(b)(2)
103.35(b)(1)	165.110(b)(2)(i)
103.35(b)(2)	165.110(b)(2)(ii)
103.35(c)	165.110(b)(3)
103.35(c)(1)	165.110(b)(3)(i)
103.35(c)(2)	165.100(b)(3)(ii)
103.35(c)(3)	165.110(b)(3)(iii)
103.35(d)(1)(i)	165.110(b)(4)(i)(A)
103.35(d)(1)(ii)	165.110(b)(4)(i)(B)
103.35(d)(2)(i)	165.110(b)(4)(ii)(A)
103.35(d)(2)(ii)	165.110(b)(4)(ii)(B)
103.35(d)(2)(iii)	165.110(b)(4)(ii)(C)
103.35(d)(2)(iv)	165.110(b)(4)(ii)(D)
103.35(d)(3)	165.110(b)(4)(iii)
103.35(d)(3)(i)	165.110(b)(4)(iii)(A)
103.35(d)(3)(ii)	165.110(b)(4)(iii)(B)
103.35(d)(3)(iii)	165.110(b)(4)(iii)(C)
103.35(d)(3)(iv)	165.110(b)(4)(iii)(D)
103.35(d)(3)(v)	165.110(b)(4)(iii)(E)
103.35(d)(3)(vi)	165.110(b)(4)(iii)(F)
103.35(d)(3)(vi)(A)	165.110(b)(4)(iii)(F)(*1*)
103.35(d)(3)(vi)(B)	165.110(b)(4)(iii)(F)(*2*)
103.35(d)(3)(vi)(C)	165.110(b)(4)(iii)(F)(*3*)
103.35(d)(3)(vi)(D)	165.110(b)(4)(iii)(F)(*4*)
103.35(d)(3)(vi)(E)	165.110(b)(4)(iii)(F)(*5*)
103.35(d)(3)(vii)	165.110(b)(4)(iii)(G)
103.35(e)(1)	165.110(b)(5)(i)
103.35(e)(1)(i)	165.110(b)(5)(i)(A)
103.35(e)(1)(ii)	165.110(b)(5)(i)(B)
103.35(e)(1)(iii)	165.110(b)(5)(i)(C)
103.35(e)(2)	165.110(b)(5)(ii)
103.35(f)	165.110(c)
103.35(f)(1)	165.110(c)(1)
103.35(f)(2)	165.110(c)(2)
103.35(f)(2)(i)	165.110(c)(2)(i)
103.35(f)(2)(ii)	165.110(c)(2)(ii) and 165.110(c)(2)(iii)
103.35(f)(2)(iii)	165.110(c)(2)(iv)
103.35(g)	165.110(d)

FDA points out that it has published (see the **Federal Register** of September 16, 1988 (53 FR 36063)) and is publishing (see elsewhere in this issue of the **Federal Register**) several proposed rules to revise the chemical and microbiological quality standards of § 103.35 to provide for establishment of new standards and updating of existing standards.

FDA advises that all water included in the definition of bottled water will be subject to the quality standard for bottled water.

Section 103.3 defines "lot," "sample," and "analytical unit," and current § 103.35 refers to these terms. Because FDA is removing the quality standard from § 103.35 and including it in proposed § 165.110, FDA believes that these terms must also be defined in proposed Part 165. Therefore, FDA is proposing to establish § 165.3 to reference definitions for the terms "lot," "sample," and "analytical unit" found in § 103.3.

B. Exemptions for Mineral Water

As discussed above, FDA is proposing that mineral water be subject to the quality standard for bottled water. However, some allowable levels in the quality standard are based on EPA secondary maximum contaminant levels (SMCL's) for color, odor, TDS, chloride, iron, manganese, sulfate, and zinc. These allowable levels were established for aesthetic reasons and not for consumer safety. Mineral water with a high mineral content may not meet the allowable levels for odor and color because of the types of minerals that may be present. For example, chloride at high levels may be undesirable organoleptically, and excess iron may precipitate, producing a brown color (Ref. 22). The agency tentatively concludes that certain aesthetically based allowable levels should not apply to waters with more than 500 ppm TDS.

Accordingly, the agency is proposing to add a footnote to the list of allowable levels in § 165.110(b)(4)(i)(A) to provide that when water is labeled as "mineral water," it will be exempt from the allowable levels for color, odor, TDS, chloride, iron, manganese, sulfate, and zinc. FDA is not proposing to include bottled waters that are not conspicuously identified with the term "mineral" or that are identified as "mineral water, low mineral content" in

this exemption because consumers will not generally expect to encounter flavors affected by high mineral content in these bottled water products.

FDA is not, however, proposing to exempt mineral water from the allowable levels for copper, fluoride, and silver. FDA proposed a revised allowable level for fluoride in the **Federal Register** of September 16, 1988 (53 FR 36063 at 36067). Elsewhere in this issue of the **Federal Register**, FDA is proposing a new allowable level for silver and is proposing to affirm its existing level for copper. The allowable levels for fluoride and silver are intended not merely to protect the flavor and color of the water but to ensure that significant adverse aesthetic effects to consumers are avoided. In the case of fluoride, FDA has proposed the allowable level to ensure that consumers are not subject to dental fluorosis (characterized chiefly by mottling of the teeth) from bottled water. In the case of silver, FDA has proposed the allowable level to prevent argyria (a discoloration of the skin). FDA believes that the quality standard for mineral water should protect consumers from any adverse effects on the body, even those that may be characterized as aesthetic.

In the **Federal Register** of June 7, 1991 (56 FR 26460), EPA published a final rule to establish a maximum contaminant level goal (MCLG) of 1.3 mg/L for copper. This value was based on short-term gastrointestinal disturbances and other acute toxic effects of copper on humans at relatively high doses (50 FR 46936 at 46968, November 13, 1985). However, as EPA stated in the final rule, the maximum copper level found in groundwater supplies "was 0.47 mg/L and the mean of the positive measurements (i.e., those exceeding the detection limit of 0.010 mg/L) was 0.075 mg/L." These values are well below the present quality standard limit of 1.0 mg/L. Therefore, FDA believes that the proposed regulation should not exempt mineral water from the existing quality standard for copper. Elsewhere in this issue of the **Federal Register**, FDA is proposing to retain the existing allowable level for copper in bottled water of 1.0 mg/L.

EPA has recently established a secondary MCL for aluminum, and FDA is proposing elsewhere in this issue of the **Federal Register** to adopt an allowable level for this chemical. If FDA establishes an allowable level for aluminum, the agency will propose to exempt mineral water (except low mineral content type mineral waters) from that standard because the standard is intended to control aesthetic properties of the water (turbidity), and not its effect on the body. However, if the agency exempts mineral water from the allowable level for aluminum, the water will still have to comply with the quality standard with respect to turbidity. FDA is not proposing at this time to exempt mineral water from the allowable level for turbidity because high turbidity may interfere with disinfection and microbiological determinations. The agency requests comment from interested persons concerning the need to establish a separate turbidity level for mineral water.

C. Substandard Chemical Quality Labeling

Current § 103.35(f)(2)(ii) permits the general phrase "Contains Excessive Chemical Substances" to be used where bottled water fails to meet an allowable level for a chemical in § 103.35(d), with a listing of the specific chemical that exceeds the allowable level being optional. However, the agency is proposing to include mineral water in the definition of bottled water and to exempt it from certain allowable levels in the quality standard when it contains more than 500 ppm TDS. Mineral water with TDS greater than 500 ppm may contain significant levels of chemical substances that are not considered excessive for mineral water. Mineral water is marketed for its mineral content, especially when it contains significant levels of minerals such as fluoride or calcium. Therefore, the general phrase, "Contains Excessive Chemical Substances," on mineral water that contains a level of a substance that exceeds the allowable level for mineral water may mislead consumers because they may assume that mineral water ordinarily contains considerable amounts of chemical substances. In view of this possibility, the agency tentatively concludes that the general phrase may not be adequate for mineral water and is therefore proposing in § 165.110(c)(2)(ii) that the label or labeling of mineral water list the specific names of any substances present in amounts that exceed the allowable levels to which mineral water is subject (e.g., "Contains Excessive Arsenic," "Contains Excessive Trihalomethanes"). However, FDA points out that current § 103.35(g) (which FDA is proposing to recodify as § 165.110(d)) provides that regardless of whether the bottled water bears a statement of substandard quality, the product is adulterated if it contains a substance (e.g., arsenic) at a level considered injurious to health under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)).

Current § 103.35(f) references § 103.5(b), which sets forth general principles for how statements of substandard quality are to be made on foods that are defined by a quality standard but for which there is no identity standard. Because the agency is proposing to establish a standard of identity and move the standard of quality for bottled water to § 165.110, FDA is proposing to amend current § 103.35(f) (which will be recodified as § 165.110(c)) to reference 130.14(a) (in § 165.110(c) (1) and (2)). This section sets forth general statements of substandard quality for use on foods for which a standard of identity has been established.

D. Chemical Quality Standards

The IBWA petition requested revision of chemical quality standards for total trihalomethanes (TTHM) from 100 parts per billion (ppb) to 10 ppb and for lead from 50 ppb to 5 ppb.

EPA has the primary responsibility for determining appropriate safety standards for drinking water. As stated above, under 21 U.S.C. 349, FDA is obligated to follow EPA's lead by revising bottled water regulations after EPA promulgates interim or revised primary drinking water regulations or by publishing its reasons for not doing so. EPA published a final rule in the **Federal Register** of June 7, 1991 (56 FR 26460) on national primary drinking water regulations for lead in drinking water. FDA published a proposal to lower the lead quality standard to 5 ppb elsewhere in this issue of the **Federal Register** in response to EPA's revised lead standards. EPA is currently reviewing drinking water standards for TTHM. Therefore, FDA is not proposing any action on the IBWA request concerning TTHM.

IV. CGMP'S

A. Product Water, Operations Water, and Compliance Procedures

1. Conforming Amendment

Because the agency is moving the quality standard from § 103.35 to proposed § 165.110(b), the reference in § 129.35 needs to be updated to reflect this change. Therefore, FDA is amending § 129.35(a)(3)(ii) to reference proposed § 165.110 instead of § 103.35.

2. Testing of Mineral Water

The IBWA petition requested that § 129.80(g) be revised by deleting the exclusion for mineral water from testing requirements to reflect the inclusion of mineral water in the definition of

"bottled water." Because FDA is proposing to grant the latter request in proposed § 165.110(a)(1) and to subject this commodity to the quality standards in proposed § 165.110(b), FDA is proposing to revise § 129.80(g) as requested and to delete the exclusion for mineral water from the testing requirements.

3. Use of Public Water Certificate in Lieu of Monitoring

IBWA requested in its petition that § 129.35(a)(3) be amended to provide bottlers that use a public water source with the alternative of obtaining and displaying a certificate from the public water system (demonstrating that the public water system conducts the monitoring required by paragraph 129.35(a)(3)) in lieu of conducting all source monitoring required by this paragraph for chemical contaminants. The petition also requested that FDA reduce the frequency or scope of source monitoring, provided that the source does not contain the substances for which monitoring is required and is not vulnerable to contamination.

FDA realizes that it would be redundant to require bottlers of water from municipal sources that meet all EPA standards to retest source water for the contaminants that are covered by the bottled water quality standards. The only possible source of contamination of such water would be the water distribution system itself, and it is unlikely that this system would act as a source of most of the regulated chemical contaminants. Moreover, protection from chemical contamination is provided by § 129.80(g)(2), which requires that a plant analyze a representative sample of each type of bottled drinking water produced at least annually for chemical contaminants.

Therefore, FDA is proposing in § 129.35(a)(4)(i) to permit firms that use a municipal water system as the source of their water to substitute municipal testing results showing full compliance with the EPA primary and secondary drinking water regulations (or a certificate to this effect) for the source water chemical contaminant testing required in § 129.35(a)(3).

The EPA final rule of January 30, 1991 (56 FR 3526), allows States to grant areawide or statewide waivers of pesticide testing requirements based on pesticide use information. The rule also provides States with the discretion to set subsequent testing frequencies in systems that did not detect volatile synthetic organic chemicals in the initial round of samples and that are assessed and designated as not vulnerable. EPA stated in adopting this rule that for all contaminants for which levels are established in the rule, minimum monitoring requirements may be increased or decreased by States based on analytical results or the results of a vulnerability assessment. EPA monitoring requirements are designed to ensure that compliance with the MCL's is met and to efficiently utilize State and utility resources (56 FR 3526 at 3559, January 30, 1991).

FDA realizes that it would be unreasonable to require bottlers using nonmunicipal sources to test source water for each and every contaminant regardless of the chances of finding a particular contaminant. Such testing can be quite costly, and it makes no sense to require testing for a pesticide or other synthetic organic chemical that is not used in the source water recharge basin. Thus, in certain cases, there is justification for reducing both the frequency and scope of testing for chemical contaminants and for providing exemptions from testing requirements under carefully controlled conditions. Because EPA regulations currently permit State regulatory agencies to modify testing requirements under appropriate circumstances, FDA tentatively concludes that it is reasonable to recognize appropriate testing exemptions from EPA requirements granted by State agencies that have jurisdiction over approval of source water under EPA regulations. Therefore, FDA is proposing in § 129.35(a)(4)(ii) to permit firms that use a nonmunicipal water source as the source of their water to reduce the frequency of testing and the number of chemical contaminants for which they test source water if they can document that such reduction is consistent with a waiver that the State has issued under EPA regulations.

FDA emphasizes however that, irrespective of the minimum testing requirements specified in the CGMP regulations (part 129) for source water or finished products, every lot of bottled water products introduced or delivered into interstate commerce must comply with the bottled water quality standards (proposed § 165.110(b)) and is subject to the act, including the provisions of 21 U.S.C. 342 on the circumstances in which food is adulterated. Therefore, FDA is proposing in § 129.35(a)(4)(iii) that the finished bottled water must comply with bottled water quality standards (proposed § 165.110(b)) and 21 U.S.C. 342(a)(1) dealing with adulterated foods.

B. Additional Definitions

IBWA requested revision of the definitions in § 129.3 to include new definitions for "bottled water plant," "plant operator," "water dealer," and a revised definition for "bottled drinking water."

IBWA did not provide any explanation for why these provisions are needed, and FDA has no information to support the requested revisions. Therefore, FDA is not proposing at this time to establish definitions for "bottled water plant," "plant operator," or "water dealer" or to revise the definition for "bottled drinking water." FDA is requesting comment from interested persons concerning the need to define or amend the definitions of these terms.

C. Unregulated Contaminants

IBWA requested revision of part 129 to provide for additional source and final product testing requirements in § 129.35 to detect and control specific unregulated contaminants. No explanation was provided for why these additional provisions are needed.

Part 129 does not limit testing to only those contaminants listed in the quality standards. Bottled water that contains a poisonous or deleterious substance is subject to the adulteration provisions of 21 U.S.C. 342(a)(1) and therefore to regulatory action. Further, all food firms, including bottled water producers, are subject to the CGMP regulations in part 110 (21 CFR part 110). Section 110.80 (21 CFR 110.80) states that appropriate quality control procedures are to be employed to ensure that food is suitable for human consumption. This section also states that all food that has become contaminated, to the extent that it is adulterated within the meaning of the act, is to be rejected or, if permissible, treated or processed to eliminate the contamination. Thus, bottled water producers are already obligated to monitor their source water for contaminants that may not be the subject of specific provisions in FDA's regulations. If these producers knowingly produce and distribute adulterated bottled water, they may be subject to the criminal penalties of the act.

D. Microbiological Control Standards

The petition requested revision of § 129.40 to include microbiological control standards that include prohibitions from processing and bottling water with equipment that has been used to produce milk, fruit juice, or any other food product "likely to contribute nutrients for microbiological growth." In its March 25, 1988, amendment to its petition, IBWA submitted a report on dual filling lines

prepared by Harold Wainess & Associates (HWA).

The Milk Industry Foundation (MIF) submitted comments on the IBWA petition opposing a requirement for the use of dedicated equipment for bottling water. MIF stated that milk processors are experienced in sanitation and related procedures that are necessary for the production of safe, high quality foods, both dairy and nondairy. MIF also stated that the adoption of the IBWA request for dedicated equipment would: (1) Eliminate many milk processors from the bottled water market or impose substantial additional costs on companies, (2) increase costs to consumers, and (3) not provide health or safety benefits to the public.

FDA believes that dedicated equipment will not ensure that the goal of production of foods with a low probability of microbiological contamination will be met. Only good sanitation will ensure that this goal is achieved. As the HWA report points out, milk is more sensitive to microbiological contamination than water. Because of this fact, the milk industry has had to develop and achieve very high sanitary standards to meet regulatory agencies' requirements for safety. In addition, the Pasteurized Milk Ordinance, which is used as a model by most States, includes strict standards of operation in dairy plants. The agency believes that the bottled water recall data included in the HWA report to establish the need for the requested revision do not refute that high sanitary standards are met by the milk industry. Only a few of the recalls cited involved dairy plants, and the number of such recalls cited was far too few to draw any conclusions concerning problems with the lack of dedicated equipment.

Microbiological standards already exist for bottled water in § 103.35(b) (which FDA is proposing to recodify as § 165.110(b)(2)). The agency will propose additional microbiological quality standards as necessary to protect consumers from microbiological hazards. Regardless of the type of plant processing the water, the water must meet these standards or bear appropriate labeling advising that it is of substandard quality. In addition, FDA advises that the water is also subject to regulatory sanctions under 21 U.S.C. 342(a)(1) if deviations from these standards result in a product that may be injurious to health.

FDA tentatively finds that IBWA has not provided adequate support to justify proposing an amendment to § 129.40 to require processing and bottling water with dedicated equipment. FDA is not persuaded that the HWA report establishes that the revision is needed.

E. Production and Process Controls

IBWA requested revision of certain requirements in Part 129 pertaining to filtration and germicidal treatment. Specifically, IBWA requested that the agency add a new paragraph in § 129.40, to require that bottled water that originates from a surface water source that is not protected from surface contamination be subject to ozonation, filtration, or another effective process that removes or destroys the cysts of the parasite *Giardia lamblia*.

In 1989, EPA revised its regulations concerning processes to remove or destroy the cysts of this parasite (54 FR 27486, June 29, 1989). FDA is preparing a response to EPA's final rule.

IBWA also requested that the agency amend the treatment requirements for bottled water to require "* * * filtration, and effective germicidal treatment by ozonation, carbonation * * * or equivalent disinfection * * *" in accordance with the food additive requirements. The amendment would replace the current provisions of § 129.80(a) which require that certain specified treatments of bottled water be in accord with the food additive requirements but do not require filtration and germicidal treatment.

IBWA did not provide a basis to support this revision. EPA is currently considering the need for disinfection treatment of ground waters, and FDA is awaiting EPA's determination.

F. Laboratory and Personnel Approval

IBWA requested that the CGMP regulations in Part 129 be revised to include requirements for certification of laboratories analyzing water and for supervisory personnel.

IBWA did not provide a basis to justify the need for these approvals. Moreover, the act does not provide authority to the agency to require such approval. Further, even if such authority were provided by the act, FDA lacks the resources to monitor analytical laboratories and personnel in the absence of a significant public health problem. In § 129.35(a)(3)(iii), FDA states that analysis of samples may be performed for the plant by competent commercial laboratories. Such laboratories may include EPA certified or other competent laboratories, and no further requirements appear to be necessary.

G. Annual Plant Inspection

IBWA requested that FDA revise the CGMP regulations in Part 129 to include a requirement for annual plant inspections to ensure compliance with the regulations.

FDA finds that IBWA has not presented an adequate basis for it to propose this revision. Annual plant inspections are not required for any other food products within FDA's jurisdiction, either by statute or by regulation. Thus, without a clear indication of a significant public health problem that could not be corrected by other means, there is no basis for FDA to adopt such a requirement for bottled water. The agency does not believe that the petition establishes that there is a significant public health problem with bottled water. FDA lacks the resources to conduct annual plant inspections for manufacturers of bottled water in the absence of such a problem. FDA recognizes, however, that IBWA requires third party inspection of its member firms, and FDA encourages such self-regulated programs within industry.

H. Recall Procedures

The IBWA petition requested that FDA establish specific recall procedures for bottlers and dealers in the CGMP regulations in part 129.

FDA finds no basis for this requested revision. Recall procedures for FDA regulated products are already set forth in 21 CFR part 7, subpart C. These procedures are voluntary. The IBWA petition does not explain why special recall procedures for bottled water products are necessary. IBWA did not point to any circumstances that establish that there is a unique problem with bottled water.

V. Other Matters

A. Ozone

In the **Federal Register** of November 5, 1982 (47 FR 50209), FDA affirmed that ozone is generally recognized as safe (GRAS), with specific limitations, for use as a antimicrobial agent in bottled water. Mineral water having TDS greater than 500 ppm was not included within the definition of "bottled water" at the time that this use of ozone was affirmed as GRAS. Therefore, the agency is proposing to specify in § 184.1563(d) that the term "bottled water," for purposes of this section, does not include mineral water with TDS greater than 500 ppm. This action will ensure that FDA's rulemaking on the definition of bottled water in § 165.110 will not inadvertently have the effect of expanding the permitted uses of ozone.

Anyone wishing to petition for food additive listing or GRAS affirmation for the use of ozone in mineral water with

TDS greater than 500 ppm may do so following the procedure set out in 21 CFR 171.1 or 170.35, respectively.

B. Nutrition Labeling

In the **Federal Register** on November 27, 1991 (56 FR 60394 at 60418), FDA proposed that the serving size of carbonated beverages, wine coolers, and all types of water be 240 mL. This proposal was published as part of FDA's food labeling initiative to implement the provisions of the 1990 amendments and replaced FDA's serving size proposal of July 19, 1990 (55 FR 29517).

In response to the 1990 amendments, FDA also published a proposed rule on November 27, 1991 (56 FR 60366) concerning nutrition labeling. FDA proposed the circumstances in which a simplified form of nutrition labeling could be used. In this proposal, FDA stated that beverages such as soft drinks could bear the simplified nutrition information format.

Final regulations for nutrition labeling of foods, including bottled water, are expected to be published in the **Federal Register** by early 1993. The following is a brief discussion of relevant provisions in the November 27, 1991, proposal and the agency's tentative position regarding the nutrition labeling of mineral water.

FDA proposed that nutrition information relating to food must be provided for all products that contain more than insignificant amounts of any of the nutrients or food components that are required to be listed, or whose label, labeling, or advertising contains a nutrient content claim or any other nutrition information. FDA proposed that an insignificant amount of a nutrient or a food component is that amount that allows a declaration of zero in nutrition labeling. A nutrient content claim or any other nutrition information in any context, and in any form of expression, implicit as well as explicit, will subject a food to the nutrition labeling provisions.

Nutrients likely to be present in bottled water products include calcium, sodium, and iron. If any of these minerals are present in more than insignificant amounts in the product, nutrition labeling will be required under the act. According to the proposed regulations, a significant amount of calcium is 18 milligrams (mg) or more per serving, a significant amount of sodium is 5 mg or more per serving, and a significant amount of iron is 0.24 mg or more per serving. It is unlikely that many products will contain a significant quantity of iron, but some products may contain a significant amount of calcium or sodium or both.

In the November 27, 1991, proposal FDA further stated that if manufacturers voluntarily choose to declare additional nutrients or food components that are not among the 15 required nutrients (e.g., magnesium and potassium), they will be required to use the statement "Not a significant source of ———," with the blank filled in with the name of any of the 15 required nutrients or food components that are missing or present in insignificant amounts. The agency also proposed that if a product is voluntarily enriched or fortified with added vitamins or minerals, any such nutrients must be declared within the simplified format and followed by the above statement. The agency stated that it considered such voluntary addition of nutrients an effort to market the food as a significant source of nutrients.

FDA believes that nutrition labeling should appear on bottled water labeled as "mineral water, high mineral content" because consumers may assume that water with a high mineral content would be of nutritional benefit. However, FDA realizes that mineral water with a high mineral content could contain enough sodium, calcium, and iron to make nutrition labeling mandatory.

FDA is aware that some foreign producers of bottled water products state or imply on products sold in their domestic markets that their products may provide some health benefit. In response to the 1990 amendments, FDA proposed in the **Federal Register** of November 27, 1991 (56 FR 60537), general requirements pertaining to the use of health claims that characterize the relationship of a food component to a disease or health-related condition on the labels and in labeling of foods. These requirements, if adopted, will apply to health claims made on bottled water products.

C. Ingredient Declaration

If ingredients are added to the water, including carbon dioxide, each must be declared on the label as required by applicable regulations in part 101 (21 CFR part 101). According to § 101.4, all ingredients must be listed by common or usual name in descending order of predominance by weight on either the principal display panel or the information panel.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24 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.

The proposed recodification of § 103.35 to new § 165.110 and the proposed conforming reference changes in Part 129 and in § 184.1563 are excluded under § 25.24(a)(9). The proposed amendments to part 129 pertaining to the CGMP's of the bottled water industry are excluded under § 25.24(a)(10). The action proposing new definitions and requirements in § 165.110 is excluded under § 25.24(b)(1).

VII. Economic Impact and Federalism Assessment

FDA has examined the economic implications of the proposed rule to establish a standard of identity for bottled water, recodify the standard of quality for bottled water, and define various types of bottled water, as required by Executive Orders 12291, 12612, and the Regulatory Flexibility Act. Executive Order 12291 compels agencies to use cost-benefit analysis when making decisions, and Executive Order 12612 requires Federal agencies to ensure that Federal solutions, rather than State or local solutions, are necessary. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

There are two options associated with this proposed rule: (1) Make the proposed changes in standards of identity and quality and in the definitions applicable to bottled water, or (2) take no action.

Option two is the baseline case and will be considered to have neither costs nor benefits. Potential compliance costs under option one include the cost of new analytical testing for mineral water and the cost of label changes for all types of bottled water. Potential benefits under option one include labeling cost savings and the value of increased interstate commerce and competition in the bottled water industry from the elimination of conflicting State regulations.

Mineral water testing is done by brand rather than by bottling plant or firm. The exact number of brands of mineral water currently sold in the United States is unknown; however, this

number is probably less than 100.[1] As an example of the costs involved, the agency assumes there are 85 brands of mineral water sold in the United States at this time. The compliance cost of new analytical testing for mineral water depends on the type and amount of testing currently being done on mineral water. Based on the testing requirements contained in the CGMP's for drinking water, including mineral water, the agency believes that many mineral water bottlers are already testing for the substances specified in the proposed regulation. For example, FDA believes that no new testing for microbiological contaminants will occur as a result of the proposed regulation. In addition, many States probably have testing requirements for mineral water.

If State regulations do not require testing for any substances specified in Federal bottled water regulations, then the estimated compliance cost of subjecting mineral water to testing requirements for bottled water would be about $3,000 per brand per year for chemical contaminants and about $1,400 per brand every 4 years for radiological testing, based on the cost of required testing at a private testing laboratory. Over 20 years at a discount rate of 5 percent, these testing costs would amount to about $44,000 per brand or about $3 million for all brands. If State regulations already require testing for all substances specified in Federal bottled water regulations, then the estimated compliance cost of subjecting mineral water to testing requirements for bottled water would be zero. FDA requests information on the cost of any mineral water testing required by the proposed regulation that is not already being performed.

A number of provisions in the regulation proposed below affect the labeling of bottled water. One bottled water firm reported that label changes cost between $40,000 and $50,000.[2] Some bottled water firms would ordinarily change their labels in the allotted compliance period. In general, the length of time between ordinarily scheduled label changes varies considerably, from less than 1 year up to 10 years. Smaller firms typically change their labels less frequently than larger firms. As an example of the costs involved: (1) If all bottled water firms have labeling costs of about $45,000 per label change, (2) if all bottled water firms make one label change as a result of Federal standards, and (3) if the average bottled water plant ordinarily changes its labels once every 6 years, then the total cost of the label changes proposed below would be about $18 million. FDA requests information on the labeling costs imposed by this proposal.

Standards of identity for various types of bottled water have the potential to reduce the number of firms and thus competition in the markets for particular types of bottled water. However, FDA believes the proposed standard is more general than any State's existing standard, and that no firm legally selling a given type of bottled water will be unable to do so because of the proposed regulation. FDA requests information on any bottling plant legally producing bottled water that will be required to rename its product as a result of the current proposal.

Other than the costs of labeling, which may be passed on, no costs should accrue to consumers since FDA does not believe that Federal standards defining certain types of bottled water, namely, artesian, spring, and well water, will contribute to the belief that the composition or properties of bottled water from different geological sources varies in any systematic way. In addition, FDA does not believe that a Federal standard defining mineral water involving both the mineral content of the water and its geological source will contribute to the belief that the properties or composition of mineral water necessarily differ from that of other types of water to which minerals may be added. Although Federal food standards generally deal with issues that affect the properties of the finished product, it should be clear that the proposed standards for artesian, spring, and well water do not. In addition, it should be clear that the standard for mineral water involves both the geological source and the properties and composition of that water. FDA believes that consumers are interested in the geological source of bottled water as such and will not use this information to infer differences in the composition or properties of water where none exist.

The potential benefits of option one include savings on labeling costs which now result from conflicting State definitions for the terms used to describe bottled water. States can be divided into three categories with respect to their labeling regulations for bottled water: (1) Twenty States use only bottled water regulations found in the Code of Federal Regulations, (2) seventeen States use the International Bottled Water Association's Model Code labeling provisions, as a supplement either to the Code of Federal Regulations or to their own bottled water regulations, and (3) thirteen States have adopted their own labeling provisions as a supplement to the bottled water regulations in the Code of Federal Regulations.[3]

One bottled mineral water firm reported making 4 label changes costing between $40,000 and $50,000 per change in the last 6 years to keep their labels in conformance with State regulations.[4] Approximately six States in which this firm sells bottled water adopted their own labeling provisions in this time period. As an example of the costs involved, if one label change would ordinarily have taken place in the last 6 years, then the average labeling cost due to the adoption of the potentially conflicting State standards for bottled water for this one firm would be about $23,000 per year. If labeling changes would ordinarily take place more frequently than once every 6 years, then the cost of responding to State labeling regulations would be lower.

Labeling costs resulting from changing State regulations for most bottled water firms are probably less, because the reporting firm is in the upper twenty-fifth percentile of bottled water firms in terms of the number of employees. The number of States to which water is shipped is probably a function of firm size, which in turn is a function of the number of employees. In addition, many States have already promulgated bottled water regulations, and the rate at which States adopt and change labeling regulations for bottled water will probably decline significantly over time. Finally, this firm produces mineral water, and State regulations concerning the labeling of mineral water are more likely to change than regulations concerning other types of bottled water. As an example of the costs involved: (1) If the average bottled water firm has additional labeling costs of $12,000 per year because of changing State definitions, and (2) the average yearly rate of change of bottled water regulations over the next 20 years is half the current rate (so that the total number of States having their own potentially unique labeling provisions triples in 20 years), then Federal bottled water standards would save bottling plants approximately $35 million in labeling costs over 20 years. FDA requests information on labeling costs

[1] Phone call between Terry Troxell, FDA, and Carol Kinkade, IBWA, May 26, 1992.

[2] Memorandum of phone call between Ed Puro, FDA, and Bruno Rolando, Quibell Corp., May 19, 1992.

[3] Information submitted by Lisa Prats, IBWA, May 15, 1992.

[4] Memorandum of phone call between Ed Puro, FDA, and Bruno Rolando, Quibell Corp., May 19, 1992.

attributable to conflicting State standards for bottled water.

If one label cannot comply with all relevant State regulations concerning the labeling of bottled water, then bottled water plants may have to maintain different labels for different States. This could add to the manufacturing, storage, and shipping costs for the affected products. FDA requests cost information from any bottled water producer currently maintaining different labels for different States.

Finally, eliminating inconsistent State standards for bottled water should stimulate interstate commerce and competition within this industry. FDA requests information on the probable effects of this proposal on the degree of competition within this industry.

In summary, the agency estimates that the compliance costs of this proposal are between $18 million and $21 million, depending on the proportion of proposed Federal testing requirements for mineral water that are already included in State testing requirements, and the number of plants that will have to relabel their bottled water products. The agency estimates that benefits are about $35 million, depending on the frequency with which firms ordinarily change their labels and the rate at which States adopt potentially unique labeling regulations, plus the value of any increase in interstate commerce which may occur. Net benefits over 20 years will range from $14 million to $17 million plus the value of any increase in interstate commerce in bottled water.

Finally, this proposal has sufficient federalism implications so that FDA has assessed its effects in light of the principles, criteria, and requirements stated in sections 2 through 4 of Executive Order 12612. The proposal is fully consistent with those principles, criteria, and requirements. As discussed in sections II. and VII. of this document, States have developed their own policies to regulate bottled water, and FDA until this time has refrained from establishing a standard of identity. However, because the States have developed inconsistent provisions, FDA finds that a national standard of identity is necessary. The evidence compelling this tentative conclusion is found in sections II. and III. of this document. FDA has consulted with a number of States about this situation and the agency's tentative conclusions. With this notice, FDA is providing an opportunity for States to participate in the process by which the agency will make a final decision in this matter. This policy will impose no additional costs or burdens on the States. They will be free to continue to perform their traditional functions. However, if this proposal is found necessary and adopted, those States that have regulatory provisions that are not identical to those set forth in the document will have to conform their regulatory provisions to those set forth here. (See 21 U.S.C. 343–1(a).)

VIII. Comments

Interested persons may, on or before March 8, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. Effective Date

The agency is proposing that any final rule that may be issued based upon this proposal becomes effective 180 days following its publication in the **Federal Register**. The agency is providing this time period to permit affected firms adequate time to take appropriate steps to bring their products into compliance with the standards imposed by the new rules. The agency solicits comments on whether a different effective date is appropriate to make the effective date consistent with the date on which other labeling changes will be required under such recent legislation as the 1990 amendments or the amendments to the Fair Packaging and Labeling Act, enacted as part of the American Technology Preeminence Act of 1991.

X. References

The following references have been placed on display in the Dockets Management Branch (address above), and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.

1. Committee on State Food Labeling, Food and Nutrition Board, Institute of Medicine, National Academy of Sciences, "Food Labeling: Toward National Uniformity," National Academy Press, Washington DC, 1992.

2. Deal, W.F., "Remarks before the Congressional Office of Technology Assessment," Proceedings of the Bottled Water Workshop, A Report Prepared for the Use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, U.S. Government Printing Office, Washington, DC, 1990.

3. North Carolina Department of Agriculture, Food and Drug Protection Division, 2 NCAC 9C .0700—Bottled water.

4. State of California, Chapter 639, Assembly Bill No. 170, September 15, 1987.

5. Timothy, A.R., Coors Brewing Co., letter to Fred Shank, March 16, 1992.

6. Quibell, R.S., Quibell Corp., letter to Terry C. Troxell, May 6, 1991.

7. Maxwell, J.C., Jr., Wheat First Securities as quoted in Beverage Industry, February 1992.

8. Cech, I., "Bottled Water: Truth in Advertising and Selected Water Quality Issues," Proceedings of the Bottled Water Workshop, A Report Prepared for the Use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, U.S. Government Printing Office, Washington, DC, 1990.

9. Ferstandig, R., "Consumers & Bottled Water," Proceedings of the Bottled Water Workshop, A Report Prepared for the Use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, U.S. Government Printing Office, Washington, DC, 1990.

10. Codex Alimentarius, Volume XII, "Codex Standards for Natural Mineral Waters and Edible Ices and Ice Mixes," Food and Agriculture Organization of the United Nations, World Health Organization, Rome, 1982.

11. Texas Department of Health, Division of Food And Drugs, Rules for Bottled and Vended Water, August 20, 1988.

12. Association of Food and Drug Officials, "AFDO Model Bottled Water Regulation," 1986.

13. The Council of the European Communities, "Council Directive of 15 July, 1980 on the Approximation of the Laws of the Member States Relating to the Exploitation and Marketing of Natural Mineral Waters," *Official Journal of the European Communities*, No. L. 229/1, 1980.

14. O'Donnell, W.J., "Sanpellegrino," Proceedings of the Bottled Water Workshop, A Report Prepared for the Use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, U.S. Government Printing Office, Washington, DC, 1990.

15. Heath, R.C., United States Geological Survey, "Basic Ground-Water Hydrology," Water-Supply Paper 2220, United States Government Printing Office, 1989.

16. The United States Pharmacopeia, United States Pharmacopeial Convention, Inc., Rockville, MD, 1985.

17. Konikow, L.F., U.S. Geological Survey letter to Terry Troxell, January 14, 1992.

18. Meinzer, O.E., "Ground Water," *Hydrology*, Dover Publications, Inc., New York, 1942.

19. Guralnik, D.B., "Webster's New World Dictionary of the American Language," Warner Books, Inc., 1983.

20. Sowards, R.D., Texas Department of Health, letter to Janice F. Oliver, July 30, 1991.

21. Lipnicki, J.D., Field Programs Branch (HFF–26), Center for Food Safety and

Applied Nutrition, Food and Drug Administration, memo to Nick Duy, December 12, 1990.

22. Allen, H.E., "Chemical Quality of Bottled Water," Proceedings of the Bottled Water Workshop, A Report Prepared for the Use of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, U.S. Government Printing Office, Washington, DC, 1990.

List of Subjects in 21 CFR

Part 103

Beverages, Bottled water, Food grades and standards.

Part 129

Beverages, Bottled water, Food packaging, Reporting and recordkeeping requirements.

Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 103, 129, 165, and 184 be amended as follows:

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR part 103 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 410, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 349, 371, 376).

Subpart B—[Removed and Reserved]

2. Subpart B, consisting of § 103.35 is removed and reserved.

PART 129—PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER

3. The authority citation for 21 CFR part 129 continues to read as follows:

Authority: Secs. 402, 409, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 348, 371, 374); sec. 361 of the Public Health Service Act (42 U.S.C. 264).

4. Section 129.35 is amended in paragraph (a)(3)(ii) by removing "§ 103.35" and adding in its place "§ 165.110" and by adding new paragraph (a)(4) to read as follows:

§ 129.35 Sanitary facilities.

* * * * *

(a) * * *

(4) *Source water testing exemptions.* (i) Firms that use a municipal water system for source water may substitute municipal testing results, or certificates showing full compliance with all provisions of EPA National Primary and Secondary Drinking Water Regulations pertaining to chemical contaminants, for the testing requirements of § 129.35(a)(3).

(ii) Firms that use a nonmunicipal water source as the source of their water may reduce the frequency of testing and the number of chemical contaminants for which they test source water if they can document that such reduction is consistent with a State issued waiver under EPA regulations.

(iii) The finished bottled water must comply with bottled water quality standards (21 CFR 165.110(b) of this chapter) and section 402(a)(1) of the Federal Food, Drug, and Cosmetic Act dealing with adulterated foods.

* * * * *

5. Section 129.80 is amended by revising the introductory text of paragraph (g) to read as follows:

§ 129.80 Processes and controls.

* * * * *

(g) *Compliance procedures.* A quality standard for bottled drinking water is established in § 165.110(b) of this chapter. To ensure that the plant's production of bottled drinking water complies with the applicable standards, laws, and regulations of the government agency or agencies having jurisdiction, the plant will analyze product samples as follows:

* * * * *

6. Part 165 is added to read as follows:

PART 165—BEVERAGES

Subpart A—General Provisions

Sec.
165.3 Definitions.

Subpart B—Requirements for Specific Standardized Beverages

165.110 Bottled water.

Authority: Secs. 201, 401, 403, 403A, 409, 410, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 343A, 348, 349, 371, 376).

Subpart A—General Provisions

§ 165.3 Definitions.

(a) A *lot* is:

(1) For purposes of determining quality factors related to manufacture, processing, or packing, a collection of primary containers or units of the same size, type, and style produced under conditions as nearly uniform as possible and usually designated by a common container code or marking, or in the absence of any common container code or marking, a day's production.

(2) For purposes of determining quality factors related to distribution and storage, a collection of primary containers or units transported, stored, or held under conditions as nearly uniform as possible.

(b) A *sample* consists of 10 subsamples (consumer units), taken one from each of 10 different randomly chosen shipping cases to be representative of a given lot, unless otherwise specified in a specific standard in this part.

(c) An *analytical unit* is the portion(s) of food taken from a subsample of a sample for the purpose of analysis.

Subpart B—Requirements for Specific Standardized Beverages

§ 165.110 Bottled water.

(a) *Identity*—(1) *Description.* Bottled water is water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients except it may optionally contain safe and suitable antimicrobial agents. Bottled water may be used as an ingredient in beverages (e.g., diluted juices, flavored bottled waters). It does not include those food ingredients that are declared in ingredient labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," and "tonic water." The processing and bottling of bottled water shall comply with applicable regulations in part 129 of this chapter.

(2) *Nomenclature.* The name of the food is "bottled water" or alternatively one of the following terms as appropriate:

(i) The name of water from a well tapping a confined aquifer in which the water level stands above the natural water table may be "artesian water." Artesian water may be collected with the assistance of external force to enhance the natural underground pressure so long as such measures do not alter the physical properties, composition, and quality of the water.

(ii) The name of water containing not less than 250 parts per million (ppm) total dissolved solids, coming from a source tapped at one or more bore holes or springs, originating from a geologically and physically protected underground water source may be "mineral water." Mineral water shall be distinguished from other types of water by its constant level of minerals and trace elements at the point of emergence from the source.

(iii) The name of water that has been produced by distillation, deionization, reverse osmosis, or other suitable processes and that meets the definition of purified water in the most recent edition of the United States Pharmacopeia may be "purified water." Alternatively, the water may be called "distilled water" if it is produced by distillation.

(iv) The name of water derived from an underground formation from which water flows naturally to the surface of the earth or would flow naturally to the surface of the earth if not for its collection below the earth's surface may be "spring water." Spring water shall be collected only at the spring or through a bore hole that is adjacent to the point of emergence. Spring water collected with the assistance of external force to protect the water shall be from the same underground stratum as the spring and shall retain all the physical properties, and be of the same composition and quality, as the water that would flow naturally to the surface of the earth if not for its collection below the earth's surface.

(v) The name of water from a hole bored, drilled, or otherwise constructed in the ground which taps the water of an aquifer may be "well water."

(3) *Other label statements.* (i) If the total dissolved solids (TDS) content is below 500 ppm, or if the TDS is greater than 1,500 ppm, the statement "low mineral content" or the statement "high mineral content", respectively, shall appear on the principal display panel following the statement of identity in type size at least one-half the size of the statement of identity but in no case of less than one-sixteenth of an inch.

(ii) When bottled water comes from a municipal source and has not been treated to meet the definition of distilled water or purified water as defined in paragraph (a)(2) of this section, the label shall state "from a municipal source" on the principal display panel or panels. This statement shall immediately and conspicuously precede or follow the name of the food without intervening written, printed, or graphic matter, other than statements required by paragraph (c) of this section in type size at least one-half the size of the statement of identity but in no case of less than one-sixteenth of an inch.

(iii) When the label or labeling characterizes the bottled water in any manner (e.g., through label statements or vignettes with references to infants) as for use in feeding infants, and the product is not sterile, the principal display panel shall bear conspicuously the phrase "not sterile, use as directed by physician or by labeling directions for use of infant formula."

(b) *Quality.* The standard of quality for bottled water including water for use as an ingredient in beverages (except those described in the labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," and "tonic water") is as follows:

(1) *Definitions.* (i) *Trihalomethane* means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

(ii) *Total trihalomethane* means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane, dibromochloromethane, bromodichloromethane and tribromomethane), rounded to two significant figures.

(2) *Microbiological quality.* Bottled water shall, when a sample consisting of analytical units of equal volume is examined by the methods described in applicable sections of "Standard Methods for the Examination of Water and Wastewater," 17th ed. (1989), American Public Health Association, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (copies are available from the American Public Health Association, 1015 15th St. NW., Washington, DC 20005, or may be inspected at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC), meet the following standards of microbiological quality:

(i) *Multiple-tube fermentation method.* Not more than one of the analytical units in the sample shall have a most probable number (MPN) of 2.2 or more coliform organisms per 100 milliliters and no analytical unit shall have an MPN of 9.2 or more coliform organisms per 100 milliliters; or

(ii) *Membrane filter method.* Not more than one of the analytical units in the sample shall have 4.0 or more coliform organisms per 100 milliliters and the arithmetic mean of the coliform density of the sample shall not exceed one coliform organism per 100 milliliters.

(3) *Physical quality.* Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the method described in applicable sections of "Standard Methods for the Examination of Water and Wastewater," 17th ed. (1989), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (the availability of this incorporation by reference is given in paragraph (b)(2) of this section), meet the following standards of physical quality:

(i) The turbidity shall not exceed 5 units.

(ii) The color shall not exceed 15 units.[1]

(iii) The odor shall not exceed threshold odor No. 3.[1]

(4) *Chemical quality.* (i)(A) Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the methods described in paragraph (4)(i)(B) of this section, meet standards of chemical quality and shall not contain chemical substances in excess of the following concentrations:

Substance	Concentration in Milligrams per Liter
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chloride[1]	250.0
Chromium	0.05
Copper	1.0
Iron[1]	0.3
Lead	0.05
Manganese[1]	0.05
Mercury	0.002
Nitrate (N)	10.0
Phenols	0.001
Selenium	0.01
Silver	0.05
Sulfate[1]	250.0
Total dissolved solids[1]	500.0
Zinc[1]	5.0
Organics:	
Endrin (1,2,3,4,10,10-hexachloro - 6,7 - epoxy - 1,4,4a,5,6,7,8,8a - octa - hydro - 1,4 - endo, endo - 5,8 - dimethane naphthalene)	0.0002
Lindane (1,2,3,4,5,6 - hexachloro - cyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1 - trichloro - 2,2 - bis[p - methoxy - phenyl] ethane)	0.1
Total Trihalomethanes	0.10
Toxaphene ($C_{10}H_{10}Cl_8$-technical chlorinated camphene, 67–69 percent chlorine)	0.005
2,4-D (2,4-dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-trichlorophenoxypropionic acid)	0.01

(B) Analyses conducted to determine compliance with paragraph (4)(i)(A) of this section shall be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water and Wastewater," 17th ed. (1989), or "Methods for Chemical Analysis of Water and Wastes," Environmental Monitoring and Support Laboratory, EPA–600/4–82–055, March 1983, U.S. Environmental Protection Agency, both of which are incorporated by reference

[1] Mineral water is exempt from standard where product contains more than 500 milligrams per liter total dissolved solids.

in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(C) Analyses for organic substances shall be determined by appropriate methods described in "Methods for Organochlorine Pesticides in Industrial Effluents" and "Methods for Chlorinated Phenoxy Acid Herbicides in Industrial Effluents," November 28, 1973, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and "Part I: The Analysis of Trihalomethanes in Finished Waters by the Purge and Trap Method," Method 501.1 and "Part II: The Analysis of Trihalomethanes in Drinking Water by Liquid/Liquid Extraction," Method 501.2 in 40 CFR part 141, Appendix C (45 FR 68672, November 29, 1979). The availability of these incorporations by reference are given in paragraph (b)(2) of this section.

(ii)(A) Bottled water packaged in the United States to which no fluoride is added shall not contain fluoride in excess of the levels in Table 1 and these levels shall be based on the annual average of maximum daily air temperatures at the location where the bottled water is sold at retail.

TABLE 1

Annual average of maximum daily air temperatures (°F)	Fluoride concentration in milligrams per liter
53.7 and below	2.4
53.8–58.3	2.2
58.4–63.8	2.0
63.9–70.6	1.8
70.7–79.2	1.6
79.3–90.5	1.4

(B) Imported bottled water to which no fluoride is added shall not contain fluoride in excess of 1.4 milligrams per liter.

(C) Bottled water packaged in the United States to which fluoride is added shall not contain fluoride in excess of levels in Table 2 and these levels shall be based on the annual average of maximum daily air temperatures at the location where the bottled water is sold at retail.

TABLE 2

Annual average of maximum daily air temperatures (°F)	Fluoride concentration in milligrams per liter
53.7 and below	1.7
53.8–58.3	1.5
58.4–63.8	1.3
63.9–70.6	1.2
70.7–79.2	1.0
79.3–90.5	0.8

(D) Imported bottled water to which fluoride is added shall not contain fluoride in excess of 0.8 milligram per liter.

(iii) Bottled water, when a composite of analytical units of equal volume from a sample is examined by the methods listed in paragraphs (b)(4)(iii)(E) through (b)(4)(iii)(F) of this section, shall not contain the following chemical contaminants in excess of the concentrations specified in paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(D) of this section.

(A) [Reserved]

(B) The permitted levels for volatile organic chemicals are as follows:

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
Benzene (71–43–2)	0.005
Carbon tetrachloride (56–23–5)	0.005
1,2-Dichloroethane (107–06–2)	0.005
1,1-Dichloroethylene (75–35–4)	0.007
1,1,1-Trichloroethane (71–55–6)	0.20
Trichloroethylene (79–01–6)	0.005
Vinyl chloride (75–01–4)	0.002

(C) through (E) [Reserved]

(F) Analyses conducted to determine compliance with paragraphs (b)(4)(iii)(B) and (b)(4)(iii)(C) of this section shall be made in accordance with a relevant method contained in "Methods for the Determination of Organic Compounds in Drinking Water," Office of Research and Development, Environmental Monitoring Systems Laboratory, EPA/600/4–88/039, December 1988, and listed separately in paragraphs (b)(4)(iii)(F)*(1)* through (b)(4)(iii)(F)*(5)* of this section, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Except as otherwise indicated below, copies are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, or available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC.

(*1*) Method 502.1—"Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography" (applicable to VOC's).

(*2*) Method 502.2—"Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series" (applicable to VOC's).

(*3*) Method 503.1—"Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Column Gas Chromatography" (applicable to VOC's).

(*4*) Method 524.1—"Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry" (applicable to VOC's).

(*5*) Method 524.2—"Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry" (applicable to VOC's).

(G) [Reserved]

(5) *Radiological quality.* (i) Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the methods described in paragraph (b)(5)(ii) of this section, meet standards of radiological quality as follows:

(A) The bottled water shall not contain a combined radium-226 and radium-228 activity in excess of 5 picocuries per liter of water.

(B) The bottled water shall not contain a gross alpha particle activity (including radium-226, but excluding radon and uranium) in excess of 15 picocuries per liter of water.

(C) The bottled water shall not contain beta particle and photon radioactivity from manmade radionuclides in excess of that which would produce an annual dose equivalent to the total body or any internal organ of 4 millirems per year calculated on the basis of an intake of 2 liters of the water per day. If two or more beta or photon-emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed 4 millirems per year.

(ii) Analyses conducted to determine compliance with paragraph (b)(5)(i) of this section shall be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water and Wastewater," 17th ed. (1989), and "Interim Radiochemical Methodology for Drinking Water," Environmental Monitoring and Support Laboratory, EPA–600/4–75–008 (Revised), March 1976, U.S. Environmental Protection Agency, both of which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these incorporations by reference is given in paragraph (b)(2) of this section.

(c) *Label statements.* Bottled water, the quality of which is below that prescribed by this section, shall be labeled with a statement of substandard quality as follows:

(1) When the microbiological quality of bottled water is below that prescribed by paragraph (b)(2) of this section, the label shall bear the statement of substandard quality specified in § 130.14(a) of this chapter.

(2) When the physical, chemical, or radiological quality of bottled water is below that prescribed by paragraphs (b)(3) through (b)(5) respectively of this

section, the label shall bear the statement of substandard quality specified in § 130.14(a) of this chapter except that, as appropriate, instead of or in addition to the words "Contains Excessive Bacteria" the following statement(s) shall be used:

(i) "Excessively Turbid", "Abnormal Color", and/or "Abnormal Odor" if the bottled water fails to meet the requirements of paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii), respectively, of this section.

(ii) "Contains Excessive ———," with the blank filled in with the name of the chemical for which a maximum contaminant level in paragraph (b)(4) of this section is exceeded (e.g., "Contains Excessive Arsenic," "Contains Excessive Trihalomethanes").

(iii) "Contains Excessive Chemical Substances" may be used in lieu of the statement in paragraph (c)(2)(ii) if the bottled water is not mineral water.

(iv) "Excessively Radioactive" if the bottled water fails to meet the requirements of paragraph (b)(5) of this section.

(d) Adulteration. Bottled water containing a substance at a level considered injurious to health under section 402(a)(1) of the Federal Food, Drug, and Cosmetic Act is deemed to be adulterated, regardless of whether or not the water bears a label statement of substandard quality prescribed by paragraph (c) for this section.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

7. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

8. Section 184.1563 is amended in the table in paragraph (c), under the heading "Category of food" by removing "§ 103.35(b) through (e)" and adding in its place "§ 165.110(b)(2) through (b)(5)" and by adding new paragraph (d) to read as follows:

§ 184.1563 Ozone.

* * * * *

(d) The term "bottled water," for purposes of this section, does not include mineral water with total dissolved solids greater than 500 parts per million.

Dated: June 23, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

Editorial note: This document was received at the Office of the Federal Register December 28, 1992.

[FR Doc. 92-31855 Filed 12-30-92; 9:00 am]

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January 5, 1993

Part III

Department of the Treasury

Fiscal Service

31 CFR Parts 349 and 356
Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 349 and 356

[Department of the Treasury Circular, Public Debt Series No. 1–93]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury hereby publishes a final rule setting out the terms and conditions for the sale and issue by the Department to the public of marketable book-entry Treasury bills, notes, and bonds. This rule, also referred to as the uniform offering circular, applies to securities held in the book-entry system established by the Department and maintained through the Federal Reserve Banks, commonly referred to as the commercial book-entry system, as well as to those held in the TREASURY DIRECT system. This final rule, for the most part, consolidates into one document the terms and conditions which are currently found in a variety of other documents. It replaces 31 CFR part 349, relating to the offering of Treasury bills. In addition, individual offering circulars for Treasury notes and bonds will no longer be published as of the effective date of this rule.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Michael W. Sunner, Deputy Assistant Commissioner, Office of Financing, Bureau of the Public Debt (202) 219–3350, or Margaret Marquette, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (202) 219–3320.

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 1992, the Department of the Treasury published a proposed rule setting out the terms and conditions governing the sale and issue of marketable book-entry Treasury bills, notes, and bonds (57 FR 3870). Sixteen written comment letters were received in response to that proposed rule. A revised proposed rule was published on September 30, 1992 (57 FR 45116). Five commenters responded to that proposed rule. The Department found the comments extremely useful in making the revisions described herein. Although some minor comments are not addressed here, all comments have been considered in the formulation of this final rule.

The comments were primarily in the following areas: Submission of bids by computer, net long position reporting, customer confirmations, investment advisers as bidders, and certifications for separate bidder status. The comments and other changes to the rule are discussed, as appropriate, in the following Section-by-Section Analysis.

II. Section-by-Section Analysis

Section 356.2 Definitions

The term "intermediary" has been added to the listing of definitions. This term refers to a depository institution or dealer that forwards bids for customers through another depository institution or dealer. An intermediary is distinguishable from a submitter in that a submitter submits bids directly to a Federal Reserve Bank or the Bureau of the Public Debt. An intermediary forwards bids to another intermediary or to a submitter rather than directly to a Federal Reserve Bank or the Bureau of the Public Debt. Other minor changes have been made throughout the rule to clarify the obligations of the intermediary depository institution or dealer.

Section 356.10 Offering Announcement

Two comments were received on this section. The commenters were pleased that the Department had revised the offering circular to include specific terms and conditions that, under the first proposed rule, were to be as specified in the offering announcement. The commenters were concerned, however, about the provision that allows changes to be made in the terms and conditions for the sale and issue of securities by other than an amendment to the offering circular. One of those commenters was concerned likewise with the provision that gives the offering announcement control over the offering circular in the event of any inconsistencies between the offering circular and the offering announcement.

No changes have been made to this section. The Department is sensitive to the commenters' concerns about monitoring and compliance burdens. It intends that the offering circular will be a comprehensive document, and that, whenever possible, changes will be made by means of an amendment to the offering circular. It reserves the right, however, to modify any terms and conditions of any new securities offerings without first publishing such changes for public comment. When a change is not temporary and is announced by means other than an amendment to the offering circular, the circular will be amended to reflect such change.

Section 356.11 Submission of Bids

One commenter commented generally that requirements contained on tender forms and in certifications or representations should be consistent with the requirements of the uniform offering circular, and should not go beyond the requirements of the circular. The Department will be revising tender forms and other agreements in accordance with this final rule.

Two comments were received on § 356.11(c)(5). This section provided that if disruptions or failures in the operation of the Federal Reserve Bank's computer or communications facilities result in the nonreceipt or untimely receipt of tenders otherwise timely submitted, the Department at its option may accept or reject such tenders. The commenters objected to this provision. The Department has deleted § 356.11(c)(5).

Section 356.13 Net Long Position

Commenters expressed concern about the proposed requirement contained in § 356.13(b) that if the person making the bidding decision knows of an increase in the bidder's net long position of $200 million or more after the designated position reporting time, the larger amount must be reported. Commenters felt that, to comply with this requirement in practice, those bidders would have to monitor and calculate their positions right up to the time their bids are submitted. The commenters stated that this would be difficult if not impossible to achieve, particularly for those bidders that must aggregate their positions across a range of affiliates.

The Department has decided not to include the proposed requirement for bidders to update net long position information after the designated reporting time. Instead, it will continue its current practice of requiring a bidder to determine its net long position one-half hour prior to the closing time for receipt of competitive bids.

In connection with clarifying the treatment of investment advisers under the Bidder Definitions, discussed below, the Department has revised § 356.13(a)(2) to clarify when net long positions must be aggregated for reporting purposes. This section provides for aggregating net long positions and competitive bids of different persons or entities, even though they might otherwise be considered separate bidders, if the investment or bidding decisions for

those persons or entities are centralized—as in the case of a single investment adviser. This section provides specific direction on which net long positions and bids must be taken into account, and it permits the exclusion of certain net long positions of less than $500 million.

It should be noted that § 356.22(b) of this Part provides that when the net long positions and competitive bids of more than one person or entity must be combined under § 356.13(a)(2), such combined amount will be used for the purpose of the 35% award limitation.

Section 356.14 Submitting Bids for Customers

One commenter recommended that the threshold for requiring that a submitter inform a customer of the customer's net long reporting obligation be raised from $10 million to $100 million. The commenter suggested that the higher amount was more in keeping with the $2 billion threshold for net long position reporting.

The Department concurs with that recommendation. Section 356.14(c)(1) has been changed to require a submitter or intermediary to inform its customer of the customer's net long reporting obligation when the customer bids competitively through that submitter for $100 million or more.

Two comments were received on the requirement, in § 356.14(c)(3), that if the submitter knows that the position information provided by the customer is incorrect, the submitter shall not submit the customer's bid. The commenters were concerned that the phrase "if the submitter knows" carries potential liability in cases where employees are assumed to have knowledge that they did not, in fact, have. They felt that, in order to avoid such liability, the submitter would be required to conduct a data search when a customer chooses to report its position through that submitter. The commenters suggested that a precise definition of "knowledge" be given or that the term "submitter" be narrowed.

Based on the above, § 356.14(c)(3) has been revised to narrow the circumstances under which a submitter or intermediary would be required to withhold a bid. That section now provides that a customer's bid shall not be submitted if the personnel directly involved in receiving or forwarding a customer's bid have actual knowledge that the position information provided by the customer is incorrect.

Section 356.24 Notice of Awards; Confirmations

Two commenters commented on the requirement, contained in § 356.24(d), that any customer awarded $100 million or more must furnish a written statement confirming its net long position. The commenters expressed concern that the obligation to file at the $100 million level might discourage customers from participating in auctions. One commenter felt also that using a $100 million threshold for net long position confirmations and a $500 million threshold for bid confirmations was unnecessarily confusing. Both commenters recommended that the net long position confirmation requirement and the bid confirmation requirement be combined.

The Department has modified the customer confirmation requirements. Section 356.24(d) has been deleted. Section 356.24(e) has been renumbered § 356.24(d) and includes provisions for both bid and net long position confirmations. Under the new § 356.24(d), any customer awarded $500 million or more in an auction must furnish a written statement confirming its bid and net long position. This statement must be provided to the Federal Reserve Bank where the bid was submitted no later than 10:00 a.m. on the day following the auction. The provisions requiring a submitter submitting a customer bid to notify its customer of the bid confirmation and net long position confirmation requirements have likewise been combined.

Appendix A—Bidder Definitions

Commenters commended the Department for its revisions to the Bidder Definitions, especially the provision that has been made for a major organizational component to obtain recognition as a separate bidder.

The commenters requested clarification, however, regarding the treatment of investment advisers and others who bid on behalf of their managed investment accounts or other clients (hereafter referred to as "investment advisers"). They expressed concern that, without a bidder category for advisers that manage accounts, it is not clear that such entities may submit bids on behalf of their managed accounts.

The Bidder Definitions do not include a separate category for investment advisers. Under the Bidder Definitions, however, if an investment adviser meets the corporation, partnership, or individual category definition, such person or entity may be considered a bidder within that category. The investment adviser may then bid in its own name and may include in its bid amounts that it is investing for clients. In that case, the adviser is considered to be the bidder for all purposes of this rule.

In the alternative, an investment adviser, when authorized by a client or principal, may place bids for the client in the name of such client, provided the client meets one of the Bidder Definitions. In that case, the client or principal is considered to be the bidder for all purposes of this rule.

It should be noted that regardless of whether the investment adviser or the client is named the bidder, §§ 356.13(a)(2) and 356.22(b) apply. Section 356.13(a)(2) provides for the aggregation of net long positions and competitive bids when one person or entity is exercising control over the net long positions or competitive bids of one or more other persons or entities. This requirement is described more fully in the section of this preamble discussing the net long position reporting requirements. Section 356.22(b) provides that the aggregate amount referred to above will be used for the purpose of the 35% award limitation.

One commenter expressed concern about the language contained in the sample certification to be used in requesting recognition as a separate bidder. The commenter suggested that the Department provide a carve-out, in the certification, for communication among support staff, e.g., legal or compliance, as distinct from information communicated among traders or business managers. The Department has not made this change. It believes that the language which refers to yields, rates, amounts, positions, and strategies related to a specific auction is integral to the certification and is not unnecessarily restrictive.

Finally, one commenter pointed out that, as proposed, a bidder must certify that it will not exchange any investment strategies that it plans to follow with any other part of its corporate structure. The commenter suggested that this provision be narrowed to prohibit the exchange of investment strategies regarding the security being auctioned. The Department has adopted this suggestion.

Procedural Requirements

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required.

Although this rule was issued in proposed form to secure the benefit of

public comment, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

The collections of information contained in this rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1535–0112. The estimated annual burden per respondent varies from 20 minutes to 40 minutes, depending on individual circumstances, with an estimated average of 30 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Bureau of the Public Debt, Forms Management Officer, Washington, DC 20239–1300 and to the Office of Management and Budget, Paperwork Reduction Project (1535–0112), Washington, DC 20503.

List of Subjects

31 CFR Part 349

Federal Reserve System, Government securities, Securities.

31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR Chapter II, subchapter B, is amended as follows:

PART 349—[REMOVED]

Part 349 is removed.

Part 356 is added to read as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–92)

Subpart A—General Information

Sec.
356.0 Authority for sale and issue.
356.1 Applicability.
356.2 Definitions.
356.3 Book-entry securities and systems.
356.4 Functions of Federal Reserve Banks.
356.5 Description of securities.

Subpart B—Bidding, Certifications, and Payment

356.10 Offering announcement.
356.11 Submission of bids.
356.12 Noncompetitive and competitive bidding.
356.13 Net long position.
356.14 Submitting bids for customers.
356.15 Certifications.
356.16 Responsibility for payment.

Subpart C—Determination of Auction Awards; Settlement

356.20 Determination of auction awards.
356.21 Proration of awards.
356.22 Limitation on auction awards.
356.23 Announcing auction results.
356.24 Notice of awards; confirmations.
356.25 Payment for awarded securities.

Subpart D—Miscellaneous Provisions

356.30 Payment of principal and interest on notes and bonds.
356.31 STRIPS.
356.32 Taxation.
356.33 Reservation of rights.
356.34 Remedies.
356.35 Reservations as to terms of offerings.
356.36 Paperwork Reduction Act approval.

Appendix A to Part 356—Bidder Definitions

Appendix B to Part 356—Formulas and Tables

Exhibit A to Part 356—Sample Announcements of Treasury Offerings to the Public

Exhibit B to Part 356—Sample Autocharge Agreement to Deliver and Charge for Securities Awarded in Department of the Treasury Auctions

Exhibit C to Part 356—Minimum Par Amounts for Strips

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*

Subpart A—General Information

§ 356.0 Authority for sale and issue.

The Secretary of the Treasury is authorized under chapter 31 of title 31, United States Code, to issue United States obligations and to offer them for sale under such terms and conditions as the Secretary may prescribe.

§ 356.1 Applicability.

Unless otherwise specified in an offering announcement, the provisions in this part, including the appendices, govern the sale and issuance of all marketable Treasury securities and any other obligations issued by the Secretary that, by the terms of the offering announcement, are made subject to this part.

§ 356.2 Definitions.

In this part, unless the context indicates otherwise:

Accrued interest means an amount payable to the Department for such part of the next semiannual interest payment that represents interest income attributed to the period prior to the date of issue. (See appendix B.)

Auction means a bidding process by which the Department sells marketable Treasury securities to the public.

Autocharge agreement means a written agreement between a submitter and a depository institution, acknowledged by a Federal Reserve Bank, which authorizes a Federal Reserve Bank to deliver securities awarded to the submitter and its customers at auction to the book-entry account of the depository institution or, when authorized, to a TREASURY DIRECT account, and to charge a funds account of the depository institution for the settlement amount of the securities. (See Exhibit B for a sample autocharge agreement.)

Bid means an offer to purchase a stated par amount of securities, either competitively or noncompetitively, in an auction.

Bidder, as further defined in appendix A, means a person or an entity that bids either directly or through an entity authorized to submit bids for customers in an auction. In some cases, two or more persons or entities are considered to be one bidder based on their relationship or their actions in participating in an auction.

Book-entry security means a security the issuance and maintenance of which are represented by an accounting entry or electronic record and not by a certificate.

Call means the redemption, pursuant to the terms specified in its offering announcement, of a security, in whole or in part, prior to maturity, at the option of the Secretary.

Competitive bid means a bid to purchase a stated par amount of securities at a specified yield or discount rate.

Corpus means the principal component of a stripped security and future callable semiannual interest payments, if any.

CUSIP means Committee on Uniform Securities Identification Procedures.

CUSIP number means the unique identifying number assigned to each separate security issue and each separate STRIPS component. CUSIP numbers are provided by the CUSIP Service Bureau of Standard & Poor's Corporation.

Customer means a bidder on whose behalf a depository institution or dealer has been directed to submit or forward a competitive or noncompetitive bid for a specified amount of securities in a specific auction. Only depository institutions and dealers may submit or forward bids for customers, whether directly at a Federal Reserve Bank or the Bureau of the Public Debt, or through an intermediary depository institution or dealer.

Dated date means the date from which interest accrues. The dated date

and issue date are the same except when the date from which interest accrues is prior to the issue date.

Dealer means an entity that is registered or has given notice of its status as a government securities broker or government securities dealer, pursuant to Section 15C(a)(1) of the Securities Exchange Act of 1934.

Department means the United States Department of the Treasury.

Depository institution means:

(1) An entity described in section 19(b)(1)(A), excluding subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)). Under section 19(b)(1)(A) of the Federal Reserve Act, the term *depository institution* includes:

(i) Any insured bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(ii) Any mutual savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(iii) Any savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(iv) Any insured credit union as defined in 12 U.S.C. 1752 or any credit union which is eligible to make application to become an insured credit union under 12 U.S.C. 1781;

(v) Any member as defined in 12 U.S.C. 1422; and

(vi) Any savings association (as defined in 12 U.S.C. 1813) which is an insured depository institution (as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1811, *et seq.*) or is eligible to apply to become an insured depository institution under such Act.

(2) Any agency or branch of a foreign bank as defined by the International Banking Act of 1978, as amended (12 U.S.C. 3101).

Discount means the difference between par and the price of the security, when the price is less than par.

Discount amount means the discount divided by 100 and multiplied by the par amount.

Discount rate, also referred to as "bank discount rate," means an annualized rate of return to maturity on bills, expressed in percentage terms and based on a 360-day year. (See appendix B for formulas and examples.)

Federal Reserve Bank means a Federal Reserve Bank or a branch of a Federal Reserve Bank.

Funds account means a cash account maintained by a depository institution at a Federal Reserve Bank.

Interest rate means the annual percentage rate of interest paid on the par amount of a specific issue of notes or bonds. (See appendix B for methods and examples of interest calculations on notes and bonds.)

Intermediary means a depository institution or dealer that forwards bids for customers to another depository institution or dealer and not directly to a Federal Reserve Bank or the Bureau of the Public Debt.

Issue date means the date specified in the offering announcement on which a security is issued as an obligation of the United States, and from which interest normally begins to accrue.

Marketable security means a security that is negotiable and transferable, i.e., may be bought and sold in the secondary market.

Maturity date means the date specified in the offering announcement on which a security becomes due and payable, and ceases to earn interest.

Minimum to hold means the smallest amount of a security that will be issued to a bidder and may be held in any book-entry account. Unless otherwise stated in the offering announcement, the minimum to hold is the same as the minimum bid amount given in the offering announcement.

Multiple-price auction means an auction in which each successful bidder pays the price equivalent to the yield or rate that it bid.

Multiple to hold means the smallest additional amount of a security that will be issued to a bidder and may be held in any book-entry account above the minimum to hold. Unless otherwise stated in the offering announcement, the multiple to hold is the same as the multiple to bid amount given in the offering announcement.

Noncompetitive bid means a bid to purchase securities at the weighted average yield or discount rate of awards to competitive bidders.

Par means a price of 100. (See appendix B.)

Par amount means the stated value of a security that will be paid at maturity.

Person means a natural person.

Premium means the difference between par and the price of the security, when the price is greater than par.

Premium amount means the premium divided by 100 and multiplied by the par amount.

Price means the price of a security as calculated using the formulas in appendix B.

Public offering means the par amount of securities offered to the public for purchase in an auction. For all bills except cash management bills, the public offering is the amount specified in the offering announcement, less securities awarded in the auction to the Federal Reserve Banks for their own account (up to the amount of maturing securities held by the Federal Reserve) and for the account of foreign and international monetary authorities (up to the amount of maturing securities held by foreign and international accounts). For notes, bonds, and cash management bills, the public offering is the same as the amount specified in the offering announcement.

Reopening means the auction of an additional amount of an outstanding security.

Secretary means Secretary of the Treasury.

Security means a Treasury bill, note, or bond, each as described in this part, and any other obligation issued by the Secretary that, by the terms of the applicable offering announcement, is made subject to this part. Security includes an interest or principal component under the STRIPS program (see below).

Settlement means final and complete payment for securities awarded in an auction.

Settlement amount means the par amount of securities awarded less any discount amount and plus any premium amount and accrued interest.

Single-price auction means an auction in which all successful bidders pay the same price regardless of the yields or rates they each bid.

STRIPS (Separate Trading of Registered Interest and Principal of Securities) means the Department's program under which eligible securities are authorized to be separated into principal and interest components, and traded separately. These components are maintained in book-entry form on the books of a Federal Reserve Bank.

Submitter means the person or entity submitting bids directly to a Federal Reserve Bank or the Bureau of the Public Debt for its own account, for the account of others, or both. The only submitters that are permitted to submit bids for the account of others are depository institutions and dealers.

Tender means the document or computer transmission submitted to a Federal Reserve Bank or the Bureau of the Public Debt by which a bidder bids for securities.

TINT means an interest component from a stripped security.

TREASURY DIRECT means the TREASURY DIRECT Book-Entry Securities System. (See 31 CFR 357, subpart C.)

Weighted average means the average of the yields or discount rates at which securities are awarded to competitive bidders weighted by the par amount of

securities allotted at each yield or discount rate.

Yield, also referred to as "yield to maturity," means the annualized rate of return to maturity on a note or bond expressed as a percentage. (See appendix B.)

§ 356.3 Book-entry securities and systems.

Securities issued subject to this part shall be held in either of two systems for maintaining book-entry securities, described. Securities may be transferred from one system to the other in accordance with Treasury regulations governing book-entry Treasury bills, notes, and bonds. See Department of the Treasury Circular No. 300, as currently revised, and Department of the Treasury Circular, Public Debt Series No. 2–86, as amended (31 CFR parts 306 and 357).

(a) *Commercial book-entry system.*[1] The commercial book-entry system is established, maintained, and operated by the Federal Reserve Banks, acting as fiscal agents of the United States, pursuant to 12 U.S.C. 391. The Federal Reserve Banks maintain book-entry accounts for themselves, depository institutions, and other authorized entities, such as government and international agencies and foreign central banks. In their accounts, depository institutions maintain securities held for their own account and for the accounts of others, including other depository institutions and dealers, which may, in turn, maintain accounts for others.

(b) *TREASURY DIRECT.* TREASURY DIRECT is a system in which the book-entry securities of account holders are identified and maintained directly on the records of the Bureau of the Public Debt, Department of the Treasury.

§ 356.4 Functions of Federal Reserve Banks.

Federal Reserve Banks, as fiscal agents of the United States, are authorized to perform all activities necessary to carry out the provisions of this part, any offering announcements, and applicable regulations.

§ 356.5 Description of securities.

Securities offered pursuant to this part are offered exclusively in book-entry form and are direct obligations of the United States, issued under chapter 31 of title 31 of the United States Code. The securities are subject to the terms and conditions set forth in this part, as well as the general regulations governing United States securities (31 CFR part 306), the regulations governing book-entry Treasury bills, notes, and bonds (31 CFR part 357), and the offering announcements, all to the extent applicable. When the Department issues additional securities with the same CUSIP number as outstanding securities, all securities with the same CUSIP number are considered the same security.

(a) *Treasury bills.* Treasury bills are issued at a discount, are redeemed at their par amount at maturity, and have maturities of not more than one year.

(b) *Treasury notes.* Treasury notes are issued with a stated rate of interest, earn interest semiannually, and are redeemed at their par amount at maturity. They are sold at discount, par, or premium, depending upon the auction results. They have maturities of at least one year, but of not more than ten years.

(c) *Treasury bonds.* Treasury bonds are issued with a stated rate of interest, earn interest semiannually, and are redeemed at their par amount at maturity. They are sold at discount, par, or premium, depending upon the auction results. They typically have maturities of more than ten years.

Subpart B—Bidding, Certifications, and Payment

§ 356.10 Offering announcement.

The Department provides public notice of the sale of bills, notes, and bonds by issuing an offering announcement. The offering announcement lists the specifics of each offering, e.g., offering amount, term and type of security, CUSIP number, and issue and maturity dates. The offering announcement and this part, including the Appendices, specify the terms and conditions of sale. To the extent that the provisions of an offering announcement are inconsistent with the provisions of this part, the provisions of the offering announcement will control. (See Exhibit A for sample announcements.)

§ 356.11 Submission of bids.

(a) *General.* (1) Bids may be submitted directly to a Federal Reserve Bank that is authorized to accept tenders or to the Bureau of the Public Debt, Washington, DC, or through a depository institution or dealer that is authorized, pursuant to § 356.14, to submit bids on behalf of customers. Except as otherwise provided in this section, tenders must be submitted in an approved format. Competitive and noncompetitive bids must be received prior to the respective closing times specified in the offering announcement, except as provided in paragraph (b)(2) of this section. Bids not received timely will not be recognized in the auction. Bids for securities are binding on the bidder after the closing time specified in the offering announcement.

(2) If the awarded securities are to be issued in the commercial book-entry system, a submitter must have on file at a Federal Reserve Bank a certificate listing those persons who are authorized to submit tenders on its behalf. The certificate must be duly executed by an authorized person on behalf of the submitter. A tender will not be recognized if the person submitting the tender is not listed on the certificate. The submitter is responsible for any tenders submitted for the submitter by persons who are designated on the certificate as authorized to submit tenders on its behalf.

(b) *Submission of paper tenders.* (1) Paper tenders should be on preprinted forms provided by the Federal Reserve Bank to which the tender is submitted or preprinted forms of the Bureau of the Public Debt, and should provide the information requested on the form. Paper tenders in any other form or incomplete tenders may be accepted or rejected at the option of the Department.

(2) The submitter is responsible for ensuring that the paper tender is received timely at the Federal Reserve Bank or the Bureau of the Public Debt, Washington, DC. A noncompetitive bid is considered timely if received prior to the deadline for the receipt of noncompetitive tenders. Further, a noncompetitive bid received after the deadline for the receipt of noncompetitive tenders is considered timely only if it was submitted by mail and only if the envelope containing the tender bears a U.S. Postal Service cancellation date prior to the auction date and the tender is received on or before the issue date.

(3) Neither the Federal Reserve Bank nor the Department shall be, in any way, responsible for any unauthorized paper tender submissions or for any delays, errors, or omissions in the submission of paper tenders.

(c) *Submission of tenders by computer.* Competitive and noncompetitive tenders may be submitted by computer transmission to a Federal Reserve Bank. Tenders may be submitted by computer only by those submitters that have previously arranged with a Federal Reserve Bank for such submission.

(1) For computer tenders, the submitter must comply with computer communications and electronic access standards and requirements for Treasury auctions. Incomplete tenders or transmissions that do not comply with

[1] Upon the adoption of a final rule therefor, the commercial book-entry system will be referred to as the Treasury/Reserve Automated Debt Entry System (TRADES).

such standards and requirements may be accepted or rejected at the option of the Department.

(2) All tenders submitted by computer are binding on the submitter to the same extent as if they had been paper tenders. No paper tender should be submitted that duplicates a tender submitted by computer.

(3) Tenders submitted by computer must be received by the applicable closing time; the Federal Reserve Bank's computer time stamp will establish the time of receipt.

(4) The submitter bears sole risk for any disruption or failure in the operation of its own computer, any electronic-based communications facilities, or any communications lines between the submitter and the Federal Reserve Bank.

(5) The submitter is responsible for tenders submitted using computer equipment on its premises, whether or not such tenders are authorized.

(6) Neither the Federal Reserve Bank nor the Department shall be, in any way, responsible for any delays, errors, or omissions in the submission of tenders.

§ 356.12 Noncompetitive and competitive bidding.

(a) *General.* All bids must state the par amount of securities bid for and must equal or exceed the minimum bid amount stated in the offering announcement. Bids that exceed the minimum bid amount must be in the multiple stated in the offering announcement.

(b) *Noncompetitive.* A bidder bidding competitively for its own account may not bid noncompetitively for its own account in the same auction. A request for reinvestment of securities maturing in TREASURY DIRECT is a noncompetitive bid.

(1) *Maximum bid.* A bidder may not bid noncompetitively for more than $1 million in a bill auction or more than $5 million in a note or bond auction. The maximum bid limitation does not apply to bidders who are bidding solely through TREASURY DIRECT reinvestment requests.

(2) *Additional restrictions.* A bidder may not bid noncompetitively for its own account if, in the security being auctioned, it holds a position in when-issued trading or in futures or forward contracts between the date of the offering announcement and the designated closing time for the receipt of competitive tenders. Prior to the designated closing time for receipt of competitive tenders, a noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction.

(c) *Competitive.* A bidder bidding noncompetitively for its own account may not bid competitively for its own account in the same auction.

(1) *Bid format.* A competitive bid must show the yield or discount rate bid, expressed with two decimals. Fractions may not be used.

(2) *Maximum recognized bid.* There is no limitation on the maximum dollar amount that a bidder may bid for competitively, either at one yield or discount rate, or at different yields or discount rates. However, a competitive bid by a bidder at a single yield or discount rate that exceeds 35% of the public offering amount will be reduced to that amount. For example, if the public offering is $10 billion, the maximum bid amount that will be recognized at any one yield or discount rate from any bidder is $3.5 billion. (See § 356.22 for award limitations.)

§ 356.13 Net long position.

(a) *Reporting net long positions.* (1) When bidding competitively, a bidder must report the amount of its net long position when the total of all of its bids in an auction plus the bidder's net long position in the security being auctioned equals or exceeds $2 billion. If the bidder either has no position or has a net short position and the total of all of its bids equals or exceeds $2 billion, a net long position of zero must be reported. In cases where a bidder that is required to report the amount of its net long position bids through more than one submitter or Federal Reserve Bank, the bidder's total net long position should be reported through only one submitter or Federal Reserve Bank to which a bid was submitted. A bidder that is a customer must report its net long position through one depository institution or dealer. (See § 356.14(c).)

(2) If a person or entity (such as an investment adviser) is exercising control over the net long positions or competitive bids of one or more other persons or entities, then such net long positions and bids, as well as its own net long positions and competitive bids, must be combined for purposes of this paragraph (a)(2). If the combined amount of those net long positions and bids equals or exceeds $2 billion, then the person or entity exercising control must report: (i) A combined net long position that aggregates its own net long position with the other net long positions under its control; and (ii) the name of each person or entity in whose name it is placing competitive bids in the auction. The person or entity exercising control need not include in the combined amount any net long position less than $500 million of any person or entity in whose name it is not placing a competitive bid. The report required by this paragraph (a)(2) must be provided, prior to the closing time for receipt of competitive tenders, to a Federal Reserve Bank to which a competitive bid is being submitted.

(b) *Determination of net long position.* The net long position must be determined as of the designated reporting time, which is one-half hour prior to the closing time for receipt of competitive bids. A net long position includes the par amount of:

(1) Holdings of outstanding securities with the same CUSIP number as the security being auctioned;

(2) Positions, in the security being auctioned, in

(i) When-issued trading,

(ii) Futures contracts that require delivery of the specific security being auctioned (but not futures contracts for which the security being auctioned is one of several securities that may be delivered, and not futures contracts that are cash-settled), and

(iii) Forward contracts; and

(3) Holdings of STRIPS principal components of the security being auctioned, including when-issued trading positions of such principal components.

§ 356.14 Submitting bids for customers.

Depository institutions and dealers may submit bids for their own account, for their customers, or for customers of intermediaries, subject to the requirements set out in paragraphs (a), (b), and (c) of this section. Others are permitted to submit bids only for their own account.

(a) *Payment.* By submitting a bid on behalf of its customer or a customer of any intermediary, a submitter agrees to remit payment for securities awarded as a result of such bid.

(b) *Customer lists.* A customer list must be submitted or be available, as provided in paragraphs (b) (1), (2) and (3), whenever bids for more than one customer are included on the same tender. The customer list must include direct customers of the submitter as well as customers of any intermediaries who are forwarding customer bids to the submitter.

(1) For competitive bids submitted by paper tender, the submitter must provide a separate tender for each yield or discount rate at which a bid is submitted. As a part of such tender, the submitter must provide a list that includes the full name of each customer and the amount bid by each customer. For competitive bids submitted by

computer, the submitter may submit bids at multiple yields or discount rates on the same tender. On each such tender, the submitter must submit the full name of each customer and the amount bid at each yield or discount rate by each customer.

(2) For noncompetitive bids, a list must be provided that includes the full name of each customer and the amount bid by each customer. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders, and must be received by the Federal Reserve Bank to which the tender was submitted by close of business on the auction day.

(3) Bids submitted on behalf of trusts or other fiduciary estates must identify on the customer list the full name or title of the trustee or fiduciary; a reference to the document creating the trust or fiduciary estate with date of execution; and the employer identification number of the trust or fiduciary estate.

(c) *Net long position of customers.* (1) A submitter or intermediary, when submitting or forwarding a competitive bid of $100 million or more for its customer, must inform that customer of the customer's net long position reporting obligation as described in § 356.13.

(2) A submitter or intermediary, when submitting or forwarding a competitive bid for a customer, must report the net long position amount if such amount is provided by the customer.

(3) If personnel of a submitter or intermediary who are directly involved in receiving or forwarding a customer's bid know that the position information provided by a customer is incorrect, the customer's bid shall not be submitted or forwarded by the submitter or intermediary.

(4) If the amount of a customer's net long position is to be reported by the submitter by paper tender, a separate tender must be submitted for that customer that includes the amount of the net long position.

§ 356.15 Certifications.

(a) *Submitters.* By submitting a tender for a security, a submitter is deemed to have certified that it is in compliance with this part and the offering announcement governing the sale and issue of the security. Further, the submitter is deemed to have certified that the information provided on the tender with regard to bids for its own account is accurate and complete, and that the information provided on the tender with regard to bids for customers accurately and completely reflects information provided to it by its customers or intermediaries. Prior to submitting a computer tender, a submitter must have on file a written certification that the submitter is certifying, each time it submits a computer tender, that it is in compliance with this part and the applicable offering announcement. The certification must be signed and dated by an authorized person on behalf of the submitter, be filed with the Federal Reserve Bank to which the computer tender is submitted, and be renewed at least annually.

(b) *Intermediaries.* By forwarding a bid, an intermediary is deemed to have certified that it is in compliance with this part and the offering announcement governing the sale and issue of the security. Further, the intermediary is deemed to have certified that the information provided to a submitter or other intermediary with regard to bids for its own account is accurate and complete, and that the information provided to a submitter or other intermediary with regard to bids for customers accurately and completely reflects information provided to it by its customers or intermediaries.

(c) *Customers.* By bidding for a security, a customer is deemed to have certified that it is in compliance with this part and the offering announcement governing the sale and issue of the security and that the information it provided to the submitter or intermediary in connection with the bid is accurate and complete.

§ 356.16 Responsibility for payment.

A bidder agrees to pay the settlement amount for any securities awarded to it in the auction. (See § 356.25.) In addition, certain payments or provisions for payment are required at the time a tender is submitted. The specific requirements, outlined in this section, depend on whether awarded securities will be delivered to TREASURY DIRECT or the commercial book-entry system.

(a) *TREASURY DIRECT.* For securities to be held in TREASURY DIRECT, payment of the par amount and announced accrued interest, if any, must be submitted with the tender unless other provision has been made, such as provision for payment by charge to the funds account of a depository institution.

(1) *Payment with tender.* For bills, payment must be by cash, depository institution (cashier's or teller's) check, certified check, currently dated Treasury or fiscal agency check made payable to the bidder, or definitive Treasury securities maturing on or before the issue date of the securities being auctioned, but which are not overdue as defined in the general regulations governing United States securities (31 CFR 306.25). Also, maturing securities held in TREASURY DIRECT may be used as payment for new securities that are being offered, provided that the appropriate transaction request is received timely. For notes or bonds, payment must be in one of the forms described above for bills, or by personal check. Checks submitted to a Federal Reserve Bank must be made payable to that Bank and checks submitted to the Bureau of the Public Debt must be made payable to the Bureau of the Public Debt.

(2) *Authorized charge to a funds account.* If a depository institution or dealer submits a tender for a TREASURY DIRECT bidder and payment is not submitted with the tender, an authorization from a depository institution to charge the institution's funds account at a Federal Reserve Bank must be submitted with the tender.

(b) *Commercial book-entry system.* For securities to be held in the commercial book-entry system, payment of the par amount and announced accrued interest, if any, must be submitted with the tender unless provision has been made for payment by charge to the funds account of a depository institution.

(1) *Payment with tender.* Where payment is submitted with the tender, payment must be by one of the means specified under paragraph (a)(1) of this section.

(2) *Authorized charge to a funds account.* Where payment is not submitted with the tender, an authorization to charge the funds account of a depository institution must be provided as follows.

(i) A depository institution with a funds account submitting tenders directly to a Federal Reserve Bank may authorize the Bank to charge its funds account upon delivery of the securities.

(ii) A submitter that chooses not to pay by charge to its funds account or a submitter that does not have a funds account must, prior to the submission of a tender, have an approved autocharge agreement on file at the Federal Reserve Bank to which the tender is submitted. By submitting a tender for securities to be paid for under such autocharge agreement, the submitter authorizes the Federal Reserve Bank to provide, to the depository institution whose funds

account will be charged under the agreement, notice of the total par amount of, and price to be charged for, securities awarded as a result of the submitter's tender.

Subpart C—Determination of Auction Awards; Settlement

§ 356.20 Determination of auction awards.

(a) *Determining the range and amount of accepted competitive bids.*—(1) *Accepting bids.* Determinations of awards in auctions are made at the Bureau of the Public Debt after the closing time for receipt of bids. In determining auction awards, the Bureau of the Public Debt first accepts in full all noncompetitive bids received by the closing time specified in the offering announcement. Then competitive bids are accepted, starting with those at the lowest yields or discount rates through successively higher yields or discount rates, up to the amount required to meet the public offering. Bids at the highest accepted yield or discount rate will be prorated (as described in paragraph (a)(2) of this section), if necessary. If the amount of noncompetitive bids would absorb most or all of the public offering, competitive bids will be accepted in an amount determined by the Department to be sufficient to provide a fair determination of the yield or discount rate for the securities being auctioned.

(2) *Accepting bids at the high yield or discount rate.* When the total amount of bids at the highest accepted yield or discount rate exceeds the amount of the public offering remaining after acceptance of noncompetitive bids and competitive bids at the lower yields or discount rates, a percentage of the bids received at the highest accepted yield or discount rate will be awarded. This proration is performed for the purpose of awarding a par amount of securities close to the public offering amount. The percentage is derived by dividing the remaining par amount needed to fill the public offering by the par amount of the bids recognized at the high yield or rate and rounding up to the next whole percentage point.

(b) *Determining the interest rate for new note and bond issues.* The interest rate established as a result of the auction will generally be set at the 1/8 of one percent increment that produces the price closest to, but not above, par when evaluated at the weighted average yield of awards to competitive bidders.

(c) *Determining purchase prices for awarded securities.* (See Appendix B for formulas and tables. Price calculations will be rounded to three decimal places on the basis of price per hundred, e.g., 99.954.)

(1) *Multiple-price auctions*—(i) *Competitive bids.* The price of securities awarded to competitive bidders is the price equivalent to each yield or discount rate at which their bids were accepted.

(ii) *Noncompetitive bids.* The price of securities awarded to noncompetitive bidders is the price equivalent to the weighted average yield or discount rate of accepted competitive bids.

(2) *Single-price auctions.* The price of securities awarded to both competitive and noncompetitive bidders is the price equivalent to the highest yield or discount rate at which bids were accepted.

§ 356.21 Proration of awards.

(a) *Awards to submitters.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2), the Federal Reserve Banks are responsible for prorating awards for submitters at the percentage announced by the Department. For example, if 80% is the announced percentage at the highest yield or discount rate, then each bid at that rate or yield shall be awarded 80% of the amount bid. Hence, a bid for $100,000 at the highest accepted yield or discount rate would be awarded $80,000. In all cases, awards will be for, at least, the minimum to hold, and awards must be in an appropriate multiple to hold. For example, Treasury bills may be issued with a minimum to hold of $10,000 and multiples to hold of $5,000. Where a $100,000 bid is accepted at the high discount rate, and the percent awarded at the high discount rate was 11%, the award to that bidder would be $15,000, because bills cannot be held in an amount of $11,000. Awards at the highest accepted yield or rate are adjusted upwards, if necessary, to an appropriate multiple to hold. If tenders at the highest accepted rate were prorated at, for example, a rate of 4%, the award for a $100,000 bid would be $10,000, instead of $4,000, in order to meet the minimum to hold for a bill issue.

(b) *Awards to customers.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2), depository institutions and dealers, whether submitters or intermediaries, are responsible for prorating awards for their customers at the same percentage as that announced by the Department. For example, if 80% is the announced percentage at the highest yield or discount rate, then each customer bid at that rate or yield shall be awarded 80%. The same prorating rules apply to customers as apply to submitters.

§ 356.22 Limitation on auction awards.

(a) *Awards to noncompetitive bidders.* The maximum award that will be made to any bidder is $1 million for bills and $5 million for notes and bonds. This does not apply to bidders bidding solely through TREASURY DIRECT reinvestment requests.

(b) *Awards to competitive bidders.* The maximum award that will be made to any bidder is 35% of the public offering less the bidder's net long position as reportable under § 356.13. For example, in a note auction with a $10 billion public offering, a bidder with a reported net long position of $1 billion could receive a maximum auction award of $2.5 billion. When the bids and net long positions of more than one person or entity must be combined as required by § 356.13(a)(2), such combined amount will be used for the purpose of this award limitation.

§ 356.23 Announcing auction results.

After the conclusion of the auction, the Department will make an official announcement of the auction results through a press release. The press release will include such information as the amounts of bids recognized and accepted, the range of yields or discount rates at which securities were awarded, noncompetitive yield or discount rate, proration percentage, the interest rate for a note or bond, a breakdown of the amounts of noncompetitive and competitive bids recognized and accepted from the public, the amounts recognized and accepted from the Federal Reserve Banks for their own accounts and for foreign and international monetary authorities, and the minimum par amount required to strip a STRIPS-eligible note or bond.

§ 356.24 Notice of awards; confirmations.

(a) *Notice of awards.* Notice of awards will be provided by a Federal Reserve Bank or the Department to submitters of successful competitive bids. Submitters of noncompetitive bids will be notified only when the price to be paid by noncompetitive bidders is over par or if noncompetitive bids are not accepted in full.

(b) *Confirmation of award to customer.* A submitter submitting a bid for customers is responsible for notifying its customers and intermediaries that forwarded bids to it of the awards. Similarly, an intermediary is responsible for notifying its customers and any intermediaries that forwarded bids to it of the awards.

(c) *Confirmation of award and settlement amount to a depository institution having an autocharge agreement with a submitter.* Not later

than the day after each auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a submitter as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date.

(d) *Customer confirmation.* Any customer awarded a par amount of $500 million or more in an auction must furnish a confirmation including the information in paragraphs (d) (1) and (2) of this section to the Federal Reserve Bank to which the bid was submitted, no later than 10:00 a.m. on the day following the auction. The confirmation must be signed by the customer or authorized representative and must include the capacity in which such representative is acting. A submitter or intermediary submitting or forwarding a customer bid is responsible for notifying its customer of this requirement if the customer is awarded a par amount of $500 million or more as a result of bids submitted by the submitter or forwarded by the intermediary.

(1) A written confirmation of its bid, and

(2) A written statement indicating whether it had a reportable net long position as defined in § 356.13, and, if a position had to be reported, the amount of any such position and the name of the depository institution or dealer through which the customer requested that the position be reported.

§ 356.25 Payment for awarded securities.

Payment for securities is to be accomplished by the issue date. Payment will be accomplished as follows:

(a) *Payment with tender.* When payment is made with the tender as provided for in § 356.16 (a)(1) and (b)(1), settlement is accomplished as follows:

(1) *When an amount is due the submitter.* When the payment previously remitted by the submitter exceeds the settlement amount, the balance will be refunded to the submitter following the auction.

(2) *When the submitter must remit an additional amount.* When the settlement amount exceeds the payment previously remitted by the submitter, the submitter will be notified of the additional amount due and is responsible for remitting it immediately. Such additional amount may be due if the auction calculations result in a premium or if accrued interest is due.

(b) *Payment by authorized charge to a funds account.* Where the submitter's method of payment is an authorized charge to the funds account of a depository institution as provided for in §§ 356.16 (a)(2) and (b)(2), the settlement amount will be charged to the specified funds account on the issue date.

Subpart D—Miscellaneous Provisions

§ 356.30 Payment of principal and interest on notes and bonds.

Principal on notes and bonds will be paid on the maturity date as specified in the offering announcement unless the security is called pursuant to its terms and in accordance with appropriate public notice. Interest on notes and bonds accrues from the dated date. Interest is payable on a semiannual basis on the interest payment dates specified in the offering announcement through the date that the principal becomes payable. In the event any principal or interest payment date is a Saturday, Sunday, or other day on which the Federal Reserve Banks are not open for business, the amount is payable (without additional interest) on the next business day.

§ 356.31 STRIPS.

(a) *General.* A note or bond may be designated in the offering announcement as eligible for the STRIPS program. At the option of the holder, and generally at any time from its issue date until its call or maturity, any such security may be "stripped," i.e., divided into separate principal and interest components maintained in the commercial book-entry system. The principal components of such stripped security have a single CUSIP number that is different from the CUSIP number of the fully-constituted (unstripped) security. When an interest payment is stripped, an interest component is created and the interest payment date becomes the maturity date for the component. A short or long first interest payment and all interest payments within a callable period are not eligible to be stripped from the principal component. All interest components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. The CUSIP numbers of all interest components are different from the CUSIP number of any fully-constituted security and any principal component. The CUSIP numbers and payment dates for the principal and interest components are provided in the offering announcement if not previously announced.

(b) *Minimum par amounts required for STRIPS.* For a note or bond to be stripped into the components described in paragraph (a) of this section, the par amount of the note or bond must be in an amount that, based on its interest rate, will produce a semiannual interest payment in a multiple of $1,000. Exhibit C to this part provides the minimum par amounts required to strip a note or bond at various interest rates, as well as the corresponding interest payments. Amounts greater than the minimum par amount must be in multiples of that amount. The minimum par amount required to strip a particular security will be provided in the press release announcing the auction results.

(c) *Reconstituting a security.* Stripped interest and principal components may be reconstituted, i.e., restored to their fully-constituted form, and maintained in the commercial book-entry system. A principal component and all related unmatured interest components, in the appropriate minimum or multiple amounts, must be submitted together for reconstitution.

(d) *Applicable regulations.* Unless otherwise provided in this part, the Department's general regulations governing United States securities (31 CFR part 306) apply to notes and bonds separated into their STRIPS components.

§ 356.32 Taxation.

Securities issued under this part are subject to all applicable taxes imposed under the Internal Revenue Code of 1986. Under section 3124 of title 31, United States Code, the securities are exempt from taxation by a State or political subdivision of a State, except for State estate or inheritance taxes and other exceptions as provided in that section.

§ 356.33 Reservation of rights.

The Secretary reserves the right to accept or reject or refuse to recognize any or all bids or tenders submitted under this part. The Secretary also reserves the right to award more or less securities than the amount of securities specified in the offering announcement. The Secretary further reserves the right to waive any provision or provisions of this part for any or all bidders or submitters. Decisions of the Secretary under this section shall be final.

§ 356.34 Remedies.

(a) *General.* When a person or an entity fails to comply with the requirements of this part, the Secretary will consider the circumstances of such failure and determine an appropriate remedy. Such remedy may include prohibiting the person or entity from participating in future auctions for its own account, for the account of others, or both. The Secretary may refer such

occurrences to the appropriate regulatory agency for enforcement action.

(b) *Liquidated damages.* A bidder agrees to pay liquidated damages of 1% of the par amount of securities awarded the bidder in an auction if the bidder fails to pay for the awarded securities in a timely manner. The Secretary may waive, in whole or in part, the payment of liquidated damages. This liquidated damages provision shall not preclude the use of any other available remedy.

§ 356.35 Reservations as to terms of offerings.

The Secretary reserves the right to supplement or amend provisions of this part. The Secretary further reserves the right to modify the terms and conditions of new securities and to depart from the customary pattern of securities offerings at any time. Public notice of any such changes will be provided.

§ 356.36 Paperwork Reduction Act approval.

The collections of information contained in §§ 356.11, 356.12, 356.13, and 356.14, and in appendix A of this part have been approved by the Office of Management and Budget under control number 1535–0112.

Appendix A to Part 356—Bidder Definitions

For the purpose of this part, the definitions set forth in this appendix describe all of the categories of bidders eligible to bid in Treasury auctions. These definitions are to be used by persons and entities in determining whether they are considered one bidder or more than one bidder for the purpose of bidding in auctions and for the purpose of complying with the requirements of this part. Notwithstanding these definitions, any persons or entities that intentionally act together with respect to bidding in a Treasury auction are considered, collectively, to be one bidder.

The following definitions will be used by the Department in applying competitive and noncompetitive award limitations and related requirements, as described in this part.

(a) *Corporation*—A corporation and all affiliates, whether persons, partnerships, or other entities, hereinafter referred to as a corporate structure, are considered, collectively, to be one bidder.

An affiliate is any: entity that is more than 50% owned, directly or indirectly, by the corporation; entity that is more than 50% owned, directly or indirectly, by any other affiliate of the corporation; person or entity that owns, directly or indirectly, more than 50% of the corporation; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the corporation; or entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the corporation or of any affiliate of the corporation.

Under certain circumstances, one or more major organizational components (e.g., the parent or a subsidiary) in a corporate structure, either separately or together with one or more other organizational components in the corporate structure, may be recognized as a bidder separate from the larger corporate structure. All of the following criteria must be met for such component or components to qualify for recognition as a separate bidder:

(1) Such component or components must be prohibited by law or regulation from exchanging, or must have established written internal procedures (i.e., Chinese walls) designed to prevent the exchange of, information related to bidding in Treasury auctions with any other component in the corporate structure;

(2) Such component or components must not be created for the purpose of circumventing the Department's bidding and award limitations;

(3) Decisions related to purchasing Treasury securities at auction and participation in specific auctions must be made by employees of such component or components. Employees of such component or components that make decisions to purchase or dispose of Treasury securities must not perform the same function for other components within the corporate structure; and

(4) The records of such component or components related to the bidding for, acquisition of, and disposition of Treasury securities must be maintained by such component or components. Those records must be identifiable—separate and apart from similar records for other components within the corporate structure.

To obtain recognition as a separate bidder, each component or group of components must request such recognition from the Department, provide a description of the component or group and its position within the corporate structure, and provide the following certification:

[Name of the bidder] hereby certifies that to the best of its knowledge and belief it meets the criteria for a separate bidder as described in appendix A to 31 CFR part 356. The above-named bidder also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the component or group of components from:

(1) Exchanging any of the following information with any other part of the corporate structure: (a) Yields or rates at which it plans to bid; (b) amounts of securities for which it plans to bid; (c) positions that it holds or plans to acquire in a security being auctioned; and (d) investment strategies that it plans to follow regarding the security being auctioned, or

(2) In any way intentionally acting together with any other part of the corporate structure with respect to formulating or entering bids in a Treasury auction.

The above-named bidder agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate bidder status changes or when this certification is no longer valid.

(b) *Partnership*—A partnership for which the Internal Revenue Service has assigned a tax-identification number; general partners acting on behalf of the partnership; and all affiliates, whether persons, corporations, or other entities; hereinafter referred to as a partnership structure, are considered, collectively, to be one bidder. A partnership structure that contains one or more corporations is considered one bidder under either this "partnership" category or the "corporation" category, but not both.

An affiliate is any: Entity that is more than 50% owned, directly or indirectly, by the partnership; entity that is more than 50% owned, directly or indirectly, by any other affiliate of the partnership; person or entity that owns, directly or indirectly, more than 50% of the partnership; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the partnership; or entity, a majority of whose general partners or a majority of whose board of directors are general partners or directors of the partnership or of any affiliate of the partnership.

Under certain circumstances, one or more major organizational components (e.g., the partnership or a subsidiary) in a partnership structure, either separately or together with one or more other organizational components in the partnership structure, may be recognized as a bidder separate from the larger partnership structure. All of the following criteria must be met for such component or components to qualify for recognition as a separate bidder:

(1) Such component or components must be prohibited by law or regulation from exchanging, or must have established written internal procedures (i.e., Chinese walls) designed to prevent the exchange of, information related to bidding in Treasury auctions with any other component in the partnership structure;

(2) Such component or components must not be created for the purpose of circumventing the Department's bidding and award limitations;

(3) Decisions related to purchasing Treasury securities at auction and participation in specific auctions must be made by employees of such component or components. Employees of such component or components that make decisions to purchase or dispose of Treasury securities must not perform the same function for other components within the partnership structure; and

(4) The records of such component or components related to the bidding for, acquisition of, and disposition of Treasury securities must be maintained by such component or components. Those records must be identifiable—separate and apart from similar records for other components within the partnership structure.

To obtain recognition as a separate bidder, each component or group of components must request such recognition from the Department, provide a description of the component or group and its position within the partnership structure, and provide the following certification:

[Name of the bidder] hereby certifies that to the best of its knowledge and belief it meets the criteria for a separate bidder as described in appendix A to 31 CFR part 356. The above-named bidder also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the component or group of components from:

(1) Exchanging any of the following information with any other part of the partnership structure: (a) Yields or rates at which it plans to bid; (b) amounts of securities for which it plans to bid; (c) positions that it holds or plans to acquire in a security being auctioned; and (d) investment strategies that it plans to follow regarding the security being auctioned, or

(2) In any way intentionally acting together with any other part of the partnership structure with respect to formulating or entering bids in a Treasury auction.

The above-named bidder agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate bidder status changes or when this certification is no longer valid.

(c) *Government-related entity*—(1) The government of each of the 50 states and of the District of Columbia is considered to be one bidder.

(2) A unit of local government, including any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, is considered to be one bidder.

(3) The government of a commonwealth, territory, or possession of the United States is considered to be one bidder.

(4) A governmental entity, body, or corporation established under Federal, State, or local law is considered to be one bidder.

(5) A foreign central bank, the government of a foreign state, or an international organization in which the United States holds membership is considered to be one bidder.

An investment, reserve, or other fund of one of the above government-related entities, not otherwise meeting the definition of the "trust or other fiduciary estate" category, is considered part of that entity and not a separate bidder unless applicable law requires that the investments of such fund be made separately.

(d) *Trust or other fiduciary estate*—A legal entity created under a valid trust instrument, court order, or other legal authority that designates a trustee or fiduciary to act for the benefit of a named beneficiary may be considered a bidder. To be considered a bidder, such legal entity must be able to be identified by the name or title of the trustee or fiduciary; specific reference to the trust instrument, court order, or legal authority under which the trustee or fiduciary is acting; and the unique IRS-assigned employer identification number (not social security number) for the entity. Further, it must be the trustee or fiduciary who makes the decisions related to participation in auctions on behalf of the trust or fiduciary estate.

(e) *Individual*—A person, whether acting in his or her individual capacity, as a sole proprietor, for any entity not otherwise defined as a bidder, or in more than one such capacity, is considered to be one bidder. When a person meets the definition of an affiliate within a corporate or partnership structure as defined above, such person may only be considered a bidder in this "individual" category when the bidder of which they are a part is not bidding in the same auction. A person acting in an official capacity as an employee or other representative of a bidder defined in any other category is not considered an "individual" bidder when acting in such capacity. A person, his or her spouse, and any children under the age of 21 having a common household are considered, collectively, to be one "individual" bidder.

(f) *Other bidder*—A bidder defined by any of the above categories is not considered a bidder in this category. A bidder not defined by any of the above categories may possibly be considered a bidder in this category. For purposes of this definition, "other bidder" means an institution or organization with a unique IRS-assigned employer identification number. This definition of other bidder includes such entities as an association, church, university, union, or club. This category does not include any person or entity acting in a fiduciary or investment management capacity, a sole proprietorship, an investment account, an investment fund, a form of registration, or investment ownership designation.

Notwithstanding the definitions in this appendix, it is the intent of the Department that no auction participant receive a larger auction award by acquiring securities through others than it could have received had it been considered a bidder under these definitions.

Appendix B to Part 356—Formulas and Tables

I. Computation of Interest on Treasury Bonds and Notes.

II. Formulas for Conversion of Bond and Note Yields to Equivalent Prices.

III. Computation of Purchase Price, Discount Rate, and Investment Rate for Treasury Bills.

I. Computation of Interest on Treasury Bonds and Notes

A. Regular Half-Year Payment Period

Interest on marketable Treasury bonds and notes is payable on a semiannual basis. The regular interest payment period is a full half-year of six calendar months. Examples of half-year periods are: (1) February 15 to August 15, (2) May 31 to November 30, and (3) February 29 to August 31 (in a leap year). Calculation of an interest payment for a note with a par amount of $1,000 and an interest rate of 8% is made in this manner: ($1,000 × .08) ÷ 2 = $40. Specifically, a semiannual interest payment represents one half of one year's interest, and is computed on this basis regardless of the actual number of days in the half-year.

B. Daily Interest Decimal

In cases where an interest payment period is shorter or longer than six months or where accrued interest is payable by an investor, a daily interest decimal, based on the actual number of days in the half-year or half-years involved, must be computed. The number of days in any half-year period is shown in Table 1.

TABLE 1

Interest period	Beginning and ending days are 1st or 15th of the months listed under interest period (number of days)		Beginning and ending days are the last days of the months listed under interest period (number of days)	
	Regular year	Leap year	Regular year	Leap year
January to July	181	182	181	182
February to August	181	182	184	184
March to September	184	184	183	183
April to October	183	183	184	184
May to November	184	184	183	183
June to December	183	183	184	184
July to January	184	184	184	184
August to February	184	184	181	182
September to March	181	182	182	183
October to April	182	183	181	182
November to May	181	182	182	183
December to June	182	183	181	182

Table 2 below sets forth the daily interest decimals covering interest from ⅛% to 20% on $1,000 for one day in increments of ⅛ of one percent. These decimals represent 1/181, 1/182, 1/183, or 1/184 of a full semiannual interest payment, depending on which half-year is applicable.

TABLE 2.—DECIMAL FOR ONE DAY'S INTEREST ON $1,000 AT VARIOUS RATES OF INTEREST, PAYABLE SEMIANNUALLY OR ON A SEMIANNUAL BASIS, IN REGULAR YEARS OF 365 DAYS AND IN YEARS OF 366 DAYS (TO DETERMINE APPLICABLE NUMBER OF DAYS, SEE TABLE 1).

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
⅛	0.003396739	0.003415301	0.003434066	0.003453039
¼	0.006793478	0.006830601	0.006868132	0.006906077
⅜	0.010190217	0.010245902	0.010302198	0.010359116
½	0.013586957	0.013661202	0.013736264	0.013812155
⅝	0.016983696	0.017076503	0.017170330	0.017265193
¾	0.020380435	0.020491803	0.020604396	0.020718232
⅞	0.023777174	0.023907104	0.024038462	0.024171271
1	0.027173913	0.027322404	0.027472527	0.027624309
1⅛	0.030570652	0.030737705	0.030906593	0.031077348
1¼	0.033967391	0.034153005	0.034340659	0.034530387
1⅜	0.037364130	0.037568306	0.037774725	0.037983425
1½	0.040760870	0.040983607	0.041208791	0.041436464
1⅝	0.044157609	0.044398907	0.044642857	0.044889503
1¾	0.047554348	0.047814208	0.048076923	0.048342541
1⅞	0.050951087	0.051229508	0.051510989	0.051795580
2	0.054347826	0.054644809	0.054945055	0.055248619
2⅛	0.057744565	0.058060109	0.058379121	0.058701657
2¼	0.061141304	0.061475410	0.061813187	0.062154696
2⅜	0.064538043	0.064890710	0.065247253	0.065607735
2½	0.067934783	0.068306011	0.068681319	0.069060773
2⅝	0.071331522	0.071721311	0.072115385	0.072513812
2¾	0.074728261	0.075136612	0.075549451	0.075966851
2⅞	0.078125000	0.078551913	0.078983516	0.079419890
3	0.081521739	0.081967213	0.082417582	0.082872928
3⅛	0.084918478	0.085382514	0.085851648	0.086325967
3¼	0.088315217	0.088797814	0.089285714	0.089779006
3⅜	0.091711957	0.092213115	0.092719780	0.093232044
3½	0.095108696	0.095628415	0.096153846	0.096685083
3⅝	0.098505435	0.099043716	0.099587912	0.100138122
3¾	0.101902174	0.102459016	0.103021978	0.103591160
3⅞	0.105298913	0.105874317	0.106456044	0.107044199
4	0.108695652	0.109289617	0.109890110	0.110497238
4⅛	0.112092391	0.112704918	0.113324176	0.113950276
4¼	0.115489130	0.116120219	0.116758242	0.117403315
4⅜	0.118885870	0.119535519	0.120192308	0.120856354
4½	0.122282609	0.122950820	0.123626374	0.124309392
4⅝	0.125679348	0.126366120	0.127060440	0.127762431
4¾	0.129076087	0.129781421	0.130494505	0.131215470
4⅞	0.132472826	0.133196721	0.133928571	0.134668508
5	0.135869565	0.136612022	0.137362637	0.138121547
5⅛	0.139266304	0.140027322	0.140796703	0.141574586
5¼	0.142663043	0.143442623	0.144230769	0.145027624
5⅜	0.146059783	0.146857923	0.147664835	0.148480663
5½	0.149456522	0.150273224	0.151098901	0.151933702
5⅝	0.152853261	0.153688525	0.154532967	0.155386740
5¾	0.156250000	0.157103825	0.157967033	0.158839779
5⅞	0.159646739	0.160519126	0.161401099	0.162292818
6	0.163043478	0.163934426	0.164835165	0.165745856
6⅛	0.166440217	0.167349727	0.168269231	0.169198895
6¼	0.169836957	0.170765027	0.171703297	0.172651934
6⅜	0.173233696	0.174180328	0.175137363	0.176104972
6½	0.176630435	0.177595628	0.178571429	0.179558011
6⅝	0.180027174	0.181010929	0.182005495	0.183011050
6¾	0.183423913	0.184426230	0.185439560	0.186464088

TABLE 2.—DECIMAL FOR ONE DAY'S INTEREST ON $1,000 AT VARIOUS RATES OF INTEREST, PAYABLE SEMIANNUALLY OR ON A SEMIANNUAL BASIS, IN REGULAR YEARS OF 365 DAYS AND IN YEARS OF 366 DAYS (TO DETERMINE APPLICABLE NUMBER OF DAYS, SEE TABLE 1).—Continued

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
6⅞	0.186820652	0.187841530	0.188873626	0.189917127
7	0.190217391	0.191256831	0.192307692	0.193370166
7⅛	0.193614130	0.194672131	0.195741758	0.196823204
7¼	0.197010870	0.198087432	0.199175824	0.200276243
7⅜	0.200407609	0.201502732	0.202609890	0.203729282
7½	0.203804348	0.204918033	0.206043956	0.207182320
7⅝	0.207201087	0.208333333	0.209478022	0.210635359
7¾	0.210597826	0.211748634	0.212912088	0.214088398
7⅞	0.213994565	0.215163934	0.216346154	0.217541436
8	0.217391304	0.218579235	0.219780220	0.220994475
8⅛	0.220788043	0.221994536	0.223214286	0.224447514
8¼	0.224184783	0.225409836	0.226648352	0.227900552
8⅜	0.227581522	0.228825137	0.230082418	0.231353591
8½	0.230978261	0.232240437	0.233516484	0.234806630
8⅝	0.234375000	0.235655738	0.236950549	0.238259669
8¾	0.237771739	0.239071038	0.240384615	0.241712707
8⅞	0.241168478	0.242486339	0.243818681	0.245165746
9	0.244565217	0.245901639	0.247252747	0.248618785
9⅛	0.247961957	0.249316940	0.250686813	0.252071823
9¼	0.251358696	0.252732240	0.254120879	0.255524862
9⅜	0.254755435	0.256147541	0.257554945	0.258977901
9½	0.258152174	0.259562842	0.260989011	0.262430939
9⅝	0.261548913	0.262978142	0.264423077	0.265883978
9¾	0.264945652	0.266393443	0.267857143	0.269337017
9⅞	0.268342391	0.269808743	0.271291209	0.272790055
10	0.271739130	0.273224044	0.274725275	0.276243094
10⅛	0.275135870	0.276639344	0.278159341	0.279696133
10¼	0.278532609	0.280054645	0.281593407	0.283149171
10⅜	0.281929348	0.283469945	0.285027473	0.286602210
10½	0.285326087	0.286885246	0.288461538	0.290055249
10⅝	0.288722826	0.290300546	0.291895604	0.293508287
10¾	0.292119565	0.293715847	0.295329670	0.296961326
10⅞	0.295516304	0.297131148	0.298763736	0.300414365
11	0.298913043	0.300546448	0.302197802	0.303867403
11⅛	0.302309783	0.303961749	0.305631868	0.307320442
11¼	0.305706522	0.307377049	0.309065934	0.310773481
11⅜	0.309103261	0.310792350	0.312500000	0.314226519
11½	0.312500000	0.314207650	0.315934066	0.317679558
11⅝	0.315896739	0.317622951	0.319368132	0.321132597
11¾	0.319293478	0.321038251	0.322802198	0.324585635
11⅞	0.322690217	0.324453552	0.326236264	0.328038674
12	0.326086957	0.327868852	0.329670330	0.331491713
12⅛	0.329483696	0.331284153	0.333104396	0.334944751
12¼	0.332880435	0.334699454	0.336538462	0.338397790
12⅜	0.336277174	0.338114754	0.339972527	0.341850829
12½	0.339673913	0.341530055	0.343406593	0.345303867
12⅝	0.343070652	0.344945355	0.346840659	0.348756906
12¾	0.346467391	0.348360656	0.350274725	0.352209945
12⅞	0.349864130	0.351775956	0.353708791	0.355662983
13	0.353260870	0.355191257	0.357142857	0.359116022
13⅛	0.356657609	0.358606557	0.360576923	0.362569061
13¼	0.360054348	0.362021858	0.364010989	0.366022099
13⅜	0.363451087	0.365437158	0.367445055	0.369475138
13½	0.366847826	0.368852459	0.370879121	0.372928177
13⅝	0.370244565	0.372267760	0.374313187	0.376381215
13¾	0.373641304	0.375683060	0.377747253	0.379834254
13⅞	0.377038043	0.379098361	0.381181319	0.383287293
14	0.380434783	0.382513661	0.384615385	0.386740331
14⅛	0.383831522	0.385928962	0.388049451	0.390193370
14¼	0.387228261	0.389344262	0.391483516	0.393646409
14⅜	0.390625000	0.392759563	0.394917582	0.397099448
14½	0.394021739	0.396174863	0.398351648	0.400552486
14⅝	0.397418478	0.399590164	0.401785714	0.404005525
14¾	0.400815217	0.403005464	0.405219780	0.407458564
14⅞	0.404211957	0.406420765	0.408653846	0.410911602
15	0.407608696	0.409836066	0.412087912	0.414364641
15⅛	0.411005435	0.413251366	0.415521978	0.417817680
15¼	0.414402174	0.416666667	0.418956044	0.421270718
15⅜	0.417798913	0.420081967	0.422390110	0.424723757
15½	0.421195652	0.423497268	0.425824176	0.428176796
15⅝	0.424592391	0.426912568	0.429258242	0.431629834
15¾	0.427989130	0.430327869	0.432692308	0.435082873
15⅞	0.431385870	0.433743169	0.436126374	0.438535912
16	0.434782609	0.437158470	0.439560440	0.441988950
16⅛	0.438179348	0.440573770	0.442994505	0.445441989
16¼	0.441576087	0.443989071	0.446428571	0.448895028
16⅜	0.444972826	0.447404372	0.449862637	0.452348066
16½	0.448369565	0.450819672	0.453296703	0.455801105

TABLE 2.—DECIMAL FOR ONE DAY'S INTEREST ON $1,000 AT VARIOUS RATES OF INTEREST, PAYABLE SEMIANNUALLY OR ON A SEMIANNUAL BASIS, IN REGULAR YEARS OF 365 DAYS AND IN YEARS OF 366 DAYS (TO DETERMINE APPLICABLE NUMBER OF DAYS, SEE TABLE 1).—Continued

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
16⅝	0.451766304	0.454234973	0.456730769	0.459254144
16¾	0.455163043	0.457650273	0.460164835	0.462707182
16⅞	0.458559783	0.461065574	0.463598901	0.466160221
17	0.461956522	0.464480874	0.467032967	0.469613260
17⅛	0.465353261	0.467896175	0.470467033	0.473066298
17¼	0.468750000	0.471311475	0.473901099	0.476519337
17⅜	0.472146739	0.474726776	0.477335165	0.479972376
17½	0.475543478	0.478142077	0.480769231	0.483425414
17⅝	0.478940217	0.481557377	0.484203297	0.486878453
17¾	0.482336957	0.484972678	0.487637363	0.490331492
17⅞	0.485733696	0.488387978	0.491071429	0.493784530
18	0.489130435	0.491803279	0.494505495	0.497237569
18⅛	0.492527174	0.495218579	0.497939560	0.500690608
18¼	0.495923913	0.498633880	0.501373626	0.504143646
18⅜	0.499320652	0.502049180	0.504807692	0.507596685
18½	0.502717391	0.505464481	0.508241758	0.511049724
18⅝	0.506114130	0.508879781	0.511675824	0.514502762
18¾	0.509510870	0.512295082	0.515109890	0.517955801
18⅞	0.512907609	0.515710383	0.518543956	0.521408840
19	0.516304348	0.519125683	0.521978022	0.524861878
19⅛	0.519701087	0.522540984	0.525412088	0.528314917
19¼	0.523097826	0.525956284	0.528846154	0.531767956
19⅜	0.526494565	0.529371585	0.532280220	0.535220994
19½	0.529891304	0.532786885	0.535714286	0.538674033
19⅝	0.533288043	0.536202186	0.539148352	0.542127072
19¾	0.536684783	0.539617486	0.542582418	0.545580110
19⅞	0.540081522	0.543032787	0.546016484	0.549033149
20	0.543478261	0.546448087	0.549450549	0.552486188

C. Short First Payment Period

In cases where the first interest payment period for a bond or note covers less than a full half-year period (a "short coupon"), the daily interest decimal is multiplied by the number of days from, but not including, the issue date to, and including, the first interest payment date, resulting in the amount of the interest payable per $1,000 par amount. In cases where the par amount of securities is greater than $1,000, the appropriate multiple should be multiplied by the unrounded interest payment amount for $1,000 par amount.

Example. A 2-year note paying 8⅜% interest was issued on July 2, 1990, with the first interest payment on December 31, 1990. The number of days in the full half-year period of June 30 to December 31, 1990, was 184 (see Table 1). The number of days for which interest actually accrued was 182 (not including July 2, but including December 31). The daily interest decimal, $0.227581522 (see Table 2, line for 8⅜%, under the column for half-year of 184 days), was multiplied by 182, resulting in a payment of $41.419837004 per $1,000. Because the note was issued in a minimum denomination of $5,000, $41.419837004 was multiplied by 5, resulting in a payment of $207.099185020, or $207.10, for a $5,000 note. For $20,000 of these notes, $41.419837004 would be multiplied by 20, resulting in a payment of $828.39674008 ($828.40).

D. Long First Payment Period

In cases where the first interest payment period for a bond or note covers more than a full half-year period (a "long coupon"), the daily interest decimal is multiplied by the number of days from, but not including, the issue date to, and including, the last day of the fractional period that ends one full half-year before the interest payment date. That amount is added to the regular interest amount for the full half-year ending on the first interest payment date, resulting in the amount of interest payable for $1,000 par amount. In cases where the par amount of securities is greater than $1,000, the appropriate multiple should be applied to the unrounded interest payment amount for $1,000 par amount.

Example. A 5-year 2-month note paying 7⅞% interest was issued on December 3, 1990, with the first interest payment due on August 15, 1991. Interest for the regular half-year portion of the payment was computed to be $39.375 per $1,000 par amount. The fractional portion of the payment, from December 3 to February 15, fell in a 184-day half-year (August 15, 1990, to February 15, 1991). Accordingly, the daily interest decimal for 7⅞% was $0.213994565. This decimal, multiplied by 74 (the number of days from but not including December 3, 1990, to and including February 15), resulted in interest for the fractional portion of $15.835597810. When added to $39.375 (the normal interest payment portion ending on August 15, 1991), this produced a first interest payment of $55.210597810, or $55.21 per $1,000 par amount. For $7,000 par amount of these notes, $55.210597810 would be multiplied by 7, resulting in an interest payment of $386.474184670 ($386.47).

E. Accrued Interest

Accrued interest will be payable by the purchaser of a Treasury bond or note when interest accrues prior to the issue date of the security. Because the purchaser receives a full interest payment despite having held the security for only a portion of the interest payment period, the Department is compensated through the payment of accrued interest at settlement.

If accrued interest covers a fractional portion of a full half-year period, the number of days in the full half-year period and the stated interest rate will determine the daily interest decimal to be used in computing the accrued interest. The decimal is multiplied by the number of days for which interest has accrued. If a reopened bond or note has a long first interest payment period (a "long coupon"), and the dated date for the reopened issue is less than six full months before the first interest payment, the accrued interest will fall into two separate half-year periods, and a separate daily interest decimal must be multiplied by the respective number of days in each half-year period during which interest has accrued. All accrued interest computations are rounded to five decimal places for a $1,000 par amount, using normal rounding procedures. Accrued interest for a par amount of securities greater than $1,000

is calculated by applying the appropriate multiple to accrued interest payable for $1,000 par amount, taken to five decimal places.

Examples. (1) *Involving One Half-Year:* A bond paying interest at a rate of 8¾%, originally issued on August 15, 1990, as a 30-year bond with a first interest payment date of February 15, 1991, was reopened as a 29-year 9-month bond on November 15, 1990. Interest had accrued for 92 days, from August 15 to November 15. The regular interest period from August 15 to February 15, 1991, covered 184 days. Accordingly, the daily interest decimal, $0.237771739, multiplied by 92, resulted in accrued interest payable of $21.874999988, or $21.87500, for each $1,000 bond purchased. If the bonds have a par amount of $150,000, then 150 is multiplied by $21.87500, resulting in an amount payable of $3,281.25.

(2) *Involving Two Half-Years:* A 10¾% bond, originally issued on July 2, 1985, as a 20-year 1-month bond, with a first interest payment date of February 15, 1986, was reopened as a 19-year 10-month bond on November 4, 1985. Interest had accrued for 44 days, from July 2 to August 15, 1985, during a 181-day half-year (February 15 to August 15); and for 81 days, from August 15 to November 4, during a 184-day half-year (August 15, 1985, to February 15, 1986). Accordingly, $0.296961326 was multiplied by 44, and $0.292119565 was multiplied by 81, resulting in products of $13.066298344 and $23.661684765 which, added together, resulted in accrued interest payable of $36.727983109, or $36.72798, for each $1,000 bond purchased. If the bonds have a par amount of $11,000, then 11 is multiplied by $36.72798, resulting in an amount payable of $404.00778 ($404.01).

II. Formulas for Conversion of Bond and Note Yields to Equivalent Prices [1]

Definitions

P=price per 100 (dollars), rounded to three places, using normal rounding procedures

C=the regular annual interest per $100, payable semiannually, e.g., 10.125 (the decimal equivalent of a 10⅛% interest rate)

i=nominal annual rate of return or yield to maturity, based on semiannual interest payments and expressed in decimals, e.g., .0719

n=number of full semiannual periods from the issue date to maturity, except that, if the issue date is a coupon frequency date, n will be one less than the number of full semiannual periods remaining to maturity. Coupon frequency dates are the two semiannual dates based on the maturity date of each note or bond issue. For example, a security maturing on November 15, 1995, would have coupon frequency dates of May 15 and November 15.

r=(1) number of days from the issue date to the first interest payment (regular or short first payment period), or (2) number of days in fractional portion (or "initial short period") of long first payment period

s=(1) number of days in the full semiannual period ending on the first interest payment date (regular or short first payment period), or (2) number of days in the full semiannual period in which the fractional portion of a long first payment period falls, ending at the onset of the regular portion of the first interest payment

$v^n=1/(1+(i/2))^n$=present value of 1 due at the end of n periods

$a_n=(1-v^n)/(i/2)=v+v^2+v^3+\ldots+v^n$=present value of 1 per period for n periods

A=accrued interest

A. *For bonds and notes with a regular first interest payment period:*

Formula:

$P(1+(r/s)(i/2))=(C/2)(r/s)+(C/2)a_n+100\ v^n$

Example:

For an 8¾% 30-year bond, issued May 15, 1990, due May 15, 2020, with interest payments on November 15 and May 15, solve for the price per 100 (P) at a yield of 8.84%.

Definitions:

C=8.75
i=.0884
r=184 (May 15 to November 15, 1990)
s=184 (May 15 to November 15, 1990)
n=59 (There are 60 full semiannual periods, but n is reduced by 1 because the issue date is a coupon frequency date.)
$v^n=1/(1+.0884/2)^{59}$, or .077940
$a_n=(1-.077940)/.0442$, or 20.861086

Resolution:

$P(1+(r/s)(i/2))=(C/2)(r/s)+(C/2)a^n+100\ v^n$ or
$P(1+(184/184)(.0884/2))=(8.75/2)(184/184)+(8.75/2)(20.861086)+100(.077940)$
(1) $P(1+.0442)=4.375+91.267251+7.7940$
(2) $P(1.0442)=103.436251$
(3) $P=103.436251\div1.0442$
(4) P=99.057892
(5) P=99.058

B. *For bonds and notes with a short first interest payment period:*

Formula:

$P(1+(r/s)(i/2))=(C/2)(r/s)+(C/2)a_n+100\ v^n$

Example:

For an 8½% 2-year note, issued April 2, 1990, due March 31, 1992, with interest payments on September 30 and March 31, solve for the price per 100 (P) at a yield of 8.59%.

Definitions:

C=8.50
i=.0859
n=3
r=181 (April 2 to September 30, 1990)
s=183 (March 31 to September 30, 1990)
$v^n=1/(1+.0859/2)^3$, or .881474
$a_n=(1-.881474)/.04295$, or 2.759627

Resolution:

$P(1+(r/s)(i/2))=(C/2)(r/s)+(C/2)a_n+100\ v^n$ or
$P(1+(181/183)(.0859/2))=(8.50/2)(181/183)+(8.50/2)(2.759627)+100(.881474)$
(1) $P(1+.042481)=4.203552+11.728415+88.1474$
(2) $P(1.042481)=104.079367$
(3) $P=104.079367\div1.042481$
(4) P=99.838143
(5) P=99.838

C. *For bonds and notes with a long first interest payment period:*

Formula:

$P(1+(r/s)(i/2))=((C/2)(r/s))v+(C/2)a_n+100\ v^n$

Example:

For an 8½% 5-year 2-month note, issued March 1, 1990, due May 15, 1995, with interest payments on November 15 and May 15 (first payment on November 15, 1990), solve for the price per 100 (P) at a yield of 8.53%.

Definitions:

C=8.50
i=.0853
n=10
r=75 (March 1 to May 15, 1990, which is the fractional portion of the first interest payment)
s=181 (November 15, 1989, to May 15, 1990)
v=1/(1+.0853/2), or .959095
$v^n=1/(1+.0853/2)^{10}$, or .658589
$a_n=(1-.658589)/.04265$, or 8.004947

Resolution:

$P(1+(r/s)(i/2))=((C/2)(r/s))v+(C/2)a_n+100\ v^n$ or
$P(1+(75/181)(.0853/2))=((8.50/2)(75/181))(.959095)+(8.50/2)(8.004947)+100(.658589)$
(1) $P(1+.017673)=1.689014+34.021025+65.8589$
(2) $P(1.017673)=101.568939$
(3) $P=101.568939\div1.017673$
(4) P=99.805084
(5) P=99.805

D. (1) *For bonds and notes reopened during a regular interest period where the purchase price includes predetermined accrued interest.*

(2) *For new bond and note issues accruing interest from the coupon frequency date immediately preceding the issue date, with the interest rate established in the auction being used to determine the accrued interest payable on the issue date.*

Formula:

$(P+A)(1+(r/s)(i/2))=C/2+(C/2)a_n+100\ v^n$

Where: $A=((s-r)/s)(C/2)$

Example:

For a 9½% 10-year note, interest accruing from November 15, 1985, issued November 29, 1985, due November 15, 1995, with interest payments on May 15 and November 15, solve for the price per 100 (P) at a yield of 9.54%. Accrued interest is from November 15 to November 29 (14 days).

Definitions:

C=9.50
i=.0954
n=19
r=167 (November 29, 1985, to May 15, 1986)
s=181 (November 15, 1985, to May 15, 1986)
$v^n=1/(1+.0954/2)^{19}$, or .412570400
$a_n=(1-.412570)/.0477$, or 12.315094
$A=(181-167)/181)(9.50/2)$, or .367403

[1] In the following examples, intermediate rounding is used to allow the reader to follow the calculations. In actual practice, the Department does not round prior to determining the final result.

Resolution:

$(P+A)[1+(r/s)(i/2)]=C/2+(C/2)a_n+100\ v^n$ or

$(P+.367403)[1+(167/181)(.0954/2)]=(9.50/2)+(9.50/2)(12.315094)+100(.412570)$

(1) $(P+.367403)[1+.044011]=4.75+58.496697+41.2570$

(2) $(P+.367403)[1.044011]=104.503697$

(3) $(P+.367403)=104.503697+1.044011$

(4) $(P+.367403)=100.098272$

(5) $P=100.098272-.367403$

(6) $P=99.730869$

(7) $P=99.731$

E. *For bonds and notes reopened during the regular portion of a long first payment period:*

Formula:

$(P+A)[1+(r/s)(i/2)]=(r'/s'')(C/2)+C/2+(C/2)a_n+100\ v^n$

Where:

$A=AI'+AI$

$AI'=(r'/s'')(C/2)$

$AI=[(s-r)/s](C/2)$

and

r=number of days from the reopening date to the first interest payment date

s=number of days in the semiannual period for the regular portion of the first interest payment period

r'=number of days in the fractional portion (or "initial short period") of the first interest payment period

s''=number of days in the semiannual period ending with the commencement date of the regular portion of the first interest payment period

Example:

A 10¾% 19-year 9-month bond due August 15, 2005, is issued on July 2, 1985, and reopened on November 4, 1985, with interest payments on February 15 and August 15 (first payment on February 15, 1986), solve for the price per 100 (P) at a yield of 10.47%. Accrued interest is calculated from July 2 to November 4.

Definitions:

C=10.75

i=.1047

n=39

r=103 (November 4, 1985, to February 15, 1986)

s=184 (August 15, 1985, to February 15, 1986)

r'=44 (July 2 to August 15, 1985)

s''=181 (February 15 to August 15, 1985)

$v^n=1/[(1+.1047/2)]^{19}$, or .136695

$a_n=(1-.136695)/.05235$, or 16.491022

$AI'=(44/181)(10.75/2)$, or 1.306630

$AI'=[(184-103)/184](10.75/2)$, or 2.366168

$A=AI'+AI$, or 3.672798

Resolution:

$(P+A)[1+(r/s)(i/2)]=(r'/s'')(C/2)+C/2+(C/2)a_n+100v^n$ or

$(P+3.672798)[1+(103/184)(.1047/2)]=(44/181)(10.75/2)+10.75/2+(10.75/2)(16.491022)+100(.136695)$

(1) $(P+3.672798)[1+.029305]=1.306630+5.375+88.639243+13.6695$

(2) $(P+3.672798)[1.029305]=108.990373$

(3) $(P+3.672798)=108.990373+1.029305$

(4) $(P+3.672798)=105.887344$

(5) $P=105.887344-3.672798$

(6) $P=102.214546$

(7) $P=102.215$

F. *For bonds and notes reopened during a short first payment period:*

Formula:

$(P+A)[1+(r/s)(i/2)]=(r''/s)(C/2)+(C/2)a_n+100\ v_n$

Where:

$A=[(r''-r)/s](C/2)$

and

r''=number of days from the original issue date to the first interest payment date

Example:

For a 10½% 8-year note due May 15, 1991, originally issued on May 16, 1983, and reopened on August 15, 1983, with interest payments on November 15 and May 15 (first payment on November 15, 1983), solve for the price per 100 (P) at a yield of 10.53%. Accrued interest is calculated from May 16 to August 15.

Definitions:

C=10.50

i=.1053

n=15

r=92 (August 15, 1983, to November 15, 1983)

s=184 (May 15, 1983, to November 15, 1983)

r''=183 (May 16, 1983, to November 15, 1983)

$v_n=1/[(1+.1053/2)]^{15}$, or .463170

$a_n=(1-.463170)/.05265$, or 10.196201

$A=[(183-92)/184](10.50/2)$, or 2.596467

Resolution:

$(P+A)[1+(r/s)(i/2)]=(r''/s)(C/2)+(C/2)a_n+100\ v_n$ or

$(P+2.596467)[1+(92/184)(.1053/2)]=(183/184)(10.50/2)+(10.50/2)(10.196201)+100(.463170)$

(1) $(P+2.596467)[1+.026325]=5.221467+53.530055+46.3170$

(2) $(P+2.596467)[1.026325]=105.068522$

(3) $(P+2.596467)+105.068522+1.026325$

(4) $(P+2.596467)=102.373539$

(5) $P=102.373539-2.596467$

(6) $P=99.777072$

(7) $P=99.777$

G. *For bonds and notes reopened during the fractional portion (initial short period) of a long first payment period:*

Formula:

$(P+A)[1+(r/s)(i/2)]=[(r'/s)(C/2)]v+(C/2)a_n+100\ v^n$

Where:

$A=[(r'-r)/s](C/2)$

and

r=number of days from the reopening date to the end of the short period

r'=number of days in the short period

s=number of days in the semiannual period ending with the end of the short period

Example:

For a 9¼% 6-year 2-month note due December 15, 1994, originally issued on October 15, 1988, and reopened on November 15, 1988, with interest payments on June 15 and December 15 (first payment on June 15, 1989), solve for the price per 100 (P) at a yield of 9.79%. Accrued interest is calculated from October 15 to November 15.

Definitions:

C=9.75

i=.0979

n=12

r=30 (November 15, 1988, to December 15, 1988)

s=183 (June 15, 1988, to December 15, 1988)

r'=61 (October 15, 1988, to December 15, 1988)

v=1/(1+.0979/2), or .953334

$v^n=[1/(1+.0979/2)]^{12}$, or .563563

$a_n=(1-.563563)/.04895$, or 8.915975

$A=[(61-30)/183](9.75/2)$, or .825820

Resolution:

$(P+A)[1+(r/s)(i/2)]=[(r'/s)(C/2)]v+(C/2)a_n+100\ v^n$ or

$(P+.825820)[1+(30/183)(.0979/2)]=[(61/183)(9.75/2)](.953334)+(9.75/2)(8.915975)+100(.563563)$

(1) $(P+.825820)[1+.008025]=1.549168+43.465378+56.3563$

(2) $(P+.825820)[1.008025]=101.370846$

(3) $(P+.825820)=101.370846+1.008025$

(4) $(P+.825820)=100.563821$

(5) $P=100.563821-.825820$

(6) $P=99.738001$

(7) $P=99.738$

III. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills

A. *Conversion of the discount rate to a purchase price for Treasury bills of all maturities:*

Formula:

$P=100\ [(1-dr)/360]$

Where:

d=discount rate, in decimals

r=number of days remaining to maturity

P=price per 100 (dollars)

Example:

For a bill issued November 24, 1989, due February 22, 1990, at a discount rate of 7.61%, solve for price per 100 (P).

Definitions:

d=.0761

r=90 (November 24, 1989 to February 22, 1990)

Resolution:

$P=100\ (1-dr/360)$

(1) $P=100\ [1-(.0761)(90)/360]$

(2) $P=100\ (1-.019025)$

(3) $P=100\ (.980975)$

(4) $P=98.0975$

(5) $P=98.098$

Note: Purchase prices per $100 are rounded to three decimal places, using normal rounding procedures.

B. *Computation of purchase prices and discount amounts based on price per $100, for Treasury bills of all maturities:*

1. To determine the purchase price of any bill, divide the par amount by 100 and multiply the resulting quotient by the price per $100.

Example. To compute the purchase price of a $10,000 13-week bill sold at a price of $98.098 per $100, divide the par amount

($10,000) by 100 to obtain the multiple (100). That multiple times 98.098 results in a purchase price of $9,809.80.

2. To determine the discount amount for any bill, subtract the purchase price from the par amount of the bill.

Example. For a $10,000 bill with a purchase price of $9,809.80, the discount amount would be $190.20, or $10,000–$9,809.80.

C. *Conversion of prices to discount rates for Treasury bills of all maturities:*

Formula:

$$d = \left[\frac{100-P}{100} \times \frac{360}{r}\right]$$

Where:

P=price per 100 (dollars)
d=discount rate
r=number of days remaining to maturity

Example:

For a 26-week bill issued December 30, 1982, due June 30, 1983, with a price of $95.930, solve for the discount rate (d).

Definitions:

P=95.930
r=182 (December 30, 1982, to June 30, 1983)

Resolution:

$$d = \left[\frac{100-P}{100} \times \frac{360}{r}\right]$$

$$1)\ d = \left[\frac{100-95.930}{100} \times \frac{360}{182}\right]$$

(2) d=[.0407×1.978022]
(3) d=.080506
(4) d=8.051%

Note: Since April 18, 1983, bills have been sold only on a discount rate basis, where the discount rates bid are submitted with two decimals, e.g., 7.32%. In price-basis auctions, discount rates calculated from prices were rounded to three places, using normal rounding procedures.

D. *Calculation of investment rate (coupon-equivalent yield) for Treasury bills:*

1. For bills of not more than one half-year to maturity:

Formula:

$$i = \left[\frac{100-P}{P} \times \frac{y}{r}\right]$$

Where:

i=investment rate, in decimals
P=price per 100 (dollars)
r=number of days remaining to maturity
y=number of days in year following the issue date; normally 365 but, if the year following the issue date includes February 29, then y is 366.

Example:

For a cash management bill issued June 1, 1990, due June 21, 1990, with a price of $99.559 (computed from a discount rate of 7.93%), solve for the investment rate (i).

Definitions:

P=99.559
r=20 (June 1, 1990, to June 21, 1990)
y=365

Resolution:

$$i = \left[\frac{100-P}{P} \times \frac{y}{r}\right]$$

$$1)\ i = \left[\frac{100-99.559}{99.559} \times \frac{365}{20}\right]$$

(2) i = [.004430 × 18.25]
(3) i = .080848
(4) i = 8.08%

(2) i=[.004430×18.25]
(3) i=.080848
(4) i=8.08%

2. For bills of more than one half-year to maturity:

Formula: P[1+(r–y/2)(i/y)](1+i/2) = 100

This formula must be solved by using the quadratic equation, which is:

$ax^2+bx+c=0$

Therefore, rewriting the bill formula in the quadratic equation form gives:

$$\left(\frac{r}{2y} - .25\right) i^2 + \left(\frac{r}{y}\right) i + \left(\frac{P-100}{P}\right) =$$

and solving for "i" produces:

$$i = \frac{-b + \sqrt{b^2 - 4ac}}{2a}$$

Where:

i=investment rate in decimals
b=r/y
a=(r/2y)–.25
c=(P–100)/P
P=price per 100 (dollars)
r=number of days remaining to maturity
y=number of days in year following the issue date; normally 365, but if the year following the issue date includes February 29, then y is 366.

Example:

For a 52-week bill issued June 7, 1990, due June 6, 1991, with a price of $92.265 (computed from a discount rate of 7.65%), solve for the investment rate (i).

Definitions:

r=364 (June 7, 1990, to June 6, 1991)
y=365
P=92.265
b=364/365, or .997260
a=(364/730)–.25, or .24863
c=(92.265–100)/92.265, or –.083835

Resolution:

$$i = \frac{-b + \sqrt{b^2 - 4ac}}{2a}$$

$$(1)\ i = \frac{-.997260 + \sqrt{(.997260)^2 - 4[(.24863)(-.083835)]}}{2(.248630)}$$

$$(2)\ i = \frac{-.997260 + \sqrt{.994528 + .083376}}{.497260}$$

(3)i=(−.997260 + 1.038222)/.497260
(4)i=.040962/.497260
(5)i=.082375 or
(6)i=8.24%

Exhibit A to Part 356—Sample Announcements of Treasury Offerings to the Public

I. Treasury Quarterly Financing Announcement.
II. Treasury Weekly Bill Announcement.
III. Treasury Cash Management Bill Announcement.

I. Treasury Quarterly Financing Announcement

For Release When Authorized at Press Conference
May 1, 19XX
Contact: Office of Financing, 202/219–3350

Treasury May Quarterly Financing

The Treasury will auction two notes and one bond totaling approximately $37,000 million, to be issued May 15, 19XX. This offering will provide about $18,025 million of new cash and will refund $18,976 million of securities maturing that date.

In addition to the public holdings, Federal Reserve Banks hold $3,662 million of the maturing securities for their own accounts, which may be refunded by issuing additional amounts of the new securities at the average yield of accepted competitive tenders.

The maturing securities held by the public include $1,099 million held by Federal Reserve Banks as agents for foreign and international monetary authorities. Amounts bid for these accounts by Federal Reserve Banks will be added to the offering. Bids for such accounts will be accepted at the average yield of accepted competitive tenders.

The 9¾-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC.

Details about each of the new securities are given in the attached offering highlights and in the Treasury Department's Uniform Offering Circular.

Highlights of Treasury Offerings May 19XX Quarterly Financing

[May 1, 19XX]

Offering Amount	$13,500	$11,750 million	$11,750 million.
Description of Offering:			
Term and type of security	3-year notes	9¾ year notes	30-year bonds of 20XX.
Series	Series S–19XX	Series A–20XX	Bonds of May 20XX.
CUSIP number	912827 A7 7	912827 ZX 3	912810 EJ 3.
Auction date	May 7, 19XX	May 8, 19XX	May 9, 19XX.
Issue date	May 15, 19XX	May 15, 19XX	May 15, 19XX.
Dated date	May 15, 19XX	Feb. 15, 19XX	May 15, 19XX.
Maturity date	May 15, 19XX	Feb. 15, 20XX	May 15, 20XX.
Interest rate	Determined based on the average of accepted competitive bids.	7¾%	Determined based on the average of accepted competitive bids.
Yield	Determined at auction	Determined at auction	Determined at auction.
Interest payment dates	Nov. 15 and May 15	August 15 and February 15	Nov. 15 and May 15.
Minimum bid amount	$5,000	$1,000	$1,000.
Multiples	5,000	$1,000	$1,000.
Accrued interest payable by investor	None	$19.05387 per $1,000	None.
Premium or discount	Determined at auction	Determined at auction	Determined at auction.
STRIPS Information:			
Minimum amount required	Not applicable	$800,000	Determined at auction.
Corpus CUSIP number	Not applicable	912820 AZ 0	912803 AW 3.
New TINT CUSIP number	Not applicable	Not applicable	912833 LD 0.
New TINT due date	Not applicable	Not applicable	May 15, 20XX.

The following rules apply to all securities mentioned above:

Submission of Bids:	
Noncompetitive bids	Accepted in full up to $5,000,000 at the weighted average yield of accepted competitive bids.
Competitive bids	(1) Must be expressed as an annual yield with two decimals, e.g., 7.10%.

	(2) Net long position for each bidder must be reported when the sum of the total bid amount, at all yields, and the net long position is $2 billion or greater.
	(3) The net long position must be determined as of one-half hour prior to the closing time for receipt of competitive tenders.
Maximum Recognized Bid at a Single Yield.	35% of offering amount.
Maximum Award	35% of offering amount.
Receipt of Tenders:	
Noncompetitive tenders	Prior to 12:00 noon Eastern time on auction day.
Competitive tenders	Prior to 1:00 p.m. Eastern time on auction day.
Payment Terms	Full payment with tender or by charge to a funds account on issue date.

II. Treasury Weekly Bill Announcement

For Release at 2:30 p.m., October 9, 19XX

Contact: Office of Financing, 202/219–3350

Treasury's Weekly Bill Offering

The Treasury will auction two series of Treasury bills totaling approximately $18,800 million, to be issued October 18, 19XX. This offering will provide about $1,375 million of new cash, as the maturing weekly bills are currently outstanding in the amount of $17,421 million.

Federal Reserve Banks hold $4,294 million of the maturing bills for their own accounts, which may be refunded within the offering amount at the weighted average discount rate of accepted competitive tenders.

Federal Reserve Banks hold $1,104 million as agents for foreign and international monetary authorities, which may be refunded within the offering amount at the weighted average discount rate of accepted competitive tenders. Additional amounts may be issued for such accounts if the aggregate amount of new bids exceeds the aggregate amount of maturing bills.

Tenders for the bills will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC.

Details about each of the new securities are given in the attached offering highlights and in the Treasury Department's Uniform Offering Circular.

Highlights of Treasury Offerings of Weekly Bills

[October 9, 19XX]

Offering Amount	$9,400 million	$9,400 million.
Description of Offering:		
Term and type of security	91-day bill	182-day bill.
CUSIP number	912794 VR 2	912794 WE 0.
Auction date	Oct. 15, 19XX	Oct. 15, 19XX.
Issue date	Oct. 18, 19XX	Oct. 18, 19XX.
Maturity date	Jan. 17, 19XX	Apr. 18, 19XX.
Original issue date	Jan. 18, 19XX	Oct. 18, 19XX.
Currently outstanding	$19,127 million	
Minimum bid amount	$10,000	$10,000.
Multiples	$5,000	$5,000.

The following rules apply to all securities mentioned above:

Submission of Bids:	
Noncompetitive bids	Accepted in full up to $1,000,000 at the weighted average discount rate of accepted competitive bids.
Competitive bids	(1) Must be expressed as a discount rate with two decimals, e.g., 7.10%.
	(2) Net long position for each bidder must be reported when the sum of the total bid amount, at all discount rates, and the net long position is $2 billion or greater.
	(3) The net long position must be determined as of one-half hour prior to the closing time for receipt of competitive tenders.
Maximum Recognized Bid at a Single Yield.	35% of public offering.
Maximum Award	35% of public offering.
Receipt of Tenders:	
Noncompetitive tenders	Prior to 12:00 noon Eastern time on auction day.
Competitive tenders	Prior to 1:00 p.m. Eastern time on auction day.
Payment Terms	Full payment with tender or by charge to a funds account on issue date.

III. Treasury Cash Management Bill Announcement

For Release at 2:30 p.m.August 27, 19XX

Contact: Office of Financing, 202/219–3350

Treasury To Auction Cash Management Bills

The Treasury will auction approximately $5,000 million of 16-day Treasury cash management bills to be issued September 3, 19XX.

Competitive tenders will be received at all Federal Reserve Banks and Branches. Noncompetitive tenders will not be accepted. Tenders will not be received at the Bureau of the Public Debt, Washington, DC.

Details about the new security are given in the attached offering highlights and in the Treasury Department's Uniform Offering Circular.

Highlights of Treasury Offering of 16-Day Cash Management Bill

[August 27, 19XX]

Offering Amount	$5,000 million.
Description of Offering:	
Term and type of security	16-day Cash Management Bill.
CUSIP number	912794 XG 4.
Auction date	Aug. 29, 19XX.
Issue date	Sept. 3, 19XX.
Maturity date	Sept. 19, 19XX.
Original issue date	Mar. 21, 19XX.
Currently outstanding	$20,125 million.
Minimum bid amount	$1,000,000.
Multiples	$1,000,000.
Minimum to hold amount	$10,000.
Multiples	$5,000.
Submission of Bids:	
Noncompetitive bids	Not accepted.
Competitive bids	(1) Must be expressed as a discount rate with two decimals, e.g., 7.10%. (2) Net long position for each bidder must be reported when the sum of the total bid amount, at all discount rates, and the net long position is $2 billion or greater. (3) The net long position must be determined as of one-half hour prior to the closing time for receipt of competitive tenders.
Maximum Recognized Bid at a Single Yield	35% of offering amount.
Maximum Award	35% of offering amount.
Receipt of Tenders:	
Noncompetitive tenders	Not accepted.
Competitive tenders	Prior to 1 p.m. Eastern time on auction day.
Payment Terms	Full payment with tender or by charge to a funds account on issue date.

Exhibit B to Part 356—Sample Autocharge Agreement To Deliver and Charge for Securities Awarded in Department of Treasury Auctions

Federal Reserve Bank of

_____

Attention: (Name of Fiscal Officer)
(Address)
(Address)

To Whom It May Concern:

I. The depository institution ("DI") and the submitting entity ("Submitter"), as identified below, agree that

(a) The Submitter is authorized to submit tenders to the Federal Reserve Bank of _____("Bank");

(b) The Bank is authorized to deliver, as provided herein, Treasury securities awarded to the Submitter through the auction process;

(c) The Bank, or other Federal Reserve Bank identified in Section II below, is authorized to charge the DI's funds account for payment of awarded securities that are delivered by the Bank hereunder. Such charge is to be made at the same time the securities are delivered;

(d) The Submitter [ ] is, [ ] is not authorized to submit TREASURY DIRECT tenders. Where such tenders are authorized, the Bank is instructed to deliver awarded securities to the TREASURY DIRECT Book-Entry System and charge the DI's funds account for the securities delivered; and

(e) The Bank [ ] is, [ ] is not authorized to deliver the awarded securities to the DI's securities account at a Federal Reserve Bank other than the Bank.

The above authorizations apply to:

[ ] bills
[ ] notes
[ ] bonds

II. For securities to be delivered to a Federal Reserve Bank other than the Bank receiving the tender, the Submitter must complete the following:

Awarded securities are to be delivered hereunder by the Bank to the DI's securities account at the Federal Reserve Bank of _____.

III. The following wire instructions are to be used by the Bank to deliver securities to the DI:

Wire Instructions: _____.

IV. General Provisions.

This agreement is effective on the date it is received by the Bank, although the Bank normally will not act under the agreement until it has acknowledged receipt of such.

The Submitter hereunder is the entity submitting bids to a Bank for its own account or for the account of others. The Submitter is responsible to the Treasury for full payment of all securities awarded, including any securities awarded under customer bids submitted by the Submitter.

Any Federal Reserve Bank identified herein is authorized to act on information in any tender in the name of the Submitter that reasonably appears to be valid and genuine. The DI, by executing this agreement, guarantees the authority and signature of the person signing this agreement on behalf of the Submitter.

This agreement will remain in effect until written notice is received by the Bank from either the DI or the Submitter that the agreement has been terminated, provided that if securities are scheduled to be delivered hereunder, such notice must be received in accordance with the termination procedures hereafter described.

As to termination action by the DI, notice of termination will not be effective unless received in writing by a Fiscal/Securities Department officer by the later of (i) 5 p.m. (the Bank's time) on the business day prior to the issue date of the securities scheduled to be delivered hereunder or (ii) if the submitter has authorized the Bank to advise the DI of securities to be delivered, two hours after such advice is sent by the Bank. Such termination action by the DI shall not affect the Submitter's responsibility to make full payment for the securities awarded. A DI may, at any time, waive in writing its right to terminate hereunder.

As to termination action by the Submitter after an auction but prior to delivery of awarded securities, the written notice of termination will not be effective, and this agreement shall remain in full force and effect, unless the Submitter has provided to the Bank, and the latter has acknowledged, a new autocharge agreement executed by a DI having a funds account at a Federal Reserve Bank.

Written notices to be sent hereunder in connection with the termination of this autocharge agreement shall be sent by either the Submitter or the DI to the Bank authorized to receive tenders hereunder.

In the event that this autocharge agreement is terminated, it is the sole responsibility of the party terminating the agreement to notify the other party hereto.

AGREED TO BY _____
(Full DI Name and ABA #)
Signature: _____
Name: _____
Title: _____
Date: _____

AGREED TO BY _____
(Full name of Submitter)
Signature: _____
Name: _____
Title: _____
Date: _____

ACKNOWLEDGED BY: Federal Reserve Bank of _____
("Bank"):
Signature: _____
Name: _____
Title: _____
Date: _____

DI'S SIGNATURE AND WIRE INSTRUCTIONS VERIFIED BY:
(For use only by Federal Reserve Bank named in Section II above)
Signature: _____
Name: _____
Title: _____
Date: _____
Federal Reserve Bank of _____

Instructions for Completing the Autocharge Agreement

1. DEPOSITORY INSTITUTION: This is the DI whose funds account at a Federal Reserve Bank will be debited, under this autocharge agreement, for the price of Treasury securities awarded at auction to the Submitter. Also, this DI must have a book-entry securities account at the Federal Reserve Bank to which securities will be delivered against payment on settlement day pursuant to the autocharge agreement and the Submitter's tender submission.

2. SUBMITTER: The Submitter must identify the full name of the entity that is submitting bids under this autocharge agreement. The name shown on the autocharge agreement should be the same as that appearing on related tender forms.

3. BANK: This is the Federal Reserve Bank to which the Submitter will be submitting tenders in Treasury auctions.

4. SIGNATURE FOR DI: This is the signature of an officer of the DI having authority to enter into or terminate this autocharge agreement, and whose signature is on file at the Federal Reserve Bank where the DI has a funds account.

5. SIGNATURE FOR SUBMITTER: This is the signature of an officer of the Submitter having authority to enter into or terminate the autocharge agreement.

6. SIGNATURE FOR BANK: This is the signature of an officer of the Bank having authority to acknowledge this autocharge agreement.

Exhibit C to Part 356—Minimum Par Amounts for STRIPS

Minimum face amounts which are multiples of $1000 required in order to produce interest payments that are multiples of $1000.

Coupon (%)	Minimum face ($)	Interest payment ($)
0.125	1600000.00	1000.00
0.250	800000.00	1000.00
0.375	1600000.00	3000.00
0.500	400000.00	1000.00
0.625	320000.00	1000.00
0.750	800000.00	3000.00
0.875	1600000.00	7000.00
1.000	200000.00	1000.00
1.125	1600000.00	9000.00
1.250	160000.00	1000.00
1.375	1600000.00	11000.00
1.500	400000.00	3000.00
1.625	1600000.00	13000.00
1.750	800000.00	7000.00
1.875	320000.00	3000.00
2.000	100000.00	1000.00
2.125	1600000.00	17000.00
2.250	800000.00	9000.00
2.375	1600000.00	19000.00
2.500	80000.00	1000.00
2.625	1600000.00	21000.00
2.750	800000.00	11000.00
2.875	1600000.00	23000.00
3.000	200000.00	3000.00
3.125	64000.00	1000.00
3.250	800000.00	13000.00
3.375	1600000.00	27000.00
3.500	400000.00	7000.00
3.625	1600000.00	29000.00
3.750	160000.00	3000.00
3.875	1600000.00	31000.00
4.000	50000.00	1000.00
4.125	1600000.00	33000.00
4.250	800000.00	17000.00
4.375	320000.00	7000.00
4.500	400000.00	9000.00
4.625	1600000.00	37000.00
4.750	800000.00	19000.00
4.875	1600000.00	39000.00
5.000	40000.00	1000.00
5.125	1600000.00	41000.00
5.250	800000.00	21000.00
5.375	1600000.00	43000.00
5.500	400000.00	11000.00
5.625	320000.00	9000.00
5.750	800000.00	23000.00
5.875	1600000.00	47000.00
6.000	100000.00	3000.00
6.125	1600000.00	49000.00
6.250	32000.00	1000.00
6.375	1600000.00	51000.00
6.500	400000.00	13000.00
6.625	1600000.00	53000.00
6.750	800000.00	27000.00
6.875	320000.00	11000.00
7.000	200000.00	7000.00
7.125	1600000.00	57000.00
7.250	800000.00	29000.00
7.375	1600000.00	59000.00
7.500	80000.00	3000.00
7.625	1600000.00	61000.00
7.750	800000.00	31000.00
7.875	1600000.00	63000.00
8.000	25000.00	1000.00
8.125	320000.00	13000.00
8.250	800000.00	33000.00
8.375	1600000.00	67000.00
8.500	400000.00	17000.00
8.625	1600000.00	69000.00
8.750	160000.00	7000.00
8.875	1600000.00	71000.00
9.000	200000.00	9000.00
9.125	1600000.00	73000.00
9.250	800000.00	37000.00
9.375	64000.00	3000.00
9.500	400000.00	19000.00
9.625	1600000.00	77000.00
9.750	800000.00	39000.00
9.875	1600000.00	79000.00
10.000	20000.00	1000.00
10.125	1600000.00	81000.00
10.250	800000.00	41000.00
10.375	1600000.00	83000.00
10.500	400000.00	21000.00
10.625	320000.00	17000.00
10.750	800000.00	43000.00
10.875	1600000.00	87000.00
11.000	200000.00	11000.00
11.125	1600000.00	89000.00
11.250	160000.00	9000.00
11.375	1600000.00	91000.00
11.500	400000.00	23000.00
11.625	1600000.00	93000.00
11.750	800000.00	47000.00
11.875	320000.00	19000.00
12.000	50000.00	3000.00
12.125	1600000.00	97000.00
12.250	800000.00	49000.00
12.375	1600000.00	99000.00
12.500	16000.00	1000.00
12.625	1600000.00	101000.00
12.750	800000.00	51000.00
12.875	1600000.00	103000.00
13.000	200000.00	13000.00
13.125	320000.00	21000.00
13.250	800000.00	53000.00
13.375	1600000.00	107000.00
13.500	400000.00	27000.00
13.625	1600000.00	109000.00
13.750	160000.00	11000.00
13.875	1600000.00	111000.00
14.000	100000.00	7000.00
14.125	1600000.00	113000.00
14.250	800000.00	57000.00
14.375	320000.00	23000.00
14.500	400000.00	29000.00
14.625	1600000.00	117000.00
14.750	800000.00	59000.00
14.875	1600000.00	119000.00
15.000	40000.00	3000.00
15.125	1600000.00	121000.00
15.250	800000.00	61000.00
15.375	1600000.00	123000.00
15.500	400000.00	31000.00
15.625	64000.00	5000.00
15.750	800000.00	63000.00
15.875	1600000.00	127000.00
16.000	25000.00	2000.00
16.125	1600000.00	129000.00
16.250	160000.00	13000.00
16.375	1600000.00	131000.00
16.500	400000.00	33000.00
16.625	1600000.00	133000.00
16.750	800000.00	67000.00
16.875	320000.00	27000.00
17.000	200000.00	17000.00
17.125	1600000.00	137000.00
17.250	800000.00	69000.00
17.375	1600000.00	139000.00
17.500	80000.00	7000.00
17.625	1600000.00	141000.00
17.750	800000.00	71000.00
17.875	1600000.00	143000.00
18.000	100000.00	9000.00
18.125	320000.00	29000.00
18.250	800000.00	73000.00
18.375	1600000.00	147000.00
18.500	400000.00	37000.00
18.625	1600000.00	149000.00
18.750	32000.00	3000.00
18.875	1600000.00	151000.00
19.000	200000.00	19000.00

Coupon (%)	Minimum face ($)	Interest payment ($)
19.125	1600000.00	153000.00
19.250	800000.00	77000.00
19.375	320000.00	31000.00
19.500	400000.00	39000.00
19.625	1600000.00	157000.00
19.750	800000.00	79000.00
19.875	1600000.00	159000.00
20.000	10000.00	1000.00

Dated: December 24, 1992.

Marcus W. Page,

Deputy Fiscal Assistant Secretary.

[FR Doc. 93-14 Filed 1-4-93; 8:45 am]

BILLING CODE 4810-35-M

federal register

Tuesday
January 5, 1993

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability for Urban Revitalization Demonstration; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3557; FR-3412-N-01]

Funding Availability (NOFA) for Urban Revitalization Demonstration

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (HUD, or the Department).

ACTION: Notice of funding availability for Fiscal Year 1993.

SUMMARY: This NOFA announces the availability of $300 million in funding for implementation and planning grants under the Urban Revitalization Demonstration (URD), which is authorized by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (the 1993 Appropriations Act) (Pub. L. 102-389, approved October 6, 1992.) The Urban Revitalization Demonstration was created for the purpose of revitalizing severely distressed or obsolete public housing developments. The activities in the program include funding of the capital costs of major reconstruction, rehabilitation and other physical improvements, the provision of replacement housing, management improvements, planning and technical assistance, implementation of community service programs and supportive services or the planning of such activities.

This Notice contains information on: eligible applicants, program requirements, rating factors, selection criteria, and contents of applications. In carrying out this demonstration, the Department of Housing and Urban Development (HUD) has chosen to exercise the authority granted in the 1993 Appropriations Act to conform certain program standards and criteria with those set forth in subsequent authorization legislation. For this purpose, the Department has chosen to incorporate certain provisions of sec. 24 of the 1937 Housing Act, as added by sec. 120 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (Revitalization of Severely Distressed Public Housing). The Demonstration is limited to public housing agencies (PHAs) in up to 15 cities, which will be chosen in accordance with the requirements set forth in this NOFA.

DATES: Applications must be received on or before 4 P.M. Eastern Standard Time on April 5, 1993, at the HUD Headquarters Office, 451 Seventh St., SW., room 4138, Washington, DC 20410. Attention: Director, Office of Construction, Rehabilitation, and Maintenance. Applications may be hand-delivered or mailed to the above address. Applications sent by facsimile will not be accepted. HUD will not waive this deadline for any reason.

ADDRESSES: An original and two copies of the completed application must be submitted to the HUD Headquarters office at the address indicated under "DATES" above. Failure to submit an application to the HUD Headquarters office so that it is received by the deadline date and time will result in the application being disqualified.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4138, Washington, DC 20410. Telephone (202) 708-1800 (This is not a toll free number). Hearing or speech impaired individuals may call HUD's TDD number 1-800-877-TDDY, which is a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The challenge of successfully revitalizing the Nation's most severely distressed public housing is a very difficult one. In launching this demonstration, the Department recognizes that there is no one prescription for the ills that affect these developments, and each development will require its own solution. It is the intent of this demonstration to allow the greatest degree of flexibility on the part of the PHA in determining the approach likely to be most successful in treating the development it has selected. The approach selected must be consistent with the overall mandate of providing modestly designed housing for low-income persons and cost-effectiveness in the management of such housing, but should incorporate boldness and creativity in addressing difficult issues such as high density, crime, poor structural design, and oppressive social and economic conditions. PHAs are encouraged to seek a broad spectrum of participation and assistance from local and state governments, neighborhood organizations, business, nonprofit corporations, social service agencies, and residents of the developments.

Paperwork Reduction Act Statement

The information collection requirements contained in this document have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned on OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

Public reporting burden for the collection of information requirements contained in this document are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk 451 Seventh Street, SW., room 10276, Washington, DC 20410-0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

I. Purpose and Substantive Description

A. Authority

The funding made available under this NOFA is authorized by the 1993 Appropriations Act (Pub. L. 102-389 approved on October 6, 1991).

B. Allocation Amounts

The 1993 Appropriations Act made available $300,000,000 of budget authority for this Program.

C. Definitions

1. Targeted Units

The units for which funds are requested by a single applicant in a single city, whether they represent a part of a development, all of a development, or more than one development.

2. Revitalization Plan

All the activities described in the application which are necessary to address the distress in the targeted units and distress in the surrounding area which has a significant effect on the targeted units, whether those activities are proposed to be funded from the grant or from other sources.

D. Eligible Applicants

Applications may be filed by the following PHAs (See appendix A):

1. PHAs located in the 40 most populous United States cities based on 1990 Census data; or

2. PHAs on the Department's Troubled Housing Authority list as of 3/31/92, except that any such PHA will not be eligible if the Secretary certifies to the Congress that the PHA is not making substantial progress to eliminate its troubled status in accordance with section 6(j) of the Housing Act of 1937. The following troubled PHAs will be considered to have made substantial progress:

a. PHAs which have been removed from the troubled list after 3/31/92, or

b. PHAs which have made improvement of at least 5 nonhandicapped points (on a zero-to-one-hundred point scale) in their most recent assessment under the Public Housing Management Assessment Program (PHMAP), as compared to their assessment completed on April 16, 1992,

c. If PHAs have not made at least 5 nonhandicapped points (on a zero-to-one-hundred point scale) improvement in their PHMAP scores, PHAs which can demonstrate to the satisfaction of the Secretary, that they are making substantial progress by a narrative describing actions that have been taken to address deficiencies identified by PHMAP, by the PHA's Memorandum of Agreement with the Department, or by Departmental reviews, audits or surveys, or

d. PHAs which have a binding commitment from another public or private entity to act as administrator of the grant on behalf of the PHA. The alternative administrator must be deemed acceptable by the Department.

E. Program Requirements

1. Severely Distressed

a. Required documentation.

i. Documentation that a development in which the targeted units are located is both severely distressed (as compared to citywide information) and among the most severely distressed developments in the PHA's inventory must be based upon the four categories below which were set forth in The Final Report of the National Commission on Severely Distressed Public Housing, dated August 10, 1992: families living in distress, incidence of serious crimes in the development, barriers to managing the environment, and physical deterioration of buildings. The serious lack of data on some of the specific indicators in the extensive and detailed definition of severely distressed public housing found in the Commission's report precludes use of the full Commission definition and rating system. Further, the Commission itself recognized the need for further examination of the definition, modification or discard of some measures based on the availability of data, and use of narrative justifications based on qualitative information where quantitative data is lacking.

ii. Applicants must determine that the development in which the targeted units are located is a severely distressed development and is among the most severely distressed developments in the PHA's inventory, and must document this finding by comparing information about the development to comparable information about the PHA's general occupancy (family) developments and about the city as a whole. Such justification must be made by means of a narrative description containing qualitative information on the categories below and must include specific supporting data relevant to the category where such data is reasonably available to the PHA. HUD fully recognizes that the relevant data may not be available in all cases. Information should be presented in real numbers or percentages as well as percentages of PHA-wide or citywide data, wherever possible. Examples of relevant data are presented below under each category.

iii. The PHA must list in its application all of the developments in its inventory which the PHA regards as severely distressed. No documentation is required, however, unless funding is requested for a development.

iv. If there is severe distress in one category, that is sufficient to determine a development as severely distressed.

v. HUD will review the documentation provided and will accept the PHA's determination unless:

(a) The facts and data presented are clearly inconsistent with available facts and data on the development in the official records of the Department or the PHA, or

(b) The facts and data presented describe conditions which either are no more distressed than the majority of the family developments in the PHA's inventory or indicate levels of distress that are below average for the city as a whole.

vi. *Categories of distress*—(a) *Families living in distress.* Information and data on barriers to self-sufficiency for the families in the development, such as percentage with no earned income, level of average income in the development as a percentage of area median income, or educational data.

(b) *Incidence of serious crime.* Information and data on the frequency of criminal acts of various types (drug-related, violent crime, thefts, etc.) or total crimes such as data from Federal, State or local law enforcement agencies, or information from the applicant's records on crime in the development including number of lease terminations or evictions for criminal activity, number of police calls to the development, incidence of vandalism or opinions and observations of individuals having direct knowledge of the nature and frequency of crime in the development as compared to the PHA's family developments and the city as a whole. These individuals may include law enforcement officials, youth anti-crime workers, and security personnel.

(c) *Barriers to managing the environment.* Information and data which reflect lack of management control of the site or failure of the development to meet the needs of residents or would-be applicants, such as the vacancy rate in the development, the turnover rate, the percent of rent collected monthly, and the rate of units rejected by applicants.

(d) *Physical deterioration of buildings and sites.* Information and data which shows the extent of physical problems at the development, such as the cost of rehabilitation/reconstruction as a percent of Total Development Cost, the density of the development as measured in units per acre, the level of deferred maintenance as measured by annual average work order backlog and number of units that do not meet Housing Quality Standards (HQS) pursuant to 24 CFR 882.109 as amended by the Lead Based Paint regulation at 24 CFR part 35, major system deficiencies, including peeling and chipping lead-based paint in greater than 20% of units, lack of reliable and reasonably efficient heat and hot water, major structural deficiencies, electrical system under code, poor site conditions, leaking roof, deteriorated laterals and sewers, and high number of plumbing leaks.

2. Funding Limitations

a. The maximum number of units for which funds may be provided in any one grant award is 500; however, developments of more than 500 units may be funded by providing funds from a grant for only a portion of the units. No more than three areas of a city, containing the community's most severely distressed developments, may be funded.

b. No more than 15 grants will be awarded. The Department intends to fund both planning and implementation grants. For planning grants, each city

may receive no more than $500,000. For implementation grants, HUD will provide no more than $50 million per city. No city may receive more than one grant under the URD from FY 1993 funds.

c. Only one application for an implementation grant may be made in any one city. The application may not cover more than 500 units in three areas and may not request more then $50 million. A PHA which has within its jurisdiction more than one eligible city may make a separate application for each city. A PHA may apply for a planning grant in the same city for which an implementation grant is requested, but it must be for a different development.

3. Matching Requirement

The City in which the PHA applicant is located must provide contributions for supportive services in an amount equal to at least 15% of the implementation grant funds requested by the PHA for supportive services. This contribution must be from non-federal sources, which may include funding under the Community Development Block Grant Program. Amounts contributed to the match shall be used for eligible supportive services under the URD under section III.A.2.b. and c. Contributions may only be in the form of cash contributions, administrative costs, and the reasonable value of in-kind contributions.

4. Sustainability

The targeted units under an implementation grant must be expected to be sustainable over the long term regardless of whether the application covers an entire development or a portion of a development. In determining sustainability, the Department will consider social and physical problems in the unfunded portion of the development, if any, and in the surrounding neighborhood, the degree to which those problems affect the units to be funded, and the extent to which actions are being taken to ameliorate those problems.

5. Replacement Housing

a. Units to be demolished or disposed of under the demonstration must be replaced on a one-for-one basis. Where the replacement housing need is to be met through conventional public housing units in ii (a), (b) or (c) below, such funds must be provided through this Urban Revitalization Grant. Other forms of replacement housing, e.g., Section 8 Certificates, may be provided from these grant funds. Replacement housing is not required for units lost through reconfiguration of interior space without demolition. Section 18 of the U.S. Housing Act of 1937 applies to demolition, disposition and replacement housing under this demonstration. The 1993 Appropriation Act, however, creates an alternative for sections 18(b)(3) (A) and (B), which describe the types of housing that may be used as replacement housing and the circumstances under which Section 8 certificates may be used. In this demonstration, replacement housing may be accomplished by the following programs or as otherwise permitted under section 18 of the Act:

i. One-third by certificates under section 8(b),

ii. The remaining two-thirds by any combination of:

(a) Conventional public housing units consistent with 24 CFR part 941.

(b) Units acquired or otherwise provided for homeownership under section 5(h) of the Act,

(c) Units made available through homeownership programs involving construction or substantial rehabilitation of homes and meeting essentially the same eligibility requirements as those established pursuant to the Nehemiah Housing Opportunity Program, (section 603–607 of the Housing and Community Development Act of 1987, Pub. L. 100–242) or under the HOPE II or III programs as established under sections 421 and 441 of the Cranston-Gonzalez National Affordable Housing Act (NAHA).

b. Within six months of the date of grant approval, the PHA must submit an approvable application prepared in accordance with Handbook 7485.1 for any demolition or disposition which is to be funded under the URD grant.

6. Cost Requirements

a. For implementation grants, the average per unit hard costs (as defined in 24 CFR 968.105) must equal or exceed 62.5 percent of Total Development Costs.

b. For all implementation grants, average per unit hard costs for units to be reconstructed or rehabilitated may not exceed 100 percent of the published Total Development Costs, except that the Department may approve exceptions to this requirement for applications achieving a standard of modest design which include an adequate justification of the higher costs based on:

i. An analysis of the costs, separately identifying costs of lead paint testing and abatement, above average infrastructure replacement, accessibility improvements to meet 504 requirements, asbestos removal, major reconfiguration of streets and sidewalks and other significant improvements; and

ii. An analysis of the cost and feasibility of alternative courses of action, showing that there are no feasible, less expensive alternatives. The alternatives may include demolition of all or a portion of the development with replacement of units on-site, off-site, or a combination. The analysis should describe all the factors that went into the PHA's decision-making and should include evaluation of alternative designs and the feasibility in time and effort of acquiring units or land off-site for replacement housing.

7. Resident Consultation

In consultation with the residents, the PHA shall develop a process which assures that residents are fully briefed and meaningfully involved in developing, implementing, and monitoring the urban revitalization program. The PHA shall give full consideration to the comments and concerns of residents. The process shall include:

a. Consultation with representative residents or resident organizations throughout the PHA in the selection of the units for which funds will be requested in this application.

b. Consultation with the residents of the selected development or, if the development is vacant, with representative residents or resident organizations throughout the PHA, regarding the preparation of the plan under a planning grant or the implementation application under an implementation grant. Such consultation shall include, but not be limited to, identification of the nature and causes of distress, design of appropriate remedies for the causes of distress, the overall redesign, units to be demolished, community service opportunities, supportive services and empowerment opportunities, and replacement housing.

c. Once a draft plan has been developed under a planning grant or a draft application has been prepared under an implementation grant, the PHA shall make a copy available for reading in the management office; provide copies of the draft to any resident organization representing the residents of the development; and provide adequate opportunity for comment by the residents of the development and their representative organizations prior to making the plan or the application final.

d. Provide to HUD and any resident organization representing the development a summary of the resident comments and its response to them; and

notify residents of the development that this summary and response are available for reading in the management office.

e. For implementation grants in which demolition or disposition is planned, the applicant must comply with Section 412 of the National Affordable Housing Act, 1990, as amended, which requires a PHA to afford the opportunity to purchase to existing PHA-wide resident councils, and to the resident management corporation, resident council or resident cooperative of the development that is to be demolished or disposed of, under certain limited conditions, including total demolition or disposition. A Notice containing procedures for implementation of this requirement is found in the **Federal Register** dated October 6, 1992, 57 FR 46074. The requirements of the Notice are not applicable to demolition of selected portions of the development in order to reduce density which is essential to ensure the long-term viability of the development or the housing agency, except that this inapplicability should not be used cumulatively to avoid Section 412 requirements. In cases where the requirements of the Notice are applicable, applications including plans for demolition or disposition must include a certification of lack of resident interest in acquiring the property in the form required by Section VII.C. of the Notice.

f. After HUD approval of a grant, notify residents of the development and any representative organizations of the approval of the grant, provide the resident organization with a copy of the HUD-approved Project Implementation Schedule; and notify the residents of the availability of the schedule in the management office for reading.

8. Local Government Certifications

The public official, or his or her authorized representative, who submits the Comprehensive Housing Affordability Strategy (CHAS), under section 105 of NAHA, must certify that the proposed activities are consistent with the CHAS. The local governing body must approve the application and must certify that they will permit replacement, in accordance with Section 18 of the Act and the 1993 Appropriations Act, of any units to be demolished or disposed of.

9. Community Service Component

Each application for an implementation grant must include a community service component as described in III.A.2.a. below and in Appendix B.

10. Displaced Persons

Under implementation grants, persons displaced by the reconstruction activities funded by URD must be eligible under the plan for occupancy of the replacement units.

11. Planned Use of Comprehensive Grant Program Funds

Any planned use of Comprehensive Grant Program Funds in connection with activities funded under the Urban Revitalization Demonstration must be shown in the Annual Statement and revised Five-Year Action Plan submitted in anticipation of FY 1994 funding.

12. Non-duplication

Grant funds may not be used to duplicate work which is funded under any other Federal program, and the PHA shall establish controls to assure non-duplication of funding.

13. Applicability of Program Regulations

The following activities that may be undertaken with grant funds shall be subject to the cited program requirements, consistent with the 1993 Appropriation Act and this NOFA. If the revitalization plan requires any deviation from these cited requirements, such as local programs for replacement housing through housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as the Nehemiah Program or HOPE II or III must be approved by the Department.

a. Demolition and disposition activity under the grant will be governed by 24 CFR part 970;

b. Public housing development activity (including on-site reconstruction as well as off-site replacement housing) will be governed by 24 CFR part 941;

c. Replacement housing activity using section 8 rental certificates will be governed by 24 CFR part 882;

d. Replacement housing activity with units acquired or otherwise provided for homeownership under section 5(h) will be governed by 24 CFR part 906;

e. Replacement housing activities provided through housing opportunity programs of construction or substantial rehabilitation of homes will be governed by 24 CFR part 280 (the Nehemiah Program);

f. Replacement housing activities under HOPE II shall be governed by 24 CFR subtitle A, appendix B;

g. Replacement housing activities under HOPE III shall be governed by 24 CFR subtitle A, appendix C;

h. Rehabilitation and physical improvement activities will be governed by 24 CFR 968.310 (Eligible costs), and 24 CFR 968.335 (Conduct of modernization activity.)

F. Other Program Characteristics

1. Waiver of Departmental Regulations

PHAs may request, for the revitalized development, a waiver of Departmental regulations (not statutory provisions) governing rents, income eligibility, or other areas of public housing management to permit a PHA to undertake measures that enhance the long-term viability of a severely distressed project revitalized under this demonstration. If the application requests a waiver which would permit a separate waiting list for the development, the PHA must adopt a strategy for affirmatively marketing the development, which shall include specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach.

2. Preferences Applicable to Selection of Tenants

PHAs may choose to utilize a local system of preferences for the selection of tenants for the revitalized development. Such preferences shall be established in writing and shall respond to local housing needs and priorities as determined by the PHA after one or more public hearings to obtain the views of low-income residents and other interested parties.

3. Use of Other Sources of Funds

Funds made available under the URD may be used in conjunction with, but not in lieu of, funding provided under the head "Modernization of Low-Income Housing Projects" for the modernization of existing public housing pursuant to section 14 of the Act (42 U.S.C. 14371); for construction or major reconstruction of obsolete public housing, other than for Indian families; for the replacement of public housing units pursuant to section 18 of the Act; and for the HOPE for Public and Indian Housing Homeownership Program as authorized under title III of the Act. (See III.B.3.g.)

4. Failure To Proceed

In the event that an applicant selected to receive URD funding does not proceed in a manner consistent with the approved plan and requirements of this NOFA, HUD may withdraw any unobligated balances of funding.

5. Grant Agreement

After HUD approves an application for a planning or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. Among other things, the grant agreement will provide that the recipient agrees:

a. To carry out the program in accordance with the provisions of this NOFA, applicable law, the approved application, and all other applicable requirements;

b. To comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring and evaluating the program in an effective and efficient manner; and

c. That HUD may withhold, withdraw, or recapture any portion of a grant, terminate the grant agreement, or take other appropriate action authorized under the grant agreement, if HUD determines that the recipient is failing to carry out the approved revitalization program in accordance with the terms of the approved application and this NOFA, including failure to provide the contribution towards the match.

II. Planning Grants

A. Eligible Activities

A planning grant may be used to plan for the revitalization of severely distressed developments consistent with the requirements of this NOFA, including:

1. Studies of the different options for revitalization, including the feasibility, costs and neighborhood impact of such options;

2. Providing technical or organizational support to ensure resident involvement in all phases of the planning and implementation processes;

3. Conducting workshops to ascertain the attitudes and concerns of the neighboring community;

4. Preliminary architectural and engineering work;

5. Planning for supportive services, including economic development, job training and self-sufficiency activities that promote the economic self-sufficiency of residents under the revitalization program;

6. Planning for community service opportunities;

7. Designing a suitable replacement housing plan, in situations where partial or total demolition is considered;

8. Planning for necessary management improvements; and

9. Conducting environmental studies.

B. Application Submission Requirements

An application for a planning grant shall contain:

1. A request for a planning grant, specifying a plan for the activities proposed, the schedule for completing the activities, the personnel necessary to complete the activities and the amount of the grant requested;

2. Identification and description of the development and the targeted units involved, and a description of the composition of the residents, including family size and income;

3. Demonstration that the development meets the description of severely distressed as described in section I.E.1. of this NOFA;

4. A description of the extent of resident interest and involvement in the development of the planning application and the plan for resident involvement during the planning period; and evidence of resident involvement consistent with the program requirements as stated in I.E.7. above to the extent applicable;

5. A description of the extent of involvement of local public and private entities in the development of the planning application and the plan for involvement of local public and private entities during the planning period;

6. A description of the process to be used in the development of the community service component;

7. If the PHA is listed on the attached March 31, 1992 list of troubled housing agencies, documentation necessary to demonstrate that the PHA has made substantial progress to eliminate their troubled status as defined in section I.D.2. of this NOFA;

8. A certification by the public official responsible for submitting the CHAS under section 105 of NAHA that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the targeted units are located;

9. A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing;

10. Form HUD–52825, Comprehensive Assessment/Program Budget (Parts I and II).

11. A narrative statement addressing each of the rating factors.

12. Form HUD–50070, Certification for a Drug-Free Workplace.

13. Form HUD–52820, PHA Board Resolution Approving URD Application.

14. Anti-Lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements if request for grant exceeds $100,000.

15. SF–LLL, Disclosure of Lobbying Activities only where any funds, other than federally appropriated funds, will be or have been used to lobby the Executive or Legislative branches of the Federal government regarding specific grants or contracts.

16. Disclosures required by section 102 of the HUD Reform Act of 1989.

17. A certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of local government, or any agency or instrumentality thereof, for the specific activities for which funding is requested in the application.

C. Rating and Selection Process

1. Rating Factors

Applications will not be rated until they have been determined to be eligible under section I.D. of this NOFA and to meet the program requirements under I.E. 1, 2, 7, and 12. If an application fails to have an adequate plan for the development of the community service component, rating may proceed. However, a revised plan must be approved by the Commission on National and Community Service (CNCS) before any funds may be disbursed. HUD Headquarters review staff will rate factors "a. through e." below. CNCS will rate factor "f" below and provide the rating to HUD for incorporation into the total score.

a. The extent of the need for the revitalization program as defined in III.C.1.a.

b. The capability of the applicant as defined in III.C.1.c;

c. The potential of the applicant for developing a successful and affordable revitalization program as determined by the quality of the plan for the planning process, and the suitability of the development for such a program;

d. The extent of resident interest and involvement in the development of the planning application and the extent of resident involvement planned for the planning period;

e. The extent of involvement of local public and private entities in the development of the planning application and the extent of involvement of local public and private entities planned for the planning period;

f. The likely effectiveness of the process described for the development of the community service component.

2. Selection Criteria

a. Points awarded under section II.C. 3. below for the rating factors.

b. National geographic diversity. The Department, in its discretion, may choose to select a lower-rated, approvable application over a higher-rated application in order to increase the level of national geographic diversity of applications approved under this NOFA.

c. Diversity of development types. HUD may, in its discretion, choose to select to lower-rated, approvable application over a higher-rated application in order to increase the diversity of development types (developments which include family high-rise buildings of five or more stories and those which include only low rise buildings) approved under this NOFA.

3. Rating Values

The following point assignments will be used to rate planning grant applications in accordance with the criteria listed in section II.C.1. above. The Department shall examine the ratings, and where it determines that applications falling below a certain point total are not suitable or not feasible for planning grants, it may establish a minimum number of points for an application to be selected. The Department shall then select the highest rated applications, unless it exercises its discretion to select lower rated, approvable applications in order to promote national geographic diversity and/or diversity of project types in accordance with Section II.C.2. of this NOFA.

Rating factors	Point range
Extent of Need	0–30
Capability	0–30
Applicant Potential for Success	0–20
Extent of Resident Interest and Involvement	0–15
Extent of Involvement of Local Public and Private Entities	0–10
Likely Effectiveness of Plan for Community Service Component	0–15
Total Maximum Score	120

4. Funding Decisions

After rating, Headquarters will select approvable applications for funding in accordance with the selection criteria set forth in section II.C.2. above. If any selected applications include plans for the development of community service components which have not been approved by the CNCS, the applicants may conform their applications to CNCS requirements after selection in order to obtain release of funds. HUD may approve an application for an amount lower than the amount requested if the application includes an ineligible activity, or if insufficient funds are available to fund the full amount requested and HUD determines that partial funding is a viable option.

5. Duration

Activities funded under planning grants shall be completed within 18 months of the effective date of the planning grant agreement.

III. Implementation Grants

A. Eligible Activities

1. At least 80% of funding awarded in each grant must be used for any combination of the following activities: capital costs of major reconstruction, rehabilitation and other physical improvements, including energy retrofit, capital costs of replacement units, certificates under section 8(b) used for replacement, management improvements for the reconstructed development and planning and technical assistance. Funds may be used for total or partial demolition and/or disposition of units. The following costs may be included:

a. Capital costs may include related administrative costs and temporary relocation necessary for reconstruction, rehabilitation, demolition or disposition.

b. Administrative costs may include the annual premium of LBP insurance incident to approved URD work.

2. Not more than 20% of funding awarded in each grant may be used for any combination of the following activities and the related administrative expenses:

a. Community service programs, as defined by the Commission on National and Community Service for the URD, specifically, programs organized, administered, overseen or funded by a public housing agency, or its designated representative, engaging individuals in meaningful service on a volunteer basis or through limited stipends to address unmet human, environmental, educational, and/or public safety needs through youth service and conservation corps, residents' associations, community-based organization, K–12 schools, institutions of higher education, churches or other religious entities and other such similar organizations. Such programs must comply with the requirements stated in appendix B.

b. Supportive services, including but not limited to, resident capacity building, literacy training, day care, youth activities, economic development, and resident employment and job training activities such as the Step-Up apprenticeship program (see **Federal Register** Notice, October 8, 1992, 57 FR 46398);

c. Economic development costs may include a setaside for a revolving loan fund, established and operated in accordance with 25 CFR part 85 (with specific reference to §§ 85.21 and 85.25), and

d. The following services authorized under the Gateway Program: outreach and information services designed to make eligible individuals aware of available services, literacy and bilingual education services, remedial education and basic skills training, employment training and personal management skill development or referrals for such services, child care or dependent care for dependents of eligible individuals during those times when training services are being provided, pre-employment skills training, employment counsel and application assistance, job development services, job training, Federal employment-related activity services, completion of high school or GED program services, transitional assistance, including child care for up to 6 months to enable such individual to successfully secure unsubsidized employment, substance abuse prevention and education, and other support services deemed to be important by the Secretary of Health and Human Services.

B. Application Submission Requirements

Each application must include a request for an implementation grant containing a description of the development and the proposed activities, information relevant to rating the application, submissions to demonstrate compliance with various program requirements, and various required certifications, as follows:

1. A description of the development and the proposed activities, including:

a. A description of the number of units, by unit size, a site plan, and a statement of the number and location of vacant units; identification of the units to be targeted, if less than the entire development; a description of socio-economic and demographic characteristics of the residents.

b. A description of the proposed treatment of the units, including a narrative description of the extent of rehabilitation/reconstruction of existing units, extent of demolition, description of changes in the sizes and shapes of units and other changes in the use of interior space; any reduction in the number of units due to reconfiguration

or changes in the utilization of interior space.

c. Description of community space alterations, improvements, and/or additions.

d. A description of the changes in the use of the site, and a post-revitalization site plan.

e. A description of proposed management improvements.

f. Description of the surrounding neighborhood, including strengths and weaknesses; proposed treatment of any neighborhood problems, including physical, economic, and security.

g. Description of proposed supportive services.

h. A description of any revolving loan fund for economic development, as permitted under Section III.A.2.c. hereof, including but not limited to the purpose of the loans, borrower eligibility, and the entity which will administer the fund.

i. Description of proposed community service component.

j. Where the demonstration grant is requested for a vacant development, identification of the residents who will receive the supportive services and participate in community service, and a statement of the reasons why this resident group is appropriate, how residents will be selected to participate and how this plan relates to the physical work planned to be undertaken in connection with this demonstration.

k. A description of the resident involvement in the development of the application and in the execution, implementation and monitoring of the revitalization plan.

l. A description of the number of replacement units to be funded, the nature of the programs to be used, including type and size of unit, tenure, and program descriptions.

m. Management plans describing the management of the revitalization activity and proposed management of the development after revitalization. The post-revitalization management plan must state whether additional or reduced management and maintenance costs will result from the revitalization and how the proposed management differs from the management process utilized prior to revitalization; e.g., resident selection, rent collection, and maintenance.

n. Form HUD-52825, Comprehensive Assessment/Program Budget (Parts I and II), covering units for which funding is requested in the current fiscal year, evidencing that the applicant has not exceeded the cost limits or exceptions granted pursuant to section I.E.6. above.

o. Statement of the percentage of the funding to be used for items listed in III.A.1. and in III.A.2. of this NOFA.

p. Modernization Organization and Staffing Plan, stating the proposed organization, staffing and inspection of the modernization program.

q. Implementation schedule for all revitalization activities for the development to be funded, whether those activities will be funded by URD or other sources.

2. The following information relevant to rating the application, which is not otherwise requested:

a. Documentation of the extent of need as required by III.C.1.a.

b. An assessment of the causes of distress; an explanation of how the proposed physical changes, management improvements, supportive services, and community service component will remedy the distress; an explanation of how the plan for management after revitalization will correct previous problems; a discussion of why the proposed revitalization plan is likely to be successful.

c. Data necessary for rating of section III.C.1.a.

d. Description of the involvement and commitment of local public and private entities sufficient to assess Section III.C.1.e.

3. The following submissions to demonstrate compliance with various program requirements:

a. Demonstration that the development meets the description of severely distressed as described in section I.E.1. of this NOFA.

b. A list of all severely distressed developments under the PHA's jurisdiction.

c. A certification by the PHA that the targeted units are located in not more than 3 separately defined areas containing the community's most severely distressed projects.

d. Description of the amount and nature of the supportive service funding from non-federal sources to be provided by the city in which the PHA is located and the percentage of the total supportive services funding that this represents; a commitment from the city to provide the contribution for supportive services required under section I.E.3.

e. If the PHA is proposing to revitalize only a portion of the development, a description of the actions to be taken to revitalize the portions which will not be funded under this application, including alternate sources of funding which may be utilized (e.g. Comprehensive Grant Program funds or reprogrammed Comprehensive Improvement Assistance Programs funds); and the basis for the conclusion that the revitalization of the targeted units will be sustainable over the long term.

f. Where average per unit costs for all hard costs will exceed 100% of TDC, a justification of the need for higher costs as required in I.E.6.

g. In order to assure that URD funds are not used in lieu of otherwise available modernization funds, a demonstration that the funds reasonably expected to be available to the PHA over the period of the CGP Five-Year Action Plan are not adequate to address the total modernization needs of the PHA.

h. If the PHA is listed on the attached March 31, 1992 list of troubled housing agencies, documentation necessary to demonstrate that the PHA has made substantial progress to eliminate their troubled status as defined in section I.D.2. of this NOFA.

4. The following submissions which are necessary only in certain circumstances:

a. Any request for waiver of Departmental regulations governing rents, income eligibility, or other areas of public housing management which will enhance the long term viability of the development, if the PHA desires such waivers. The request must:

i. Identify the specific provisions requested to be waived,

ii. State how the waiver will contribute to the success of the revitalization plan, and

iii. State specifically how the PHA wishes to manage any function for which a waiver is sought, pursuant to applicable law.

b. Narrative description of the local preferences applicable to the selection of tenants for the revitalized development if they are different from the approved tenant selection plan for the entire PHA jurisdiction, and a certification by the PHA that at least one public hearing was held to discuss the proposed local preferences.

5. The following required certifications:

a. Where demolition or disposition of units is contemplated in the application, the PHA and the city must certify that each unit will be replaced in accordance with Section 18 of the Act, as modified by the Appropriations Act of 1993 (see I.E.5.) and that they will take all necessary steps to assure that replacement units will be provided within 6 years of approval of the demolition application. In demolition/disposition cases where the requirements of the Section 412 Notice (57 FR 44074) are applicable, applications including plans for demolition or disposition must include

a certification of lack of resident interest in acquiring the property in the form required by Section VII.C. of the Notice.

b. Commitment from any other public or private entity other than the PHA for any contribution to the development or the surrounding neighborhood which is a part of the revitalization plan.

c. A certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 105 of NAHA that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the targeted units are located.

d. Disclosures required by section 102 of the HUD Reform Act of 1989.

e. Form HUD–50070, Certification for a Drug-Free Workplace.

f. Form HUD–52820, PHA Board Resolution Approving URD Application and PHA certification of compliance with minimum resident consultation requirements.

g. Anti-Lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements for grants exceeding $100,000.

h. SF–LLL, Disclosure of Lobbying Activities only where any funds, other than federally appropriated funds, will be or have been used to lobby the Executive or Legislative branches of the Federal government regarding specific grants or contracts.

i. A certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of local government, or any agency or instrumentality thereof, for the specific activities for which funding is requested in the application.

j. A certification that the applicant will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing.

C. Rating and Selection

1. Rating Factors

Applications will not be rated until they have been determined to be eligible under section I.D. of this NOFA. Further, prior to ranking, all applications must meet program requirements I.E.1, 2, 4, 6, 7, 8, and 12. Where applicable, the applications must also meet the following program requirements: I.E.3, 5, 10, and 11. If an application fails to meet the requirements for the community service component found in III.A.2.a. and Appendix B, rating may proceed. However, a revised community service component must be approved by the Commission on National and Community Service (CNCS) before any funds will be disbursed. HUD Headquarters review staff will rate factors "a"–"e" below. The CNCS will rate factor "f" below. The Department may establish a panel of experts with whom to consult for advice on elements of the applications which are within their expertise. Such experts will be advisors and will not conduct any part of the rating or selection of grantees.

a. *Extent of need for revitalization.* Points will be awarded for evidence of distress in the development and distress in the surrounding neighborhood that has a significant impact on the development as measured by the information listed below and any qualitative information submitted pursuant to the categories identified in I.E.1. In determining rating points, applicants will be compared to each other. The following information must be submitted for the development:

i. *Families living in distress.* Percentage of households with no earned income, average income as a percentage of area median.

ii. *Incidence of serious crime.* Such statistical information as is available on the following: frequency of criminal acts of various types or all criminal acts, number of lease terminations or evictions for criminal activity, average number of police calls to the development monthly, average monthly incidence of vandalism to PHA property in dollars.

iii. *Barriers to managing the environment.* Vacancy rate, percentage of new residents per year, percent of rent collected monthly.

iv. *Physical deterioration.* Cost of rehabilitation/reconstruction per unit as a percentage of TDC, density as measured in units per acre, average work order backlog, number of units that do not meet HQS, and major system deficiencies, including peeling and chipping lead-based paint, lack of reliable and reasonably efficient heat and hot water, major structural deficiencies, electrical system under code, poor site conditions, leaking roof, deteriorated laterals and sewers, high number of plumbing leaks.

b. *Potential impact of the plan.* Points will be awarded to the extent the revitalization plan developed by the PHA appropriately addresses the causes of distress and seems likely to produce fully occupied units providing a satisfactory living environment, both in terms of the physical problems of the units to be funded and the social, educational, and income problems affecting the residents. In making a determination under this factor, the Department will consider the evidence of distress identified in the application, as well as other information available to HUD from previous applications to the Department, site visits, monitoring, and other information in the Department's files. Specifically, the application must demonstrate:

i. That the PHA has accurately assessed the causes of physical, social, educational and economic distress in the targeted units, the development, and the surrounding neighborhood,

ii. That the PHA has designed appropriate remedies to ameliorate the physical, social, educational and economic distress, including appropriate supportive services and service opportunities,

iii. That the plan for management of the development after revitalization will correct previous problems and contribute to the success of the development, and

iv. That, taken together, the sum of all the actions to be taken, whether funded by the grant or by other sources is highly likely to be successful in revitalizing the targeted units, resulting in full occupancy and in the provision of decent, safe, and sanitary housing to the residents over the long term.

c. *Capabilities of the applicant.* Points will be awarded based upon the PHA's capabilities, as measured by the following indicators:

i. Overall PHA capability.

(a) The PHA's total score under the Public Housing Management Assessment Program (PHMAP), 24 CFR Part 901

(b) The PHA's most recent fiscal audit

(c) Outstanding HUD monitoring findings

(d) For PHAs which were on the 3/31/92 Troubled PHA List, any submission pursuant to I.D.2.

ii. Modernization capability.

(a) The PHA's score for Indicator 2, Modernization, (24 CFR 901.10(b)(2)) under PHMAP

(b) Ability to carry out the implementation schedule in current and previous modernization except for delays beyond the control of the PHA

iii. Quality of management plan for carrying out revitalization activity.

d. *Extent of resident involvement.* Points will be awarded based upon the extent of resident involvement, as measured by the following indicators and demonstrated in the plan:

i. Extent of resident consultation in preparation of the application;

ii. Degree of resident training, employment and contracting planned during execution of the revitalization plan (for example, as part of a Step-Up apprenticeship program); and

iii. Level of planned resident involvement in implementation and monitoring progress.

e. *Extent of involvement of local public and private entities.* Points will be awarded based upon the extent of involvement of local public and private entities, as measured by the following indicators and demonstrated in the plan:

i. Extent of involvement in the development of the application;

ii. Extent of commitment to the provision of supportive services to residents of the development to be revitalized;

iii. Level of commitment of local, non-federal funds to the physical improvement of the development and the surrounding neighborhood; and

iv. Extent of commitment to improvement of supportive services and economic activity in the immediate vicinity surrounding the development to be revitalized.

f. *Community service component.* Points will be awarded by the Commission based upon the community services component, as provided below, measured by the following indicators:

i. Quality based on:

(a) The program's ability to offer valuable services in the areas where they are needed most and where programs do not exist or where existing service opportunities are too limited to meet community needs;

(b) The program's ability to involve participants, particularly youth, in the design and operation of the program;

(c) The program's ability to involve individuals from diverse backgrounds (including diversity of gender, race, ethnic background, economic background, educational background, age, physical ability) who will serve together;

(d) The leadership and management, as measured by the qualifications of the principal leaders of the program; and

(e) The extent to which the applicant proposes specific and concrete plans for achieving its stated objectives.

ii. Cost effectiveness based on the reasonableness of the budget request relative to the perceived impact of the proposed activity.

iii. Sustainability based on:

(a) Strong and broad-based community support for involvement in the program; and

(b) Evidence that the best efforts will be made to obtain the financial resources necessary to continue the program beyond the term of the revitalization project.

iv. Innovation based on the ability of the program to advance knowledge about creative and effective community service.

v. Replicability based on the degree to which program design can be broadly applicable in areas beyond program location.

vi. The following rating points will be used by CNCS to create the score for the community service component which will then be incorporated into the overall selection and rating scores assigned in section III.C.3. below:

2. Selection Criteria

a. Points awarded under section III.C.3. below for the rating factors.

Rating factors	Point range
Quality	7.5 points.
Cost-effectiveness	2.25 points.
Sustainability	2.25 points.
Innovation	1.5 point.
Replicability	1.5 point.

b. National geographic diversity. The Department, in its discretion, may choose to select a lower-rated, approvable application over a higher-rated application in order to increase the level of national geographic diversity of applications approved under this NOFA.

c. Diversity of development types. HUD may, in its discretion, choose to select a lower-rated, approvable application over a higher-rated application in order to increase the diversity of development types (developments which include family high-rise buildings of five or more stories and those which include only low rise buildings) approved under this NOFA.

3. Rating Values

The following point assignments will be used to rate applications in accordance with the criteria listed in section III.C.1. above. The Department shall examine the rating, and where it determines that applications falling below a certain point total are not suitable or not feasible for demonstration of successful revitalization of severely distressed developments, it may establish a minimum number of points for an application to be selected.

Rating factors	Point range
Extent of need for revitalization	0–30
Potential impact of the plan	0–30
Capabilities of the applicant	0–20
Extent of resident involvement	0–15
Extent of involvement of local public and private entities	0–10
Community service component	0–15
Total maximum score	120

4. Funding Decisions

After rating, Headquarters will select approvable applications for funding in accordance with the selection criteria set forth in section III.C.1. above. If any selected applications include community service components which have not been approved by the CNCS, the applicants may conform their applications to CNCS requirements after selection in order to obtain release of funds. HUD may approve an application for an amount lower than the amount required if the application includes an ineligible activity, or if insufficient funds are available to fund the full amount requested and HUD determines that partial funding is a viable option.

IV. Application Processing

A. Schedule for Submission and Approval

Applications must be received on or before 4 p.m. E.S.T. on April 5, 1993. HUD will select grantees by [insert date 180 days from date of publication].

B. Corrections to Deficient Applications

1. Immediately after the deadline for submission of applications, Headquarters will screen each application to determine whether all items were submitted.

2. If the PHA fails to submit the technical items listed below or the application contains a technical mistake such as an incorrect signatory, the Department shall immediately notify the PHA in writing that the PHA has 14 calendar days from the date of HUD's written notification to submit or correct any of the specified items. The PHA will have no opportunity to correct deficiencies not identified in HUD's written notification. If the items listed below are missing, and the PHA does not submit them within the required time period, the application will be ineligible for further processing.

a. PHA Report on Cooperation Agreement;

b. Form HUD–50070, Certification for a Drug-Free Workplace;

c. Form HUD–52820, PHA Board Resolution Approving URD Application;

d. Certification for Contracts, Grants, Loans and Cooperative Agreements;

e. SF–LL, Disclosure of Lobbying Activities;

f. Report on Project Implementation Schedule(s);

g. Modernization Organization Staffing Plan.

V. Applicability of Other Federal Requirements

A. Flood Insurance

Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), HUD will not approve applications for grants providing financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless—

1. The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR Parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

2. Flood insurance is obtained as a condition of approval of the application.

B. Coastal Barriers Resources Act

Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve grant applications for properties in the Coastal Barrier Resources System.

C. Fair Housing Requirements

The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and regulations pursuant thereto (24 CFR part 100); Executive Order 11063 (Equal Opportunity in Housing) and regulations pursuant thereto (24 CFR part 107); the fair housing poster regulations (24 CFR part 110) and advertising guidelines (24 CFR part 109).

D. Nondiscrimination in Housing

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR part 1).

E. Discrimination on the Basis of Age or Handicap

The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and regulations issued pursuant thereto (24 CFR part 146), the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR part 8) and the Americans with Disabilities Act (Public Law 101–336) and its implementing regulation at 28 CFR part 36.

F. Employment Opportunities

The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135.

G. Minority and Womens' Business Enterprises

The requirements of Executive Orders 11246, 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

H. Disability Requirements

Fair Housing Act and section 504. The recipient must comply with the reasonable modification and accommodation requirements of the Fair Housing Act and the accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, as amended.

I. OMB Circulars

The policies, guidelines, and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by PHAs, and to the remedies for non-compliance, except when inconsistent with the provisions of the Appropriations Act, other Federal statutes, or this notice. Recipients are also subject to the audit requirements of OMB Circular A–128 implemented at 24 CFR part 44. Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies.

J. Drug-Free Workplace

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

K. Anti-Lobbying Certification

Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants for and recipients of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

L. Section 102 of HUD Reform Act of 1989

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

M. Documentation and disclosures

Since HUD makes assistance under the program available on a competitive basis, 24 CFR part 12 requires HUD to:

1. Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period (§ 12.14(b).) HUD will provide further guidance on how this material may be accessed in a later Notice published in the **Federal Register**.

2. Publish a Notice in the **Federal Register** at least quarterly indicating the recipients of the assistance (24 CFR 12.16(a).)

3. Subpart C of part 12 requires applicants that seek assistance from HUD for a specific project or activity must make the disclosures required under § 12.32. Each applicant must complete form HUD 2880, Applicant/Recipient Disclosure/Update Report, and submit the completed form with its application.

N. Section 103 HUD Reform Act of 1989

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) 708–2815; TDD (202) 708–1112. (These are not toll-free numbers.)

O. Section 112 HUD Reform Act of 1989

Section 13 of the Department of Housing and Urban Development Act 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 prohibits 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 the assistance. Section 13 was implemented by final rule (24 CFR part 86) published in the **Federal Register** on May 17, 1991 (56 FR 22912). 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 24 CFR part 86. Any questions regarding the rule should be directed to Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

P. Debarred or Suspended Contractors

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

Q. Conflict of Interest

1. In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the PHA and who exercises or has exercised any functions or responsibilities with respect to activities assisted under an URD grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

2. HUD may grant an exception to the exclusion in paragraph (1) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the revitalization demonstration and the effective and efficient administration of the revitalization program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the revitalization program that would otherwise not be available;

b. Whether an opportunity was provided for open competitive bidding or negotiation;

c. Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class;

d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

e. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (1) of this section;

f. Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

g. Any other relevant considerations.

R. Labor Standards

Pursuant to section 12 of the 1937 Act, Davis-Bacon or HUD-determined prevailing wage rates shall apply to activities under this demonstration program. The wage rate requirements do not apply to individuals who perform services for which they volunteered; do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and are not otherwise employed in the work involved (24 CFR part 70). In addition, if other Federal programs are used in connection with the revitalization program, labor standards requirements apply to the extent required by such other Federal programs. For example, if the CDBG program is used in connection with the revitalization program, the labor standards requirements of those programs would apply to the extent required by them.

S. Lead-Based Paint Testing and Abatement

Any property assisted under the revitalization program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35, and 24 CFR part 965 (subpart H). Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

T. Relocation

1. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24 are applicable to this program.

2. Temporary Relocation

The recipient shall provide each resident of an eligible property, who is required to relocate temporarily to permit work to be carried out, with suitable, decent, safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the

costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

U. Records, Reports, and Audit of Recipients

1. General Records

Each recipient shall keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose—

a. The amount and disposition of funds received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

b. The amount and nature of any other assistance, including cash, services, or other items contributed as a condition of receiving a grant;

c. The cost or other value of all in-kind non-Federal contributions towards the supportive services match required by Section I.E.3.; and

d. Any other proceeds received for, or otherwise used in connection with, the revitalization program.

2. Reports

The PHA shall submit Form HUD-52826, Schedule/Report of Modernization Expenditures (approved by the Office of Management and Budget under control number 2577-0049) no later than 45 calendar days after the end of the quarter. The first report is due 45 calendar days after the end of the quarter in which the ACC amendment is executed.

The PHA shall also submit a quarterly narrative report describing the current status of the work activities in the revitalization plan, including community service or supportive services set forth on Form HUD-52825, Comprehensive Assessment/Program Budget. In this narrative, the PHA shall describe any actions taken during the quarter towards accomplishment of its stated goals and explain any lack of progress or actions.

V. Access by HUD

For the purpose of audit, examination, monitoring, and evaluation each recipient shall give HUD (including any duly authorized representatives and the Inspector General) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by paragraph (1) of this section.

W. Environmental Requirements

Before HUD approves applications under this demonstration, HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) and HUD's implementation regulations at 24 CFR part 50 and the compliance requirements of the related environmental laws and authorities listed in 24 CFR 50.4.

Other Matters

Information Collections

The estimated information collection requirements contained in this NOFA have been sent to the Office of Management and Budget. Information on these requirements is provided as follows:

URBAN REVITALIZATION NOFA—BURDEN HOURS

Submission requirements	No. of respondents	No. responses per respondent	Total annual responses	Hours per response	Total hours
Planning Grant:					
Application (Sec. II(b))	50	1	50	40	2,000
Resident Consultation (Sec. I(d)(7))	50	1	50	10	500
Reporting Requirements (Sec. IV(s)(2))	9	4	36	4	144
Recordkeeping (Sec. IV(s)(1))	9	1	9	1	9
Implementation Grant:					
Application (Sec. III(c))	50	1	50	275	13,750
Resident Consultation (Sec. I(d)(7))	50	1	50	20	1,000
Reporting Requirements (Sec. IV(s)(2))	6	4	24	10	240
Recordkeeping (Sec. IV(s)(1))	6	1	6	2	12
Total Burden					17,655

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 7th St., SW., Washington, DC 20410.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that the provisions of this NOFA do not have a potential significant impact on the formation, maintenance, and general well-being of the family. To the extent that there is an impact on the family, revitalization of severely distressed public housing developments under the demonstration can be expected to support family values by enabling low-income families to live in decent, safe, and sanitary housing.

Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the provisions of this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Dated: December 30, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A

Forty Most Populous U.S. Cities

Cities

New York, NY
Los Angeles, CA
Chicago, IL
Houston, TX
Philadelphia, PA
San Diego, CA
Detroit, MI

Dallas, TX
Phoenix, AZ
San Antonio, TX
San Jose, CA
Baltimore, MD
Indianapolis, IN
San Francisco, CA
Jacksonville, FL
Columbus, OH
Milwaukee, WI
Memphis, TN
Washington, DC
Boston, MA
Seattle, WA
El Paso, TX
Cleveland, OH
New Orleans, LA
Nashville-Davidson, TN
Denver, CO
Austin, TX
Fort Worth, TX
Oklahoma City, OK
Portland, OR
Kansas City, MO
Long Beach, CA
Tucson, AZ
St. Louis, MO
Charlotte, NC
Atlanta, GA
Virginia Beach, VA
Albuquerque, NM
Oakland, CA
Pittsburgh, PA

PHAS on the Troubled PHA List as of 3/31/92

Boston, MA
Bridgeport, CT
New Haven, CT
Camden, NJ
Newark, NJ
D.C. Department of Public and Assisted Housing
Philadelphia, PA
Chester, PA
Atlanta, GA
Birmingham, AL
Jacksonville, FL
Puerto Rico
Virgin Islands
Cuyahoga, OH
Detroit, MI
Indianapolis, IN
Lucas County, OH
East St. Louis, IL
Chicago, IL
Springfield, IL
New Orleans, LA
Kansas City, MO
Los Angeles, CA
San Francisco, CA

Appendix B

Program Requirements for Community Service Component

Background

The legislation creating the HUD Urban Revitalization Demonstration Program requires that each plan submitted for funding include a community service component to be approved by the Commission on National and Community Service (CNCS). By requiring a community service component in each plan for urban revitalization, the legislation presents HUD and CNCS with a unique opportunity to create a strong and lasting union between physical urban revitalization and community service. Physical urban revitalization cannot be sustained without a revitalization of the spirit of the people of the community such that the people begin to view themselves as collective owners of the community. A sense of collective ownership of the community engenders not only concern for people who live in the community but also caring for and pride in the physical structures in the community. Through community service, the sense of collective ownership of the community can be developed, thereby revitalizing the spirit of the people of the community. Thus, beyond the bricks and mortar of the physical structures, community service can be the glue that holds an urban revitalization program together, sustains it, and nourishes it.

To assist applicants for urban revitalization funds in designing their community service programs, CNCS has set forth below a definition for "community service program" followed by guidance on program requirements, allowable program activities, application content, selection criteria and ranking factors.

I. Definition

For purposes of the HUD Urban Revitalization Demonstration Program, "community service program" is defined as:

A program organized, administered, overseen or funded by a public housing authority or its designated representative, engaging individuals in meaningful service on a volunteer basis or through limited stipends to address unmet human, environmental, educational, and/or public safety needs through youth service and conservation corps, residents' associations, community-based organizations, K–12 schools, institutions of higher education, churches or other religious entities (but see paragraph II.(13) below) and other such similar organizations.

II. Program Requirements

(1) An applicant that receives assistance under the revitalization program may administer the community service program or may contract with a nonprofit organization or a unit of state or local government, subject to the limitations contained in paragraph 13 below to administer such program.

(2) Each applicant intending to administer a community service program itself, and any organization contracted to administer a community service program by an applicant shall secure the services of a community service coordinator who will have primary responsibility for the design and administration of the applicant's community service program.

(3) In designing a community service program, each applicant shall solicit input from residents of the development to be revitalized—particularly youth—community-based organizations, local businesses, school representatives, representatives of religious organizations, and other interested parties. In order to maximize this level of input, each applicant is encouraged to establish a Community Service Advisory Board comprised of the parties listed in the preceding sentence.

(4) With the assistance of the parties listed in paragraph (3), each applicant shall determine the human, environmental, educational, and/or public safety needs of the housing development to be revitalized as well as the surrounding neighborhood. An applicant may also determine the human, environmental, educational, and/or public safety needs of the city at large.

(5) In light of the determination required in paragraph (4), and in conjunction with the parties listed in paragraph (3), each applicant shall devise strategies or service opportunities for addressing the greatest needs identified and provide a justification for choosing those particular strategies.

(6) Programs may, but are not required to provide, in-service stipends or post-service benefits for participants. If post-service benefits are provided, they shall only be paid at the end of the term of service and shall only be used for education, training, or apprenticeships. In-service stipends and post-service benefits are subject to the following limitations:

(a) *Full-time service.* (i) In-service stipends shall not exceed 100 percent of the poverty line for a family of two (as defined in 42 USC section 9902(2)); and

(ii) Post-service benefits shall not exceed $100 per week of service or $5,000 per year of service, whichever is less.

(b) *Part-time service.* (i) In-service stipends shall not exceed an amount equal to a share of such stipend offered to full-time participant under paragraph (a)(i) above, that has been prorated according to the number of hours such part-time participant serves in the program.

(ii) Post-service benefits shall not exceed an amount equal to a share of

such post-service benefit offered to a full-time participant under paragraph (a)(ii) above, that has been prorated according to the number of hours worked per week of service or $2000 per year of service, whichever is less.

(c) A participant in a community service program who receives an in-service stipend and/or post-service benefit shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

(7) Each applicant shall give preference for participation in service opportunities included in the community service program to residents of the housing development to be revitalized.

(8) Each community service program shall be for a term of no less than the term of the revitalization project. Each applicant shall exercise best efforts to continue the community service plan beyond the term of the revitalization project.

(9) Each applicant shall collect such data as the Commission on National and Community Service (CNCS) directs to enable CNCS to conduct an evaluation of the community service program.

(10) To reflect the importance of the community service component of each application, we recommend that each applicant use between 7 percent and 10 percent of the funds made available under the revitalization program for its community service program. Of the amount of funds reserved for the community service program:

(a) No more than 10 percent may be expended for administrative expenses related to such program; and

(b) No more than 10 percent may be expended for the purchase of major capital equipment related to such program.

(11) Prior to the placement of a participant in a service opportunity, the applicant shall consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out under the community service program.

(12) Each applicant shall ensure that individuals do not drop out of school for the purpose of participating in the community service program.

(13) Applicants shall not contract with any of the following organizations to administer or carry out, in whole or in part, any community service program funded under the demonstration program, neither may any organization selected to carry out service activities use the funds provided to conduct any of the types of activities carried out by any of the organizations listed below:

(a) Business organized for profit;

(b) Labor union;

(c) Partisan political organization;

(d) Organization engaged in religious activities, unless such activities do not involve the use of funds provided under the demonstration program by program participants and program staff to give religious instruction, conduct worship services, or engage in any form of proselytization; or

(e) Domestic or personal service company or organization.

(14) Participants in the community service program shall be citizens or nationals of the United States or lawful permanent resident aliens of the United States.

(15) *Supplementation, nonduplication, and nondisplacement*—(a) *Supplementation.* (i) Applicants are advised that funds received for the community service program are to be used only to supplement, not supplant, State and local public funds expended for services of the type assisted under this grant in the previous fiscal year.

(ii) Paragraph (i) of this section shall be satisfied, with respect to a particular program, if the aggregate expenditure for such program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for such program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of programs assisted under this grant.

(b) *Nonduplication.* (i) In general, funds may be used only for a program that does not duplicate, and is in addition to, an activity performed by paid employees in the locality being served by the program; this requirement shall not be construed to bar the replication of an exemplary volunteer or community service program; and

(ii) Funds made available under this grant for the community service program shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of paragraph (c) of this section are met.

(c) *Nondisplacement.* (i) An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the assistance used by the employer of a participant in a program funded under this grant.

(ii) A service opportunity may not infringe in any manner on the promotional opportunity of an employed individual.

(iii) A participant in a program receiving assistance under this grant shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(iv) Services may not be performed that would supplant the hiring of employed workers or would otherwise be performed by an employee, including an employed worker who recently resigned or was discharged; an employee who is subject to a reduction in force; an employee who is on leave (terminal, temporary, vacation, emergency, or sick); or an employee who is on strike or who is being locked out.

III. Allowable Program Activities

(1) An applicant's community service program shall consist of any activities that directly address the unmet needs identified through the determination required in paragraph (4) above, including, but not limited to, crime prevention, victim assistance, drug abatement, after school programs, tutoring/mentoring programs, community gardens, day care for children and elderly, housing rehabilitation, and community health centers.

(2) Applicants are encouraged to develop programs which combine support services (as defined in section III.A.2.b of this notice) and community service. For example, an applicant may support a youth corps as a means of involving youth in meaningful community service while at the same time such youth can benefit from the education and job training service provided by the youth corps.

(3) Applicants are encouraged to develop service opportunities in connection with the physical revitalization plan. For example, program participants could be involved in rehabilitation activities, planting community gardens, or painting murals.

IV. Application Content

The community service program component of each application shall include:

(1) A description of the objectives of the program;

(2) The experience, accomplishments, and qualifications of the community service coordinator, particularly his/her community service experience.

(3) For a public housing agency that contracts with another organization to administer the community service program, a description of that

organization's capacity to administer such program, including the amount and quality of staff time committed to the program, and experience in the area of community service;

(4) The manner in which the program will be coordinated with and build upon existing community service programs;

(5) The process for soliciting community input—particularly from youth—in the planning of the program;

(6) A description of youth involvement in the operation of the program, including leadership roles;

(7) The process for determining the human, environmental, educational and/or public safety needs of the housing development to be revitalized and the findings of such determination;

(8) The service opportunities proposed and how those opportunities will address unmet needs;

(9) The particular target group, if any, of the program, e.g., youth, the elderly. If any particular group is targeted either as providers of service or receivers of service, provide justification for targeting such group;

(10) A plan for recruiting participants for service opportunities;

(11) A plan for placing participants in service opportunities and preparing participants for their placements;

(12) An estimate of the number of participants expected to be involved in the program;

(13) A discussion of whether participants will serve on a volunteer basis of whether some or all will receive in-service stipends and/or post service monetary benefits out of grant proceeds. If stipends and/or post-service benefits will be paid, describe how amounts will be determined;

(14) A discussion of whether the program will offer full-time and/or part-time service opportunities;

(15) A discussion of efforts to create service opportunities that place residents in locations in the community or city at large;

(16) Any efforts to involve non-residents from the surrounding neighborhood or the city at large as co-providers of service with residents of the development to be revitalized;

(17) The extent to which the community service program will be combined with supportive services, and describe such services;

(18) A budget accompanied by a narrative setting forth the grant amounts to be expended in the administration (and, where applicable, the operation) of a community service program.

(19) Such other information as CNCS shall require.

V. Review and Approval

The community service component of each application must be reviewed and approved by the Commission on National and Community Service prior to any final funding determinations.

VI. Selection Criteria

In approving the community service components of applications for funding, CNCS will use the following criteria and ranking factors:

(1) Quality based on:

(a) The program's ability to offer valuable services in the areas where they are needed most and where programs do not exist or where existing service opportunities are too limited to meet community needs;

(b) The program's ability to involve participants—particularly youth—in the design and operation of the program;

(c) The program's ability to involve individuals from diverse backgrounds (including diversity of gender, race, ethnic background, economic background, educational background, age, physical ability) who will serve together;

(d) The leadership and management, as measured by the qualifications of the principal leaders of the program; and

(e) The extent to which the applicant proposes specific and concrete plans for achieving its stated objectives.

(2) Cost-effectiveness based on the reasonableness of the budget request relative to the perceived impact of the proposed activities.

(3) Sustainability based on:

(a) Strong and broad-based community support for and involvement in the program; and

(b) Evidence that best efforts will be made to obtain the financial resources necessary to continue the program beyond the term of the revitalization project.

(4) Innovation based on the ability of the program to advance knowledge about creative and effective community service.

(5) Replicability based on the degree to which program design can be broadly applicable in areas beyond program location.

VII. Ranking Factors

The following point assignment will be used to rank the community service component of applications in accordance with the criteria listed above.

Quality	7.50 points.
Cost-effectiveness	2.25 points.
Sustainability	2.25 points.
Innovation	1.50 points.
Replicability	1.50 points.
Total Maximum Score	15 points.

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Part V

Department of Transportation

Coast Guard

33 CFR Parts 151, et al.
Requirements for Cargo Lightering Operations; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151, 155, and 156

[CGD 90–052]

RIN 2115–AD68

Requirements for Cargo Lightering Operations

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the applicability sections of the safety and pollution prevention regulations issued under section 311(j) of the Federal Water Pollution Control Act (FWPCA) to make it clear that section 311(j) requirements apply to offshore lightering operations. The Coast Guard further proposes to establish what constitutes acceptable evidence of compliance with section 311(j). The purpose of the proposed amendments is to clarify the applicability of regulations issued under 311(j). The Coast Guard expects the amendments to codify existing practice and assist mariners in complying with the requirements of section 311(j).

DATES: Comments must be received on or before February 19, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 90–052), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket, and will be available for inspection and copying in room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Tilghman, Project Counsel and Project Manager, Oil Pollution Act (OPA 90) Staff (G–MS), (202) 267–6401, between 9 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 90–052), the specific section of this proposal to which each comment applies, and the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address listed under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal person involved in drafting this document is Ms. Joan Tilghman, Project Counsel and Project Manager.

Background and Purpose

Even prior to the Oil Pollution Act of 1990 (OPA 90), the Coast Guard had the authority under 46 U.S.C. 3715(b) to regulate, in accordance with 46 U.S.C. 3715(a), lightering operations occurring in the marine environment involving oil or hazardous material, if the lightered cargo was destined for a port or place subject to the jurisdiction of the United States. Section 4115(d) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380), however, amended section 3715(a) and added three new requirements for these lightering operations. As amended, 46 U.S.C. 3715(a) requires the delivering and receiving lightering vessels to meet five conditions.

First, the transfer must be conducted consistent with regulations prescribed by the Secretary.

Second, at the time of transfer, both the delivering and receiving vessel must have on board a Certificate of Inspection or a Certificate of Compliance as would have been required under 46 U.S.C. 3710 or 3711, had the transfer taken place in a port or place subject to the jurisdiction of the United States.

Third, at the time of transfer, each vessel must have on board a Certificate of Financial Responsibility (COFR) as would have been required under section 1016 of OPA 90 (33 U.S.C. 2716), had the transfer taken place in a port or place subject to the jurisdiction of the United States.

Fourth, at the time of transfer, each vessel must have on board evidence that it is operating in compliance with section 311(j) of the FWPCA (33 U.S.C. 1321(j)). Section 311(j) requires the owner or operator of a tank vessel to prepare and submit an emergency response plan to the President. Also, the Coast Guard issues safety and pollution prevention regulations under authority of this provision.

Fifth, each vessel must operate in compliance with 46 U.S.C. 3703a concerning tank vessel construction standards. Section 3703a requires double hulls on newly built tankers, and sets out a phase-in schedule for implementing this requirement. A note to this section also directs the Coast Guard to establish interim measures that certain existing vessels must take to provide substantial protection to the environment.

The first two conditions predate the OPA 90 amendments, and the last three conditions reflect the new requirements added by OPA 90. Regulatory action to implement the COFR and double hull statutory provisions are the subjects of separate rulemaking projects.

The purpose of this rulemaking is to clarify the applicability provisions of the provisions of the pollution prevention regulations and to define what constitutes "evidence" that the vessel is operating in compliance with section 311(j) requirements.

In 1979, the Coast Guard issued a notice of proposed rulemaking (NPRM) to impose the same regulatory requirements on offshore lightering as those imposed on vessels and facilities engaged in similar operations in the navigable waters of the United States and the contiguous zone. (44 FR 31486, May 31, 1979.) The Coast Guard intended to make offshore lightering operations subject to then-existing safety and pollution prevention regulations for similar operations near shore and in ports. The 1979 NPRM set out personnel, operating, and notice requirements for offshore lightering, including a requirement for a transfer plan and a contingency plan.

Responding to comments on this proposal, the Coast Guard issued a supplemental notice of proposed rulemaking (SNPRM). (48 FR 40741, September 9, 1983.) In the SNPRM, the Coast Guard stated that decreases in the frequency of offshore lightering made the 1979 proposed regulations "too restrictive or inappropriate," and opted to "simplify" the NPRM.

The final rule, which was published March 26, 1984 (49 FR 11170), largely codified the SNPRM. It required both the delivering and receiving vessels

engaged in an offshore lightering operation where the lightered cargo was destined for a port or place subject to the jurisdiction of the United States, to have a valid Certificate of Inspection or, alternatively, either a Certificate of Compliance or a Tank Vessel Examination Letter (TVEL).

The preamble to the final rule stated that these regulations "are required by 46 U.S.C. 3715, and supported by the need to prevent substandard tank vessels from lightering beyond the contiguous zone." The Coast Guard's objective was to construct offshore lightering requirements "as simply as possible, without sacrificing essential pollution prevention requirements." The preamble further provided that the rulemaking was amended to apply to "vessels which engage in oil and other hazardous materials lightering in the marine environment."

Current pollution prevention regulations issued under section 311(j) of the FWPCA are found in 33 CFR part 151, Vessels Carrying Oil, Noxious Liquid Substances, Garbage and Municipal or Commercial Waste; part 153, Control of Pollution by Oil and Hazardous Substances, Discharge Removal; part 155, Oil or Hazardous Material Pollution Prevention Regulations for Vessels; part 156, Oil and Hazardous Material Transfer Operations; and part 157, Rules for the Protection of the Marine Environment Relating to Tank Vessels Carrying Oil in Bulk.

The existing applicability provisions in 33 CFR parts 151, 155, and 156 use ambiguous language regarding offshore lightering operations. It is clear that the lightering regulations were intended to so apply. Further, Coast Guard Marine Safety Officers currently apply pollution prevention operating regulations to offshore lightering through the TVEL and Certificate of Inspection requirements. As a condition of receiving and maintaining a valid TVEL required by 33 CFR 156.201(a)(2), a foreign flag vessel lightering offshore must meet applicable U.S. pollution prevention requirements. (See Volume II, Marine Safety Manual, Chapter 20, Section 20B). Similarly, a U.S. flag vessel must meet those requirements to receive and maintain the required Certificate of Inspection. (See 46 CFR chapter I, subchapter D).

Because OPA 90 amendments to 46 U.S.C. 3715(a) focused attention on offshore lightering again, and because the Coast Guard anticipates an overall increase in offshore lightering operations as oil imports from the Middle East increase [1], the Coast Guard proposes to clarify the applicability provisions and certain other provisions in 33 CFR parts 151, 155, and 156. The Coast Guard further proposes that the Declaration of Inspection required under 33 CFR 156.150 and an approved vessel response plan constitute acceptable "evidence" that a vessel meets the section 311(j) requirements.

Discussion of Proposed Amendments

First, the Coast Guard proposes amending 33 CFR 151.05 and 156.205 to incorporate the definition of "marine environment" stated in 46 U.S.C. 2101. This is a technical amendment to keep the wording of the regulations consistent with the wording of the recently amended statute.

Second, the Coast Guard is proposing to amend the applicability sections in 33 CFR parts 151, 155, and 156 to expressly state that vessels lightering in the marine environment must meet the conditions set out in 46 U.S.C. 3715(a) regarding operating requirements for lightering vessels.

Third, the Coast Guard proposes to amend 33 CFR 151.23 to reflect the requirement that vessels lightering in the marine environment under the conditions set out in 46 U.S.C. 3715(a) have on board the evidence of compliance with section 311(j) of FWPCA required by proposed 33 CFR 156.217. These vessels also must have a Certificate of Inspection, a Certificate of Compliance, or a Tank Vessel Examination Letter; and a Certificate of Financial Responsibility.

Fourth, under its authority in 46 U.S.C. 3715(b), the Coast Guard proposes to amend 33 CFR 156.215 to require that lightering vessels include the amount of cargo involved in the transfer in the prearrival notice to the Captain of the Port (COTP) nearest the lightering location or zone, prior to arrival in the lightering location or zone. The Coast Guard is proposing this change to alert COTPs to important risk factors associated with lightering operations so that the COTP can plan for emergency circumstances. This requirement should not add costs to lightering operations because operators already know the amount of cargo to be lightered as a planning matter.

Finally, the Coast Guard proposes adding a new § 156.217 to establish what documents constitute "evidence" that a vessel is complying with the section 311(j) requirements (including the requirement for a vessel response plan) and applicable regulations issued under the authority of section 311(j). This evidence will be in the form of the Declaration of Inspection (DOI) or Tank Vessel Examination Letter (TVEL), and an approved vessel response plan. (The vessel response plan requirements are the subject of a separate NPRM (CGD 91–034), published in the **Federal Register** at 57 FR 27514, on June 19, 1992).

Regulatory Evaluation

The Coast Guard has determined that this proposal is not major under Executive Order 12291. This proposal is not significant under the Department of Transportation Regulatory Policies and Procedures (DOT Order 2100.5) because it does not meet any of the criteria listed in paragraph 6(a)(2) of the Order. The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is unnecessary.

Vessels currently lightering in the marine environment already are required by 33 CFR 156.210 to have a Certificate of Inspection or a Tank Vessel Examination Letter. To receive and maintain a valid COI or TVEL, vessels must be in compliance with 33 CFR parts 151, 155, and 156. Furthermore, because lightering vessels already must document, with a Declaration of Inspection, that they comply with operating requirements applicable to lightering, and because tank vessels will be required by a separate rulemaking to have a vessel response plan, the Coast Guard anticipates no new costs associated with showing evidence of compliance with section 311(j) of the FWPCA. Therefore, this proposal will not result in annual costs of $100 million or more; will have no significant adverse effects on competition, employment, or other aspects of the economy; and will not result in a major increase in costs and prices.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). "Small entities" also includes small not-for-

[1] U.S. Congress. Office of Technology Assessment. Competition in Coastal Seas: An Evaluation of Foreign Maritime Activities in the 200 Mile EEZ, Background Paper. OTA–BP–0–55 (Washington, DC: United States Government Printing Office, July, 1989).

profit organizations and small governmental jurisdictions.

Because the Coast Guard expects no new costs to be associated with this rule, the Coast Guard anticipates the economic impact of this proposal to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposed rule contains a provision that would direct the master, owner, or agent of each vessel to be lightered to include a new piece of data in a report required under 33 CFR 156.215, Pre-arrival notices. This required report will be incorporated into an approved collection of information (OMB control number 2115–0539) that expires March 31, 1993. The proposed addition is minor, and is being included in a request to OMB for extension of the existing collection of information described above.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This proposed rule would clarify that pollution prevention regulations do apply to vessels lightering in the marine environment when the cargo lightered is destined for a port or place subject to the jurisdiction of the United States. The Coast Guard intends these regulations to provide uniform, national standards for conducting lightering operations. These standards will be uniform throughout the marine environment.

Environmental Impact

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal is not expected to result in significant impact on the quality of the human environment, as defined by the National Environmental Policy Act, because the proposed is administrative in nature. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons stated in the preamble, the Coast Guard proposes to amend 33 CFR parts 151, 155, and 156 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

1. The authority citation for subpart A of part 151 is revised or read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); 46 U.S.C. 3715; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Section 151.05 is amended by adding a new definition in alphabetical order to read as follows:

§ 151.05 Definitions.

* * * * *

Marine environment means—

(1) The navigable waters of the United States and the land and resources under those waters;

(2) The waters and fishery resources of an area over which the United States asserts exclusive fishery management authority;

(3) The seabed and subsoil of the Outer Continental Shelf of the United States, the resources of the Shelf, and the waters superadjacent to the Shelf; and

(4) The recreational, economic, and scenic values of the waters and resources referred to in paragraphs (1), (2), and (3) of this definition.

* * * * *

3. In § 151.09, paragraph (a) is revised to read as follows:

§ 151.09 Applicability.

(a) Except as provided in paragraph (b) of this section, §§ 151.09 through 151.25 apply to—

(1) Each ship that is operated under the authority of the United States and engages in international voyages;

(2) Each ship that is operated under the authority of the United States and is certificated for ocean service;

(3) Each ship that is operated under the authority of the United States and is certificated for coastwise service beyond 3 nautical miles from land;

(4) Each ship that is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in § 2.05–10 of this chapter;

(5) Each ship that is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States; or

(6) Each delivering and receiving ship engaged in a lightering operation in the marine environment when the oil or hazardous material lightered is destined for a port or place subject to the jurisdiction of the United States.

* * * * *

4. Section 151.23 is amended by redesigning existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

§ 151.23 Inspection for compliance and enforcement.

* * * * *

(b) While engaged in a lightering operation in the marine environment, a vessel is subject to inspection by the Coast Guard to determine if the vessel has on board—

(1) Evidence of compliance with section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) and applicable regulations issued under the authority of section 311(j), as required under § 156.217 of this chapter;

(2) A Certificate of Inspection, a Certificate of Compliance, or a Tank Vessel Examination Letter, as required under § 156.210 of this chapter; and

(3) A Certificate of Financial Responsibility as required under part 130 of this chapter.

* * * * *

5. In § 151.30, paragraph (a) is revised to read as follows:

§ 151.30 Applicability.

(a) Except as provided in paragraph (b) of this section, §§ 151.30 through 151.49 apply to—

(1) Each ship that is operated under the authority of the United States and engages in international voyages;

(2) Each ship that is operated under the authority of the United States and is certificated for ocean service;

(3) Each ship that is operated under the authority of the United States and is certificated for coastwise service beyond 3 nautical miles from land;

(4) Each ship that is operated under the authority of the United States and

operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in § 2.05–10 of this chapter;

(5) Each ship that is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States; or

(6) Each delivering and receiving ship engaged in a lightering operation in the marine environment when the oil or hazardous material lightered is destined for a port or place subject to the jurisdiction of the United States.

* * * * *

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

6. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C); 46 U.S.C. 3715; sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b). Sections 155.340 and 155.750(e) are issued under section 4110, Pub. L. 101–380, 104 Stat. 515.

7. In § 155.100, paragraph (a) is revised to read as follows:

§ 155.100 Applicability.

(a) Subject to the exceptions provided for in paragraph (b) of this section, this part applies to—

(1) Each ship that is operated under the authority of the United States, wherever located;

(2) Each ship that is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States; or

(3) Each delivering and receiving ship engaged in a lightering operation in the marine environment when the oil or hazardous material lightered is destined for a port or place subject to the jurisdiction of the United States.

* * * * *

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

8. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C) and (D); 46 U.S.C. 3715; sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

9. Section 156.100 is revised to read as follows:

§ 156.100 Applicability.

This subpart applies to the transfer of oil or hazardous material on the navigable waters, the contiguous zone, or in the marine environment of the United States to, from, or within each vessel with a capacity of 250 barrels or more; except that this subpart does not apply to transfer operations involving public vessels.

10. Section 156.200 is revised to read as follows:

§ 156.200 Applicability.

This subpart applies to each vessel to be lightered and the service vessel engaged in a lightering operation in the marine environment when the oil or hazardous material lightered is destined for a port or place subject to the jurisdiction of the United States. This subpart does not apply to lightering operations involving public vessels. These rules are in addition to the rules of subpart A of this part, as well as the rules in the applicable sections of parts 151, 153, 155, 156, and 157 of this chapter.

11. In paragraph (b) of § 156.205, the definition for "Marine environment" is revised to read as follows:

§ 156.205 Definitions.

* * * * *

(b) * * *

Marine environment means—

(1) The navigable waters of the United States and the land and resources under those waters;

(2) The waters and fishery resources of an area over which the United States asserts exclusive fishery management authority;

(3) The seabed and subsoil of the Outer Continental Shelf of the United States, the resources of the Shelf, and the waters superadjacent to the Shelf.

(4) The recreational, economic, and scenic values of the waters and resources referred to in paragraphs (1), (2), and (3) of this definition.

* * * * *

12. In § 156.215, paragraph (a)(3) is revised to read as follows:

§ 156.215 Pre-arrival notices.

(a) * * *

(3) The number of transfers expected and the amount of cargo expected to be transferred during each transfer;

* * * * *

13. A new § 156.217 is added to read as follows:

§ 156.217 Lightering.

(a) If in a lightering operation, a vessel delivers or receives oil or hazardous material in the marine environment, the receiving vessel may transfer that oil or hazardous material in a port or place subject to the jurisdiction of the United States only if—

(1) The transfer was in accordance with applicable regulations in parts 151, 153, 155, 156, and 157 of this chapter; and

(2) The delivering and receiving vessels have on board at the time of transfer, evidence that each vessel is operating in compliance with section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) and applicable regulations issued under the authority of section 311(j) in the form of a Declaration of Inspection as required by § 156.150 of this chapter and a vessel response plan approved under part 155 of this chapter.

Dated: December 29, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–86 Filed 1–4–93; 8:45 am]

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January 5, 1993

Part VI

Environmental Protection Agency

40 CFR Part 2
Disclosure of Confidential Data; Interim Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL-4552-1]

Disclosure of Confidential Data to Authorized Representatives of the United States and to Potentially Responsible Parties

AGENCY: Environmental Protection Agency.

ACTION: Interim rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is issuing interim regulations modifying certain of EPA's regulations at 40 CFR part 2, subpart B governing confidential business information. This rule updates statutory references to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) pursuant to changes made by the Superfund Amendments and Reauthorization Act of 1986, corrects erroneous citations to CERCLA and the Clean Air Act (CAA) in these regulations, authorizes disclosure of confidential data submitted by contractors, pursuant to CERCLA section 104, to authorized representatives of the United States and to potentially responsible parties (PRPs) in actions under CERCLA section 107 for recovery of EPA's response costs, and authorizes disclosure of confidential data to contractors of other Federal agencies.

DATES: This rule is effective January 5, 1993. Comments will be accepted until March 8, 1993.

ADDRESSES: Send or deliver written comments to Donald A. Sadowsky, Contracts, Information General Law Division (LE-132K), Office of General Counsel, Environmental Protection Agency, 401 M Street, SW., Washington, DC 24060.

FOR FURTHER INFORMATION CONTACT: Donald A. Sadowsky, Office of General Counsel. Telephone 202/260-5469.

SUPPLEMENTARY INFORMATION:

On May 20, 1975, EPA published in the **Federal Register** (40 FR 21987) a proposed rule concerning procedures for the treatment of confidential business information (CBI) submitted under various environmental statutes, including the Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.* This rule was made final on September 1, 1976 (41 FR 36902), codified as 40 CFR part 2, subpart B.

On December 18, 1985, EPA published in the **Federal Register** (50 FR 51654) a rule establishing procedures for the treatment of confidential business information (CBI) submitted pursuant to section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9604. This rule was codified as 40 CFR 2.310.

A. Information Collected Pursuant to Sections 115 and 211 of the Clean Air Act

EPA's special rules governing CBI submitted pursuant to the Clean Air Act are codified at 40 CFR 2.301. Paragraph (B)(6) of § 2.301 provides that § 2.301 does not apply to information obtained under section 115(j) or 211(b) of the Clean Air Act, 42 U.S.C. 7415(j) or 7545(b). Both statutory references are inappropriate, and paragraph (b)(6) will therefore be eliminated, for the following reasons.

First, section 115(j) is no longer a part of the Clean Air Act. Second, EPA's intent with respect to section 211 was to effectuate the section's limitation on CBI claims for results of health and safety tests on fuels and additives performed pursuant to section 211(b)(2)(A). However, 40 CFR 2.30(b)(6) as currently written exempts information submitted under any part of section 211(b) from § 2.301 coverage. EPA is hereby correcting the regulation by eliminating paragraph (b)(6) and modifying § 2.301(e) (Substantive Criteria for Use in Confidentiality Determinations) to make clear that section 211(b)(2)(A) information is not entitled to confidential treatment.

B. Disclosure to Contracts of Other Federal Agencies

Under sections 114, 208 and 307(a) of the Clean Air Act (42 U.S.C. 7414, 7542, and 7607), sections 308 and 509(a) of the Clean Water Act (33 U.S.C. 1318, and 1369(a)), 1445(d) of the Safe Drinking Water Act (42 U.S.C. 300j-4), sections 3001(b)(3)(B), 3007(b), and 9005(b) of the Solid Waste Disposal Act (42 U.S.C. 6921(b)(3)(B), 6927(b), and 6995(b)), and section 104(e)(7) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9604(e)(7), EPA may disclose CBI to authorized representatives of the United States. Similarly, under section 10(e) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136h(e)) and section 14(a)(2) of the Toxic Substances Control Act (15 U.S.C. 2613(a)(2)) EPA may disclose CBI to contractors with the United States.

Although Congress did not require that contractors which are authorized representatives of the United States have a direct contractual relationship with EPA, the Agency so chose to limit its authority when it first proposed and promulgated regulations governing disclosure of CBI to contractors. See 40 FR 21990, 40 CFR 2.301(h)(2)(i). At the time it was not contemplated that there would be occasion to disclose CBI to contractors of other Federal agencies. (Special provision was later made in 40 CFR 2.306(j)(1) for disclosure to contractors of other agencies of CBI submitted pursuant to the Toxic Substances Control Act.).

However, the Agency may find it in the interests of the Government to enter into arrangements with another Federal agency where a contractor of that agency performs work to support the mission of EPA. Having clear authority to allow such access, EPA is hereby amending its regulations accordingly.

C. Information Obtained From Superfund Contractors

1. Applicability of 40 CFR 2.310

In the preamble to the rule promulgating 40 CFR 2.310, the Agency stated that § 2.310 was intended to be "applicable to information obtained under any provision of section 104 of (CERCLA)." 50 FR 51656. However, the rule as written did not apply to all information submitted under section 104. The rule applied "only to information provided to or obtained by EPA under section 104 of (CERCLA), 42 U.S.C. 9604, by or from any person who stores, treats, or disposes of hazardous wastes; or where necessary to ascertain facts not available at the facility where such hazardous substances are located, by or from any person who generates, transports, or otherwise handles or has handled hazardous substances." 40 CFR 2.310(b).

Section 2.310 as written does not cover contractor information submitted pursuant to section 104. Section 104(a)(1) authorizes EPA, *inter alia*, to respond to hazardous conditions at Superfund sites. In particular, the Government "is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to" hazardous substances at a site. CERCLA section 104(a)(1), 42 U.S.C. 9603(a)(1). The language in section 104(a)(1) ("remove or arrange for the removal"; "provide for remedial action") serves as authority for the Agency to enter into contracts for removal and remediation.

"Removal" is defined in CERCLA section 101(23) to include not only "the cleanup or removal of released hazardous substances" but also "such

actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances." "Remedial action" is defined in section 101(24) to include "those actions consistent with the permanent remedy taken" and "any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment." Moreover, removal and remedial actions include related enforcement activities. CERCLA section 101(25). Thus, "removal" and "remedial action" are defined broadly enough to include all contracts at issue, and information submitted to EPA pursuant to these contracts constitutes information submitted under CERCLA section 104.

Therefore EPA is today modifying 40 CFR 2.310 to effectuate the original intent of the Agency, i.e., to make the rule applicable to all information submitted under CERCLA section 104.

2. Disclosure to Authorized Representatives

Information obtained by the Agency under CERCLA section 104 may be disclosed to authorized representatives of the United States. CERCLA section 104(e)(7). EPA regulations at 40 CFR 2.310(h) define authorized representative to include Agency contractors and subcontractors. Thus, this amendment to 40 CFR 2.310 makes clear that confidential information from a Superfund contractor may be disclosed to another Agency contractor.

EPA recognizes that information submitted to the Agency by its contractors can be of potential value to other businesses competing for contracts with EPA, other agencies, or the private sector. Contractors typically assert that information pertaining to costs such as labor, overhead and profit rates are entitled to confidential treatment because release of this information to the public would allow competitors to underbid that contractor in future procurements. EPA has generally accorded confidential treatment to these rates where public release of the information is likely to cause substantial competitive harm.

The Agency does not intend to disclose to the public sensitive information obtained from a contractor. However, the Agency needs to utilize authorized representatives to support various functions involved in the administration of CERCLA and which involve access to contractor CBI, such as records management, data processing, and cost recovery.

By disclosing to an authorized representative information obtained from a Superfund contractor, EPA does not compromise the confidentiality of the information. 40 CFR 2.310(h) provides procedures for the protection of confidential data submitted under CERCLA section 104. These include a bar from disclosure of confidential information to a contractor or subcontractor unless the contract or subcontract provides that:

a. The employees of the contractor or subcontractor shall use the information only for the purpose of carrying out the work required by the contract or subcontract;

b. The employees of the contractor or subcontractor shall refrain from disclosing the information to anyone other than EPA (or another Federal agency, as appropriate) without prior written approval of each affected business or of an EPA legal office;

c. The employees of the contractor or subcontractor shall return to EPA (or another Federal agency, as appropriate) all copies of such information (and any abstracts or extracts therefrom) upon request by the EPA program office, whenever the information is no longer required for performance of the work required under the contract or subcontract, or upon completion of the contract or subcontract;

d. The contractor or subcontractor shall obtain a written agreement to honor such terms of the contract from each of the contractor's or subcontractor's employees who will have access to such information, before such employee is allowed access; and

e. The contractor or subcontractor acknowledges and agrees that the contract or subcontract provisions concerning the use and disclosure of business information supplied to the contractor or subcontractor by EPA (or another Federal agency, as appropriate) under the contract or subcontract are included for the benefit of, and shall be enforceable by, both the United States Government and any affected business having an interest in information concerning the business.

In addition, before such disclosure is made, the Agency must notify the submitter (either by letter or via notice in the **Federal Register** of the information to be disclosed, the identity of the contractor or subcontractor, and the purposes to be served by the disclosure, and give the submitter an opportunity to comment on the disclosure. Moreover, because Superfund contractor information is submitted pursuant to CERCLA Section 104, persons outside the Federal Government who improperly disclose the information are subject to criminal prosecution under Section 104(e)(7)(B).

This rule is by its nature retroactive, in that it authorizes disclosure of information already obtained by EPA. The retroactivity is inherent in the authority granted by Section 104 to disclose information to authorized representatives and pursuant to a proceeding. Moreover, the public interest in efficient operation of the Agency weighs in favor of such a result, while the restrictions on further use and disclosure of the information discussed above ensure that there is no adverse effect on persons who have submitted confidential information to EPA.

D. Disclosure to Potentially Responsible Parties

CERCLA gives the United States authority to respond directly to releases or threats of releases of hazardous substances into the environment or releases or threats of releases into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. CERCLA also authorizes EPA to recover response action costs from those responsible for releases or threats of releases of hazardous substances. Voluntary settlement of cost recovery cases with responsible parties under CERCLA enables the United States to recover the costs of response actions without engaging in lengthy and costly litigation.

Over the years, EPA has encountered a serious obstacle in attempting to release some of its contractor documents to responsible parties to encourage and expedite settlements. As discussed above, these documents may contain information that the contractors claim is entitled to confidential treatment.

Currently, before EPA releases to responsible parties information that may be entitled to confidential treatment, EPA seeks to obtain the consent of the submitter of the information pursuant to 40 CFR 2.209(f). EPA's experience is that it is extremely time-consuming and occasionally impossible to obtain the consent from its contractors to release their CBI to responsible parties in pre-litigation negotiations or under a protective order in litigation. It has taken as long as 18 months at one site for EPA to obtain the consent of all of its contractors to disclose information under a protective order and over a year at several other sites. The primary reason for this delay results from each contractor's desire to participate in preparing the scope of the protective order. With 35 or more contractors at a site, negotiating confidentiality agreements, stipulations, and protective orders has become a major impediment

in obtaining expeditious cost recovery settlements.

This regulation amends 40 CFR 2.310 to provide for limited releases of CBI to responsible parties under a contractual agreement in pre-litigation negotiations and under a stipulation and protective order during litigation. Generally, EPA would make a limited release to responsible parties of all CBI information maintained by EPA pursuant to 40 CFR 300.160 of the national contingency plan. This limited disclosure would be made without the prior consent of the contractors and applies to documents submitted to EPA since the inception of the Superfund program in 1980.

The basis for this regulation is found in Section 104 of CERCLA, and promulgation of the regulation will assist EPA in implementing Sections 107 and 122 of the Act. Section 107 authorizes the recovery of federal costs expended on site cleanups financed by the Superfund. If the Agency elects to pursue these costs through litigation, EPA (through the Department of Justice) brings lawsuits against responsible parties in order to recover costs it has expended in cleaning up a site. In such lawsuits, responsible parties frequently make discovery requests for information which may be entitled to confidential treatment. EPA may ultimately be required be court order to release cost documents containing such information in response to these discovery requests. CBI, although not privileged under the Federal Rules of Civil Procedure, is routinely granted protection from unlimited disclosure through the use of a protective order. Accordingly, EPA will seek the entry of a stipulation and protective order before releasing CBI to defendants. (See Appendix B for a Model Stipulation and Protective Order).

EPA requires the discretion to make a limited release of CBI to responsible parties in pre-litigation negotiations, in order to recover the costs of site cleanups more efficiently and expeditiously. Such a release clearly furthers the goal, envisioned by Congress in section 107, of a Superfund replenished through successful cost recoveries.

Section 122 encourages the Agency to facilitate settlements where possible. EPA believes that the limited release of cost information, including information potentially entitled to confidential treatment, would greatly facilitate settlements in cost recovery cases. The regulation clarifies EPA's authority to release CBI during pre-litigation negotiations under a contractual agreement, and during litigation through a stipulation and protective order. In doing so, the Agency will continue to afford protection to its contractors' information while at the same time facilitating settlements and minimizing litigation.

Congress recognized in section 104 that some trade secret information might need to be released "when relevant in any proceeding under this chapter." 42 U.S.C. 9604(e)(7)(A). Congress was willing to allow for the release of trade secret and confidential business information where the release would advance the purposes of the statute. Neither the statute nor the legislative history of CERCLA define "proceeding." A definition of "proceeding" can be found in the Administrative Procedure Act (APA), 5 U.S.C. 551.

The APA, 5 U.S.C. 551(12), defines "agency proceeding" as "an agency process as defined by paragraphs (5) [rulemaking], (7) [adjudication], and (9) [licensing] of this section." Paragraph (7) defines "adjudication" as an "agency process for the formulation of an order." "Order" is defined in paragraph (6) as "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing." In order words, an agency process which results in a final agency disposition may be considered adjudication, and thus a proceeding, under the APA.

Settlements under CERCLA section 107 or 122 fall into this definition of adjudication. The Agency negotiates a settlement with a PRP, and, after notice and comment, files the agreement in district court as a consent decree. CERCLA section 122. EPA thus reaches a disposition as to the appropriate liability of the PRP, and finalizes it through notice and comment and through entry as a consent decree, enforceable by the court against all parties.

The regulation published today amends the definition of "proceeding" in 40 CFR 2.310(a) to authorize EPA to release potential CBI to appropriate persons that EPA has determined to be PRPs at a particular site. This would not be a public release of information. The regulation allows a limited release of confidential business information to a discrete group with a need to review the information if EPA believes the release would encourage and expedite settlement. This limited disclosure would not subject this information to release under the Freedom of Information Act (FOIA), 5 U.S.C. 552. EPA would continue to deny all FOIA requests for information in cost documents that EPA determines to be CBI pursuant to exemption 4 of FOIA.

EPA believes that the use of contractual agreements and protective orders would maintain the confidential nature of the information and adequately protect it from improper release and misuse. Courts routinely afford this type of protection in other contexts and find it to be sufficiently protective. In addition, as noted above, because Superfund contractor information is submitted pursuant to CERCLA section 104, persons outside the Federal Government who improperly disclose the information are subject to criminal prosecution under section 104(e)(7)(B). (Federal employees are similarly subject to the Trade Secrets Act, 18 U.S.C. 1905.) Absent the applicability of a privilege or other litigation consideration to the disclosure, EPA believes that a limited release is necessary in order to fulfill its responsibility to expeditiously recover the costs of site cleanup. See section B., above, for a discussion of retroactivity.

The regulation does not address the release of information subject to the Privacy Act of 1974, 5 U.S.C. 552(a). EPA regulations at 40 CFR part 16 govern information that is subject to the Privacy Act and Part 16 would not be affected by the proposal.

Appendices to the preamble of today's rule set forth model documents, for illustrative purposes, that provide for the limited disclosure of certain business information that may be entitled to confidential treatment. They detail the protections EPA contemplates providing to contractors' CBI.

If a case has not been filed in federal district court, the "Agreement Regarding Confidentiality of Information" would apply (Appendix A). This document would also be appropriate for use in negotiations leading to administrative settlements with responsible parties. If an action has been filed in federal District Court, the government would seek entry by the court of the "Stipulation and Protective Order" (Appendix B). In this document defendants would stipulate that the documents released to them may contain information entitled to confidential treatment and agree to specified procedures to maintain confidentiality.

All documents released under the agreement or order would be used only in preparation for either settlement negotiations or trial. All persons to whom the information is subsequently disclosed would have to agree to be bound by the terms of the agreement or order by signing the "Confidentiality Agreement" annexed to the above

agreement and protective order. EPA and the submitter of the information would receive copies of all executed "Confidentiality Agreements" five days prior to the disclosure.

E. Statutory References to CERCLA Section 104

The Superfund Amendments and Reauthorization Act of 1986 (SARA) added several paragraphs to section 104 of CERCLA which pertain to information gathering. Subparagraph (e)(2) of section 104 was redesignated by SARA as subparagraph (e)(7). This rule amends the statutory references in 40 CFR 2.310 accordingly.

F. Correction of Citation to 40 CFR 2.310

40 CFR 2.211 requires contractors who are furnished business information by EPA to properly safeguard such information. Paragraph (d) of 2.211 erroneously cites § 2.310(i) as the provision authorizing disclosure to authorized representatives of information collected pursuant to CERCLA section 104; the correct reference is to § 2.310(h). This regulation corrects that reference.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

With respect to the changes affecting CERCLA CBI and CAA CBI, this rule is interpretive in nature, as opposed to legislative. As such it may be promulgated without prior opportunity for notice and comment, pursuant to the Administrative Procedures Act, 5 U.S.C. 553(b)(A), and may be made effective immediately, without a 30-day delay, pursuant to section 553(d)(2). With respect to information disclosed to contractors of other Federal agencies, I find that prior notice is unnecessary and that good cause exists for making the rule effective immediately, for the following reason: contractors of other Federal agencies will be required by regulation and contract to have the same protections against unauthorized use and disclosure of CBI as are EPA contractors, so that the rights of CBI submitters are unaffected.

Executive Order 12291

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

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

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

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

EPA has determined that this regulation does not meet the definition of a major rule under E.O. 12291 and has therefore not prepared a regulatory impact analysis.

Paperwork Reduction Act

Information collection requirements in a rule must be submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* No reporting or recordkeeping requirements are included as part of this regulation. Therefore, no Information Collection Request document has been prepared.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule authorizes the disclosure to authorized representatives of the United States of confidential information and disclosure pursuant to a proceeding. The persons receiving the confidential information are bound by agreement, court order, or criminal statute not to disclose the information except where authorized or to use the information for unauthorized purposes. These restrictions ensure that such disclosure does not affect the competitive position of the submitters of the information. Thus, there is no economic impact on small entities.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Government employees.

Dated: December 23, 1992.

William K. Reilly,

Administrator.

Therefore EPA amends 40 CFR part 2 as follows:

PART 2—[AMENDED]

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

Authority: 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 205, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); secs. 104 and 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604 and 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

PART 2—PUBLIC INFORMATION

§ 2.211 [Amended]

2. In section 2.211(d), remove "contractor or subcontractor with EPA" and substitute "contractor or subcontractor with the United States Government".

3. In § 2.211(d) revise "2.310(i)" to read "2.310(h)".

4. Section 2.301(b)(6) is removed.

5 Section 2.301 is amended by revising the first sentence of paragraph (e); and by revising paragraphs (h)(2)(i), (h)(2)(ii)(A) and (h)(2)(ii)(C) to read as follows:

§ 2.301 Special rules governing certain formation obtained under the Clean Air Act.

* * * * *

§ 2.208 [Amended]

(e) * * * Section 2.208 applied to information to which this section applies, except that information which is emission data, a standard or limitation, or is collected pursuant to section 211(b)(2)(A) of the Act is not eligible for confidential treat. * * *

* * * * *

(h) * * *

(2)(i) A person under contract or subcontract to the United States government to perform work in support of EPA in connection with the Act or regulations which implement the Act may be considered an authorized representative of the United States for purposes of this paragraph (h). Subject to the limitations in this paragraph (h)(2), information to which this section applies may be disclosed:

(A) To a contractor or subcontractor with EPA, if the EPA program office managing the contract first determines in writing that such disclosure is necessary in order that the contractor or subcontractor may carry out the work required by the contract or subcontract; or

(B) To a contractor or subcontractor with an agency other than EPA, if the EPA program office which provides the

information to that agency, contractor, or subcontractor first determines in writing, in consultation with the General Counsel, that such disclosure is necessary in order that the contractor or subcontractor may carry out the work required by the contract or subcontract.

(ii) * * *

(A) That the contractor or subcontractor and the contractor's or subcontractor's employees shall use the information only for the purpose of carrying out the work required by the contract or subcontract, shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office and shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request by the EPA program office, whenever the information is no longer required by the contractor or subcontractor for the performance of the work required under the contract or subcontract, or upon completion of the contract or subcontract (where the information was provided to the contractor or subcontractor by an agency other than EPA, the contractor may disclose or return the information to that agency);

(B) * * *

(C) That the contractor or subcontractor acknowledges and agrees that the contract or subcontract provisions concerning the use and disclosure of business information are included for the benefit of, and shall be enforceable by, both the United States government and any affected business having an interest in information concerning it supplied to the contractor or subcontractor by the United States government under the contract or subcontract.

* * * * *

6. Section 2.306 is amended by revising the second sentence of paragraph (j)(1); and by adding paragraphs (j)(1)(i) and (ii) to read as follows:

§ 2.306 Special rules governing certain information obtained under the Toxic Substances Control Act.

* * * * *

(j) * * * (1) * * * Subject to the limitations in this paragraph (j), information to which this section applies may be disclosed:

(i) To a contractor or subcontractor with EPA, if the EPA program office managing the contract first determines in writing that such disclosure is necessary for the satisfactory performance by the contractor or subcontractor of the contract or subcontract; or

(ii) To a contractor or subcontractor with an agency other than EPA, if the EPA program office which provides the information to that agency, contractor, or subcontractor first determines in writing, in consultation with the General Counsel, that such disclosure is necessary for the satisfactory performance by the contractor or subcontractor of the contract or subcontract.

* * * * *

7. Section 2.310 is amended by revising the section heading; by revising paragraphs (a)(1), (a)(6), (b), (g)(1), (g)(3), (g)(4), (h)(1), and (h)(4); and by adding paragraphs (g)(5) and (g)(6), to read as follows:

§ 2.310 Special rules governing certain information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) * * *

(1) *Act* means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, including amendments made by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601, et seq.

* * * * *

(6) *Proceeding* means any rulemaking or adjudication conducted by EPA under the Act or under regulations which implement the Act (including the issuance of administrative orders under section 106 of the Act and cost recovery pre-litigation settlement negotiations under sections 107 or 122 of the Act), any cost recovery litigation under section 107 of the Act, or any administrative determination made under section 104 of the Act, but not including determinations under this subpart.

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under section 104 of the Act, 42 U.S.C. 9604, by or from any person who stores, treats, or disposes of hazardous wastes; or where necessary to ascertain facts not available at the facility where such hazardous substances are located, by or from any person who generates, transports, or otherwise handles or has handled hazardous substances, or by or from any person who performs or supports removal or remedial actions pursuant to section 104(a) of the Act. Information will be considered to have been provided or obtained under section 104 of the Act if it was provided in response to a request from EPA or a representative of EPA made for any of the purposes stated in section 104, if it was provided pursuant to the terms of a contract, grant or other agreement to perform work pursuant to section 104, or if its submission could have been required under section 104, regardless of whether section 104 was cited as authority for any request for the information or whether the information was provided directly to EPA or through some third person.

* * * * *

(g)(1) Under section 104(e)(7)(A) of the Act (42 U.S.C. 9604(e)(7)(A)) any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made only in accordance with this paragraph (g).

* * * * *

(3) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, except with respect to litigation conducted by a Federal court, information to which this section applies which may be entitled to confidential treatment may be made available to the public, or to one or more parties of record to the proceeding, upon EPA's initiative, under this paragraph (g)(3). An EPA office proposing disclosure of information under this paragraph (g)(3) shall so notify the presiding officer in writing. Upon receipt of such a notification, the presiding officer shall notify each affected business that disclosure under this paragraph (g)(3) has been proposed, and shall afford each such business a period for comment found by the presiding officer to be reasonable under the circumstances. Information may be disclosed under this paragraph (g)(3) only if, after consideration of any timely comments submitted by the business, the EPA office determines in writing that, for reasons directly associated with the conduct of the proceeding, the contemplated disclosure would serve the public interest, and the presiding officer determines in writing that the information is relevant to a matter in controversy in the proceeding. The presiding officer may condition disclosure of the information to a party of record on the making of such protective arrangements and commitments as he finds to be warranted. Disclosure to one or more parties of record, under protective arrangements or commitments, shall not, of itself, affect the eligibility of

information for confidential treatment under the other provisions of this subpart. Any affected business shall be given at least 5 days notice by the presiding officer prior to making the information available to the public or to one or more of the parties of record to the proceeding.

(4) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, except with respect to litigation conducted by a Federal court, information to which this section applies which may be entitled to confidential treatment may be made available to one or more parties of record to the proceeding, upon request of a party, under this paragraph (g)(4). A party of record seeking disclosure of information shall direct his request to the presiding officer. Upon receipt of such a request, the presiding officer shall notify each affected business that disclosure under this paragraph (g)(4) has been requested, and shall afford each such business a period for comment found by the presiding officer to be reasonable under the circumstances. Information may be disclosed to a party of record under this paragraph (g)(4) only if, after consideration of any timely comments submitted by the business, the presiding officer determines in writing that:

(i) The party of record has satisfactorily shown that with respect to a significant matter which is in controversy in the proceeding, the party's ability to participate effectively in the proceeding will be significantly impaired unless the information is disclosed to him; and

(ii) Any harm to an affected business that would result from the disclosure is likely to be outweighed by the benefit to the proceeding and the public interest that would result from the disclosure.

The presiding officer may condition disclosure of the information to a party of record on the making of such protective arrangements and commitments as he finds to be warranted. Disclosure to one or more parties of record, under protective arrangements or commitments, shall not, of itself, affect the eligibility of information for confidential treatment under the other provisions of this subpart. Any affected business shall be given at least 5 days notice by the presiding officer prior to making the information available to one or more of the parties of record to the proceeding.

(5) In connection with cost recovery pre-litigation settlement negotiations under sections 107 or 122 of the Act (42 U.S.C. 9607, 9622), any information to which this section applies that may be entitled to confidential treatment may be made available to potentially responsible parties pursuant to a contractual agreement to protect the information.

(6) In connection with any cost recovery proceeding under section 107 of the Act involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, any information to which this section applies that may be entitled to confidential treatment may be made available to one or more parties of record to the proceeding, upon EPA's initiative, under this paragraph (g)(6). Such disclosure must be made pursuant to a stipulation and protective order signed by all parties to whom disclosure is made and by the presiding officer.

(h) * * * (1) Under section 104(e)(7) of the Act (42 U.S.C. 9604(e)(7)), EPA possesses authority to disclose to any authorized representative of the Untied States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

* * * * *

(h)(4) At the time any information is furnished to a contractor, subcontractor, or state or local government under this paragraph (h), the EPA office furnishing the information to the contractor, subcontractor, or state or local government agency shall notify the contractor, subcontractor, or state or local government agency that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the contractor, subcontractor, or state or local government agency and its employees to penalties in section 104(e)(7)(B) of the Act (42 U.S.C. 9604(e)(7)(B)).

Note: The remainder of text will not appear in the Code of Federal Regulations.

Appendix A to Preamble—Agreement Regarding Confidentiality of Information and Annexes

These documents would provide for limited disclosure of certain business information pertaining to costs that may be entitled to confidential treatment pursuant to 40 CFR part 2 in the situation where the Department of Justice has not filed an action on behalf of EPA in a United States District Court. The documents would also apply in circumstances where EPA is negotiating with responsible parties outside of a litigation context using CERCLA section 122 administrative settlement authorities.

Agreement Regarding Confidentiality of Business Information

EPA and the potentially responsible party (PRP) hereby agree that settlement of the Government's claim concerning the _____ Superfund site will involve the production of documents which have been submitted to the United States Environmental Protection Agency (EPA) by various contractors (listed in Annex 1) (hereinafter "submitters") containing certain information which may be entitled to confidential treatment under 40 CFR part 2. Furthermore, the parties herein agree that the limitation on the disclosure of the documents subject to this Agreement is necessary in order to protect the interests of the submitters in the confidentiality of their business information.

The terms of the Agreement Regarding Confidentiality of Business Information (hereinafter "Agreement") are as follows:

1. EPA shall provide the document(s) containing information which may be entitled to confidential treatment to the PRP and such document(s) shall be handled in accordance with the terms of this Agreement.

2. As used in this Agreement, the term "confidential information" means trade secrets or commercial or financial information submitted by a person to EPA and which may be entitled to confidential treatment under 40 CFR part 2. This information has not been determined by EPA under 40 CFR part 2, subpart B not to be entitled to confidential treatment.

3. Any information to be produced by EPA pursuant to this Agreement shall be stamped conspicuously with the word "CONFIDENTIAL" by EPA on the top of each page of each document prior to production to the PRP. The transmittal of information designated as confidential shall be done by letter from EPA stating that the information designated as confidential is subject to this Agreement.

4. Information designated as confidential under this Agreement shall not be used or disclosed by the PRP or any other person subject to paragraph 7 below for any purpose other than the preparation for negotiation of a settlement.

5. The PRP and PRP's counsel who obtain information designated as confidential hereunder, and any nonparty subject to this Agreement, shall not disclose or permit disclosure of this information to any other person, including without limitation any officer, director, employee, agent, or representative of the PRP, the PRP's counsel, or any nonparty, except in the following circumstances:

a. Disclosure may be made to employees of the PRP or of the PRP's counsel who have responsibility for settlement negotiations involving the _____ Superfund site. Any employee to whom disclosure is made shall be advised of, and become subject to, the provisions of this Agreement prior to such disclosure by executing the Confidentiality Agreement (Annex 2) annexed hereto. Employees do not include persons, firms or corporations engaged by the PRP or the PRP's counsel on a contract basis, who shall be subject to the requirements of subparagraph (b) of this paragraph.

b. Disclosure may be made to consultants, witnesses, experts, or employees of experts

("Expert(s)") employed or otherwise engaged by the PRP or PRP's counsel to assist in the preparation for negotiations. Prior to disclosure to any Expert, the Expert must agree to be bound by the terms of this Agreement by executing the Confidentiality Agreement annexed hereto. A copy of each executed Confidentiality Agreement shall be furnished to EPA and submitter not less than five (5) business days prior to disclosure to the Expert of the business information.

6. The PRP, PRP's counsel and any other person subject to this Agreement who obtains information designated as confidential hereunder, shall take all necessary and appropriate measures to maintain the confidential nature of the information, shall share such information only with persons authorized to receive it pursuant to this Agreement, and shall retain the information in a secure manner. Except as provided in paragraph 5 above, no other person shall be permitted access to the information.

7. Any person who obtains access to information designated as confidential under this Agreement may make copies, duplicates, extracts, summaries, or descriptions of the information or any portion thereof *only* for the purpose of preparation for settlement negotiations for cost recovery at the_____ Superfund site. All copies, duplicates, extracts, etc. shall be subject to terms of this Agreement to the same extent and manner as original documents.

8. Any unauthorized disclosure of information designated as confidential under this Agreement shall not result in a waiver of any submitter's claim of confidentiality.

9. Within 60 days after termination of negotiations, or as determined by EPA, any person who obtained information designated as confidential under this Agreement shall assemble and return such information to EPA, including all copies, extracts, summaries, or descriptions of the information or portions thereof. Such return shall be certified in writing by the person who obtained the information from EPA. All such information covered by this Agreement which constitutes the work product of counsel or the PRP shall be destroyed. However, if before the expiration of the 60 days the United States has filed in Federal court a cost recovery action for the _____ Superfund site, naming the PRP as a party, the PRP may retain the information. Such retention shall be governed by the provisions of this Agreement until entry of a protective order governing the information.

Dated: _____

_____

For the PRP

Dated: _____

_____

For EPA

Annex 1—List of Contractors

Annex 2—Business Information Confidentiality Agreement

The undersigned is currently working at _____ __which is located at _____. During the past year the undersigned has been employed or other-wise engaged as a consultant or contractor by the following companies located at the corresponding address:

(1) _____

(2) _____

The undersigned hereby acknowledges that he/she has read the foregoing Agreement Regarding Confidentiality of Business Information ("Agreement") executed by the attorneys for the parties involved in settlement of the Government's claim concerning the _____ Superfund site, understands the terms thereof, and agrees to be bound by such terms. The undersigned understands that disclosure of information which has been designated as confidential by the submitter of that information may cause substantial harm to the affected business' competitive position. Accordingly, among other responsibilities, the undersigned shall only share such information with persons specifically authorized to receive the information pursuant to the Agreement, shall retain the information in a secure manner, and shall use such information only for the purposes authorized by the Agreement. The undersigned understands that the pledge of confidentiality under this Confidentiality Agreement continues after any lawsuit associated with the settlement negotiations is over. Furthermore, the undersigned understands that a breach of the Agreement may subject him/her to civil claims for damages and to criminal prosecution under 42 U.S.C. 9604(e)(7)(B).

Dated: _____

Signed: _____

Appendix B to Preamble—Stipulation and Protective Order and Annexes

These documents would provide for limited disclosure of certain business information pertaining to costs that may be entitled to confidential treatment pursuant to 40 CFR part 2 after the Department of Justice has filed an action on behalf of EPA and the matter is subject to the jurisdiction of a United States District Court.

In The United States District Court

For the _____ District of _____.

United States of America, Plaintiff, v.

_____

Defendant. Civil Action No. _____.

Stipulation and Protective Order

Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (EPA), and Defendant *(name)* have hereby stipulated that discovery in this case will involve the production of documents which have been submitted to EPA by various contractors (listed in Annex 1) (hereinafter "submitter(s)") containing information which may be entitled to confidential treatment. In view of this stipulation, the Court finds that good cause exists for issuance of an order requiring limited disclosure of such information. Upon consideration of the joint motion for such an order filed by the parties hereto and pursuant to Rule 26(c), Federal Rules of Civil Procedure, *It is Hereby Ordered:*

1. Plaintiff shall submit the document(s) containing information which may be entitled to confidential treatment to the Defendant and such document(s) shall be handled in accordance with the terms of this Stipulation and Protective Order ("Protective Order")

2. As used in this Protective Order, the term "confidential information" means trade secrets or commercial or financial information submitted by a person to Plaintiff and which may be entitled to confidential treatment under 40 CFR part 2. This information has not been determined by Plaintiff under 40 CFR part 2, subpart B not to be entitled to confidential treatment.

3. Any information to be produced by Plaintiff pursuant to this Protective Order shall be stamped conspicuously with the word "CONFIDENTIAL" by the Plaintiff on the top of each page of each document prior to production to the Defendant. The transmittal of information designated as confidential shall be done by letter from the Plaintiff stating that the information designated as confidential is subject to this Protective Order.

4. Information designated as confidential under this Protective Order shall not be used or disclosed by the Defendant or any other person subject to Paragraph 7 below for any purpose other than the preparation for, and trial of, this action and any appeal therein.

5. The Defendant and Defendant's counsel who obtain information designated as confidential hereunder, and any nonparty subject to this Protective Order, shall not disclose or permit disclosure of this information to any other person, including without limitation any officer, director, employee, agent, or representative of Defendant, Defendant's counsel, or any nonparty, except in the following circumstances:

a. Disclosure may be made to employees of Defendant or of Defendant's counsel who have responsibility for the preparation and trial of this action or any appeal therein. Any employee to whom disclosure is made shall be advised of, and become subject to, the provisions of this Protective Order prior to such disclosure by executing the Confidentiality Agreement annexed hereto. Employees do not include persons, firms or corporations engaged by Defendant or Defendant's counsel on a contract basis, who shall be subject to the requirements of subparagraph (b) of this Paragraph.

b. Disclosure may be made to consultants, witnesses, experts, or employees of experts ("Expert(s)") employed or otherwise engaged by any party or counsel to any party to assist in the preparation and trial of this litigation. Prior to disclosure to any Expert, the Expert must agree to be bound by the terms of this Protective Order by executing the Confidentiality Agreement annexed hereto. A copy of each executed Confidentiality Agreement shall be furnished to the Plaintiff and submitter not less than five (5) business days prior to disclosure to the Expert.

6. Defendant, Defendant's counsel, and any other person subject to this Protective Order who obtains information designated as confidential hereunder, shall take all necessary and appropriate measures to maintain the confidentiality of the information, shall share such information only with persons authorized to receive it

pursuant to this Protective Order, and shall retain the information in a secure manner. Except as provided in Paragraph 5 above, no other person shall be permitted access to the information.

7. Any person who obtains access to information designated as confidential under this Protective Order may make copies, duplicates, extracts, summaries, or descriptions of the information or any portion thereof *only* for the purpose of preparation for litigation in this matter. All copies, duplicates, extracts, etc. shall be subject to the terms of this Protective Order to the same extent and manner as original documents.

8. Any information designated as confidential under this Protective Order shall be filed with the Court in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption of this litigation, an indication of the nature of the contents of such sealed envelope or container, the word "CONFIDENTIAL", and a statement substantially in the following form:

"This envelope, containing documents which are filed in this case by _____ ("the producing party") is not to be opened and the contents are not to be displayed or revealed except by order of the Court or consent of the producing party."

In addition, if such documents have been sealed and filed with the Court, the submitter shall be informed of this by the filing party at the time of filing.

9. Any unauthorized disclosure of information designated as confidential under this Protective Order shall not result in a waiver of any submitter's claim of confidentiality.

10. If Plaintiff desires to add contractors to the list in Annex 1, Plaintiff may file written notice with the Court and the Defendant of the identities of such contractors. If the Defendant does not object within three days of receipt of such notice, the contractors will be added to Annex 1.

11. Within 60 days after termination of this action by judgment, settlement or otherwise, or as may be determined by the court or EPA:

a. Any person who obtained information designated as confidential hereunder shall assemble and return such information to Plaintiff, including all copies, duplicates, extracts, summaries, or descriptions of the information or portions thereof. Such return shall be certified in writing by the person who obtained the information from EPA. All such information covered by this Protective Order which constitutes the work product of counsel for the Defendant shall be destroyed; and,

b. The Clerk of the Court shall maintain under seal all papers filed under seal until the Court orders otherwise.

Dated: _____

_____

For: Defendant(s)

Dated: _____

_____

For: United States of America

So Ordered this _____ day of _____, 199_____.:

_____

United States District Court Judge

_____ District of _____.

Annex 1—List of Contractors

Annex 2—Stipulation and Protective Order Confidentiality Agreement

The undersigned currently working at _____ which is located at _____. During the past year the undersigned has been employed or otherwise engaged as a consultant or contractor by the following company located at the following address:

The undersigned hereby acknowledges that he/she has read the foregoing Stipulation and Protective Order ("Protective Order") executed by the attorneys of record for the parties in the action presently pending in the U.S. District Court for the District of _____, entitled *United States* v. *(name)*, understands the terms thereof, and agrees, upon threat of penalty of contempt, to be bound by such terms. The undersigned understands that disclosure of information which has been designated as confidential by the submitter of that information may cause substantial harm to the affected business' competitive position. Accordingly, among other responsibilities, the undersigned shall only share such information with persons specifically authorized to receive the information pursuant to the Protective Order, shall retain the information in a secure manner, and shall use such information only for the purposes authorized by the Protective Order. The undersigned understands that the pledge of confidentiality under this Agreement continues after the lawsuit is over. Furthermore, the undersigned understands that a breach of the Protective Order may subject him/her to civil claims for damages and to criminal prosecution under 42 U.S.C. 9604(e)(7)(B).

Dated: _____

Signed:. _____

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