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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

RIN 0581–AA76

[No. LS–92–007]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will adjust representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (ACT) of 1985, to reflect changes in cattle inventories and cattle and beef imports which have occurred since the Board was reapportioned in 1990. Such adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decline in Board membership from 111 to 107, effective with the Secretary's 1993 appointments. Georgia, Missouri, South Dakota, and Texas each will lose one Board member while Kentucky will gain one member. Another Board position will be lost in the current mid-Atlantic unit. Since this unit does not have sufficient cattle inventory to qualify for a position on the Board, the unit will be divided, and Maryland and the District of Columbia will be combined with West Virginia to form a new mid-Atlantic unit. The States of Delaware, New Jersey, Connecticut, and Rhode Island will join with Massachusetts, Vermont, New Hampshire, and Maine to form a new Northeast unit.

EFFECTIVE DATE: This rule will become effective on April 8, 1993.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2624–S; P.O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, at 202/720–1115.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order No. 12291 and Departmental Regulations 1512–1 and has been designated as a "nonmajor" rule under the criteria contained therein.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings which must be exhausted prior to any judicial challenge to the provisions of this rule.

This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, et seq.). The Administrator of the Agricultural Marketing Service has determined that this final action will not have a significant impact on a substantial number of small entities as defined by the RFA since it only adjusts representation on the Board to reflect changes in domestic cattle inventory and imports.

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901, et seq.) and the Order issued thereunder (7 CFR 1260.101, et seq.). Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that, at least every 3 years, and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, reapportion units and/or modify the number of Board members from units in order to best reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States which do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit which has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit with the number of Board members based upon a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment in 1990, utilizing a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members.

The current Board representation by States or units has been based on an average of the January 1, 1987, 1988, and 1989 inventory of cattle in the various States as reported by the National Agricultural Statistics Service of the USDA. Importer representation has been based on a combined total average of the 1986, 1987, and 1988 live cattle imports as published by the Foreign Agricultural Service of USDA and the average of the 1986, 1987, and 1988 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its June 26–29, 1992 meeting. In considering reapportionment, the

Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1989, to January 1, 1992. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 1990, 1991, and 1992 USDA cattle inventory numbers would best reflect a representative number of cattle in each State or unit since the 1990 reapportionment.

The Board reviewed the March 1992 Foreign Agricultural Service circular, "U.S. Trade and Prospects, Dairy, Livestock, and Poultry," to determine proper importer representation. The Board recommended the use of a combined total of the average of the 1989, 1990, and 1991 cattle import data and the average of the 1989, 1990, and 1991 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its June 26–29, 1992, meeting to be consistent with the procedures used for domestic representation.

One October 19, 1992, the Agricultural Marketing Service (AMS) published in the **Federal Register** (57 FR 47576) a proposed rule providing for the adjustment in Board membership based on data reviewed by the Board. The proposed rule was published with a request for comments to be submitted to the Department by November 18, 1992.

The Department of Agriculture received nine written comments concerning the proposed rule for Board reapportionment. The commenters included industry organizations, individuals, and the Board. The Board comment registered support for the reapportionment plan as published.

Eight comments were received from organizations and individuals in two States which would lose representation under the proposal. Each of these commenters offered suggestions designed to retain the current representation for their particular State. Some commenters indicated that drought during 1989 and 1990 impacted the number of cattle in their State and suggested that if the USDA January 1 inventory number for 1993 were incorporated, the results would not only be more current but more representative of the cattle inventory in the State. The recommendation called for the use of 1991, 1992, and 1993 data rather than 1990, 1991, and 1992 data as specified in the proposed rule.

Commenters from another State pointed out that USDA's estimated number of cattle in their State was subject to substantial statistical error. Commenters further indicated that the number of cattle required to retain the current Board membership in that State was within the standard error encompassed in the estimating procedures.

Another commenter indicated that the cattle inventory data published by an industry organization was high enough to permit the retention of the current Board representation. Commenters also indicated that livestock analysts' estimates of future inventory levels were large enough to merit retention of current Board representation. In summary, it was suggested that due to the various factors enumerated above, it would be logical to permit this State to retain its current Board membership because the USDA 3-year average of cattle inventories in the State was only slightly below the level required by the Order for that number of members.

The Act and Order specify that a cattle inventory of 500,000 head is required for initial Board representation with an additional member authorized for each additional million head of cattle within the State or unit.

The USDA numbers are derived through statistical sampling procedures and are widely used and accepted. The numbers are objectively derived and are fair and equitable between States with valid statistical sampling procedures used across all States. Further the USDA numbers have served as the basis for the original Board representation and for the 1990 reapportionment of the Board. In addition, utilizing the 3-year average of inventory numbers provides an improved measure of equity versus a single year inventory and tends to mitigate the impact of drought and other year-to-year fluctuations in the cattle inventory numbers.

The Order provides for the Board to review Board representation every 2 to 3 years. The Board has determined that it will review representation every 3 years. Following the Board's inception in 1986, the first review was in 1989. At that time, in the interest of equity, the 3-year average of USDA January 1 numbers was established by the Board as the basis for future representation. The January 1, 1987, 1988, and 1989 numbers—the latest available at the time of the Board's action in July 1989—were used. Similarly, the Board's review in June of 1992 reaffirmed the Board's desire to utilize the most recent 3-year average of January 1 cattle inventory numbers available at the time of Board action. Thus, the January 1, 1990, 1991, and 1992 USDA inventory data are the basis for the current reapportionment.

The Board's decisions form the basis for the reapportionment. To incorporate 1993 data in the analysis at this point would potentially result in a variety of new reapportionment considerations without the opportunity for Board input or time to provide opportunity for public comment prior to initiation of the 1993 nomination and appointment process. For example, this would deny the Board the opportunity to act on situations such as the need to realign the mid-Atlantic region which the Board considered in mid-1992.

Therefore, it has been determined that the suggestions to retain current Board membership in the two States cannot be adopted for the reasons outlined above.

Thus, the reapportionment of the Board in this final rule is unchanged from the proposed rule. It reduces the number of representatives on the Board from 111 to 107. Four States—Georgia, Missouri, South Dakota, and Texas—lose one member each; and one State, Kentucky, gains one member. The importer unit would not be affected. However, the current mid-Atlantic unit loses its member. Since the unit does not have sufficient cattle inventory to qualify for a position on the Board, this unit will be divided with Maryland and the District of Columbia joining with West Virginia to form a new mid-Atlantic unit while the States of Delaware, New Jersey, Connecticut, and Rhode Island join with Massachusetts, Vermont, New Hampshire, and Maine to form a new Northeast unit. The States and units affected by the reapportionment plan and the current and revised member representation per unit are as follows. (Units are listed with the revised State makeup. Current mid-Atlantic States are denoted by (*) and current Northeast States are denoted by (#). West Virginia is the only State not currently in a unit which will become part of a unit.)

States	Current representation	Revised representation
1. Georgia	2	1
2. Kentucky	2	3
3. Missouri	5	4
4. South Dakota	4	3
5. Texas	14	13
6. Mid-Atlantic	1	1
*Maryland		
*District of Columbia		
West Virginia	1	
7. Northeast	1	1

States	Current representation	Revised representation
*Delaware		
*Connecticut		
#Maine		
#Massachusetts		
#New Hampshire		
*New Jersey		
*Rhode Island		
#Vermont		

New Board representation for the entire 41 units is shown in the revised §1260.141(a) contained herein. The new Board reapportionment will become effective with 1993 nominations and appointments.

This action makes final the provisions of the proposed rule published at 57 FR 47576 on October 19, 1992.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 et seq.

2. Section 1260.141 is amended by revising paragraph (a) to read as follows:

§1260.141 Membership of Board.

(a) For Board nominations and appointments beginning with those in 1993, the United States shall be divided into 40 geographical units and one unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,783	2
2. Arizona	857	1
3. Arkansas	1,700	2
4. California	4,633	5
5. Colorado	2,867	3
6. Florida	1,922	2
7. Georgia	1,430	1
8. Idaho	1,720	2
9. Illinois	1,977	2
10. Indiana	1,252	1
11. Iowa	4,550	5
12. Kansas	5,683	6
13. Kentucky	2,500	3
14. Louisiana	1,023	1
15. Michigan	1,208	1
16. Minnesota	2,720	3
17. Mississippi	1,337	1
18. Missouri	4,450	4
19. Montana	2,383	2
20. Nebraska	5,867	6
21. Nevada	560	1
22. New Mexico	1,367	1
23. New York	1,550	2
24. North Carolina	950	1
25. North Dakota	1,750	2
26. Ohio	1,610	2
27. Oklahoma	5,433	5
28. Oregon	1,433	1
29. Pennsylvania	1,850	2
30. South Carolina	590	1
31. South Dakota	3,443	3
32. Tennessee	2,280	2
33. Texas	13,367	13
34. Utah	797	1
35. Virginia	1,727	2
36. Wisconsin	4,113	4
37. Wyoming	1,243	1
38. Northwest		2
Washington	1,373	
Alaska	8.2	
Hawaii	206	
Total	1,588	
39. Northeast		1
Delaware	30	
Connecticut	74	
Maine	116	
Massachusetts	70	
New Hampshire	46	
New Jersey	70	
Rhode Island	7	
Vermont	284	
Total	697	
40. Mid-Atlantic		1
Maryland	317	
District of Columbia	0	
West Virginia	518	
Total	835	
41. Importer	6,389	6

[1] 1990, 1991, and 1992 average.

Dated: March 3, 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–5367 Filed 3–8–93; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150—AD64

Export and Import of Nuclear Equipment and Material; Clarifying Amendments

AGENCY: Nuclear Regulatory Commission

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the export and import of nuclear equipment and material. The revisions clarify the Commission's licensing requirements governing the export and import of nuclear equipment and material. The final rule makes NRC's regulations consistent with the physical security guidelines in IAEA INFCIRC/225, and conforms NRC's regulations for export and import to the Solar, Wind, Water, and Geothermal Power Production Incentives Act of 1990, and U. S. Government foreign relations commitments and changing circumstances.

EFFECTIVE DATE: March 9, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1993.

FOR FURTHER INFORMATION CONTACT: Elaine O. Hemby, Office of International Programs, Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2341, or Joanna M. Becker, Office of the General Counsel, Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1740.

SUPPLEMENTARY INFORMATION:

Introduction

The NRC is amending its regulations for the export and import of nuclear equipment and material in 10 CFR part 110. Some sections are restructured and simplified to clarify the NRC's export and import licensing regulations. Some sections are amended to bring them into conformance with U.S. Government foreign relations commitments and changing circumstances, to make necessary editorial changes, and to provide additional information to aid exporters and importers. The following summary of the changes, presented in the order in which they appear, include the reasons for the changes.

Section 110.1 is clarified and expanded to provide the exporter with a better understanding of the scope of part 110 and the jurisdictional lines between the NRC and the Department of Commerce. To correct inconsistent references, the first sentence in §110.1(a) is amended by adding the words "and §110.9" after "§110.8", as the sections that set out the nuclear equipment and material whose export is regulated by NRC, and by changing the reference "§110.9" to "§110.9a", as the section that sets out the regulations for the import of nuclear equipment and

material. Paragraph (b)(1) is amended by changing "65" to "64" to correct an erroneous reference to the Atomic Energy Act.

In § 110.1, paragraph (b)(3) is redesignated as paragraph (b)(4) and amended by adding the sentence "A uranium enrichment facility is not a production facility." In § 110.2, the definition of "production facility" is revised by adding ", other than a uranium enrichment facility," after the words "the separation of isotopes". In § 110.9a, which covers nuclear equipment and material under NRC import licensing authority, paragraph (e), "Uranium enrichment facilities", is removed. Thus, the import of a uranium enrichment facility into the United States will not require an NRC license. This conforms NRC's import licensing regulations under part 110 to the "Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990", Public Law 101–575, signed by the President on November 15, 1990. Section 5 of that law amends the Atomic Energy Act to remove a uranium enrichment facility from the definition of a "production facility" for the purposes of chapter 10, "Atomic Energy Licenses," and chapter 16, "Judicial Review and Administrative Procedure" of the Act, except with respect to the export of a uranium enrichment facility.

Footnote 1 in paragraph 110.1(b)(2) is removed and incorporated in the text as paragraph (b)(3).

In § 110.2, definitions of "nuclear referral list" and "individual shipment" are added. Also, the definition of "export" is revised to clarify its meaning. After consultation with the Executive Branch, the NRC concluded that it would be appropriate to modify the definition of a utilization facility by changing the term "control rods" to "complete reactor control rod system" as one of the major components constituting a utilization facility. The purpose of the change is to reflect more clearly the requirements of the Atomic Energy Act. Exports of individual control rods are more appropriately treated as exports of nuclear components under section 109b of the Atomic Energy Act of 1954, as amended, rather than exports of utilization facilities. Editorial changes also are made in the "utilization facility" definition. The reference to the Topaz II reactor system in the definition of a utilization facility is deleted because it is no longer necessary, as is the reference to the definition of utilization facility in § 110.5.

Section 110.4 is clarified and updated to reflect organizational changes within the NRC and current addressees for NRC contacts. Section 110.6 is updated to reflect the current addressee for the Department of Energy contact. Section 110.7, covering information collection requirements, is amended to include § 110.20 because the section contains an information collection requirement.

The list of nuclear equipment under the NRC export licensing authority in § 110.8 is restructured for clarity. For technical clarity, plants for the separation of the isotopes of lithium and lithium processing equipment are removed from paragraph (b), which covers plants for the separation of the isotopes of source material or special nuclear material, because the two technologies are different. A new paragraph is added to cover plants for the separation of the isotopes of lithium and lithium processing equipment. A new paragraph also is added to alert an exporter that some nuclear-related commodities are under the licensing authority of the Department of Commerce.

Subpart C, regarding general licenses, and subpart D, regarding specific licenses, have been combined for clarification and to emphasize the distinction between general and specific licenses. The introductory titles of subparts C and D are incorporated. A new § 110.19 is added to explain the distinction between general and specific licenses. Section 110.20 is clarified and restructured, and the section headings for §§ 110.21–110.27, covering general licenses, are revised for clarification. Section 110.25, concerning the export of graphite under general license, is amended to alert the exporter that some exports of graphite are under the licensing authority of the Department of Commerce. Section 110.26(a) is amended to permit a person to export under general license nuclear reactor components in semifabricated form to any country listed in § 110.26(a) for the purpose of undergoing final fabrication or repair for subsequent return to the United States for use in United States reactors. For simplification, footnote 2 in § 110.26(a) is removed and the countries listed in footnote 2 are added to the countries listed in § 110.26(a). Portugal, which is now a EURATOM member, is added to the list of countries in § 110.26(a). Section 110.27(c) is amended to direct the exporter to the definition of the term "formula quantities of strategic special nuclear material."

The list of embargoed destinations in § 110.28 is amended to indicate that Kampuchea is now known as Cambodia and to add Iran, Iraq and Libya. Iran, Iraq and Libya are removed from the restricted destination list in § 110.29. Albania, Bahrain, Kuwait, Malawi, Mozambique, Qatar, Saudi Arabia, South Africa, Tanzania, Zambia, and Zimbabwe are deleted from the list of restricted destinations in § 110.29 because these countries are adherents to the Non-Proliferation Treaty (NPT). A new footnote is added to § 110.29 to indicate that Argentina and Brazil will be removed from the restricted destination list following implementation of the Argentina/Brazil/IAEA full scope safeguards agreement.

Because subparts C and D are combined under a revised subpart C, the heading of subpart D is removed, and the headings of subparts E, F, G, H, I, J, K, and L are redesignated.

In § 110.30, the section heading is revised for clarity and a new paragraph is added to indicate that a fee is assessed under 10 CFR part 170 for filing an application with the NRC for a specific license for export or import. The fee was added to 10 CFR part 170 in an earlier rulemaking (56 FR 31472; July 10, 1991). The July 10, 1991 final rule implements the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), which was signed into law on November 5, 1990. The Act mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year 1991 (FY91) and the next four years (FY1992–1995) by assessing fees for licensing services requested by applicants and through annual fees on licenses. There is no annual fee for a general or specific export or import license. In § 110.31, the section heading is changed for clarification.

The NRC has reviewed its processing of nuclear export license applications under the Atomic Energy Act of 1954, as amended, and has determined that certain classes of export license applications do not raise issues which require review by the Commissioners. Therefore, paragraphs 110.40(b)(3) and (b)(4) are amended to delegate additional authority to the NRC staff to act upon certain classes of applications without prior consultation with the Commissioners. Under the amended paragraphs, the Commissioners will no longer review a license application for an export to Canada involving heavy water or for the export to EURATOM or Japan of source material or low-enriched uranium for enrichment up to 5 percent in the isotope uranium-235. The Executive Branch has also determined that these classes of export license applications do not raise issues which require review by the Executive Branch. Therefore, paragraphs 110.41(a)(3) and (a)(5) are amended to indicate that the NRC staff will act upon these classes of applications without prior consultation

with the Executive Branch. Section 110.40(a), which states that the Commission will start the review of a license application immediately after receipt, is amended to add a phrase "pursuant to the regulations in this part" indicating that the required license application fee must be received before review of the application begins.

In § 110.42(a), footnote 3 is redesignated as footnote 2 and is revised to clarify those items under the licensing jurisdiction of the NRC, including the reference to "control rods" which is changed to "complete reactor control rod system", as one of the major components constituting a utilization facility.

Section 110.43 concerning physical security standards is amended for clarification and simplification and to incorporate the update and recommendations contained in the IAEA document INFCIRC/225/Rev.2, December 1989.

In § 110.50, the name of the NRC contact referenced in paragraph (b)(3) is updated to reflect organizational changes.

In § 110.70, the NRC contact and address, concerning obtaining periodic lists of applications received, are updated in paragraph (c).

In Appendix A, paragraph (3) is amended by changing the words "reactor control rods" to "complete reactor control rod system" and by adding the phrase ", including the neutron absorbing part and the support or suspension structures therefor," after the words "reaction rate in a nuclear reactor". This is being done to be consistent with the revised definition of "utilization facility".

Corrections are made to Appendix B, which covers gas centrifuge enrichment plant components under NRC's export licensing authority, and Appendix D, which covers reprocessing plant components under NRC's export licensing authority.

Appendix E is redesignated as appendix G, and a new appendix E is added for clarification of the coverage of specially designed or prepared equipment for use in a plant for the production of heavy water, deuterium, and deuterium compounds, which are subject to NRC's licensing regulations under 10 CFR 110.8. This action will conform NRC's licensing regulations to the export control guidelines of the international Nuclear Exporters Group (the Zangger Committee), in which the United States participates. The list in appendix E is intended to clarify administration of export controls over those items.

A new appendix F is added that lists the byproduct materials under the licensing jurisdiction of the NRC. This is being done to assist exporters, importers, and customs officials in determining whether a particular isotope is under the licensing authority of the NRC.

Because this rulemaking involves a foreign affairs function of the United States, the prior notice and comment provisions of the Administrative Procedure Act do not apply, pursuant to 5 U.S.C. 553(a)(1), and good cause exists to make the amendments effective upon publication in the Federal Register, pursuant to 5 U.S.C. 553(d) of that Act.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0036 and 3150–0027.

Regulatory Analysis

The Commission has considered alternatives to as well as the costs and benefits of the final rule. There is no alternative to amending the regulations for the export and import of nuclear equipment and materials. The final rule would not result in any increase or cost to the public and is intended to clarify the current regulations to assist exporters, importers, and customs officials and to encourage the expanded use of general licences. The foregoing constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The effect of the final rule will be to clarify Part 110 to encourage expanded use of general licenses and to provide greater understanding of other provisions. This action will assist licensees and applicants in understanding and complying with the licensing procedures in Part 110 without increasing the economic impact on licensees and applicants.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because 10 CFR Part 110 applies only to export and import of nuclear facilities, materials, and equipment. Therefore, a backfit analysis is not required for this final rule.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalty, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC has adopted the following amendments to 10 CFR Part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 is revised to read:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475, (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553.

2. In § 110.1, paragraphs (a), (b)(1), (2), and (3) are revised and paragraph (b)(4) is added to read as follows:

§ 110.1 Purpose and scope.

(a) The regulations in this part prescribe licensing, enforcement, and rulemaking procedures and criteria,

under the Atomic Energy Act, for the export of nuclear equipment and material, as set out in § 110.8 and § 110.9, and the import of nuclear equipment and material, as set out in § 110.9a. This part also gives notice to all persons who knowingly provide to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 110.7b.

(b) * * *

(1) The Departments of Defense and Energy for activities authorized by sections 54, 64, 82, and 91 of the Atomic Energy Act, except when the Department of Energy seeks an export license under section 111 of the Atomic Energy Act;

(2) Persons who export uranium depleted in the isotope 235 and incorporated in defense articles or commodities solely to take advantage of high density or pyrophoric characteristics. These persons are subject to the controls of the Department of State and the Department of Commerce under the Arms Export Control Act and the Export Administration Act, as authorized by section 110 of the International Security and Development Cooperation Act of 1980;

(3) Persons who export nuclear referral list commodities subject to the licensing authority of the Department of Commerce pursuant to 15 CFR part 799, such as bulk zirconium, plants for the conversion of uranium hexafluoride, rotor and bellows equipment, maraging steel, nuclear reactor related equipment, including process control systems and simulators; and

(4) Persons who import deuterium, nuclear grade graphite, or nuclear equipment other than production or utilization facilities. A uranium enrichment facility is not a production facility.

3. In § 110.2, definitions for *Individual shipment* and *Nuclear referral list* are added, and the definitions for *Export, Production facility,* and *Utilization facility* are revised to read as follows:

§ 110.2 Definitions.

* * * * *

Export means to physically transfer nuclear equipment or material to a person or an international organization in a foreign country, except DOE distributions as authorized in Section 111 of the Atomic Energy Act or Section 110 of the International Security and Development Cooperation Act of 1980.

* * * * *

Individual shipment means a shipment consisting of one lot of freight tendered to a carrier by one consignor at one place at one time for delivery to one consignee on one bill of lading. This lot may consist of:

(1) Only one item or

(2) A number of containers all listed on the same set of shipping documents. This one lot of freight or "distinct" shipment can be transported on the same carrier with other distinct shipments containing the same items as long as each shipment is covered by separate sets of shipping documents.

* * * * *

Nuclear Referral List (NRL) means the nuclear-related, dual-use commodities on the Commerce Control List that are subject to the nuclear non-proliferation export licensing controls of the Department of Commerce. They are contained in Supplement No. 1 to 15 CFR part 799 of the Department of Commerce's Export Administration Regulations and are designated by the symbol (NP) as the reason for control.

* * * * *

Production facility means any nuclear reactor or plant specially designed or used to produce special nuclear material through the irradiation of source material or special nuclear material, the chemical reprocessing of irradiated source or special nuclear material, or the separation of isotopes, other than a uranium enrichment facility.

* * * * *

Utilization facility means:

(1) Any nuclear reactor, other than one that is a production facility and

(2) Any of the following major components of a nuclear reactor:

(i) Reactor pressure vessel (designed to contain the core of a nuclear reactor);

(ii) Reactor primary coolant pump;

(iii) "On-line" reactor fuel charging and discharging machine; and

(iv) Complete reactor control rod system.

(3) A utilization facility does not include the steam turbine generator portion of a nuclear power plant.

4. Section 110.4 is revised to read as follows:

§ 110.4 Communications.

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part should be addressed to the Assistant Director for Exports, Security, and Safety Cooperation, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2344. Communications and reports may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, Maryland 20852 or at 2120 L Street NW. (Lower Level), Washington, DC 20037.

§ 110.5 [Amended]

5. In § 110.5, remove the words "and the definition of utilization facility in § 110.2 of this part".

§ 110.6 [Amended]

6. In § 110.6, paragraph (b), the phrase "Office of International Nuclear and Non-Proliferation Policy" is revised to read "Office of Arms Control and Nonproliferation Technology Support".

§ 110.7 [Amended]

7. In § 110.7 second sentence, add "110.20," between "§§ " and "110.26".

8. Section 110.8 is revised to read as follows:

§ 110.8 List of nuclear facilities and equipment under NRC export licensing authority.

(a) Nuclear reactors and specially designed or prepared equipment and components for nuclear reactors. (See appendix A to this part).

(b) Plants for the separation of the isotopes of uranium (source material or special nuclear material) including gas centrifuge plants, gaseous diffusion plants, jet nozzle plants, vortex plants, laser isotope separation plants, chemical separation plants, and specially designed or prepared assemblies and components for these plants. (See appendix B to this part for gas centrifuge equipment and appendix C to this part for gaseous diffusion equipment).

(c) Plants for the separation of the isotopes of lithium and specially designed or prepared assemblies and components for these plants.

(d) Plants for the reprocessing of irradiated nuclear reactor fuel elements and specially designed or prepared assemblies and components for these plants. (See appendix D to this part).

(e) Plants for the fabrication of nuclear reactor fuel elements and specially designed or prepared assemblies and components for these plants.

(f) Plants for the production, separation, or purification of heavy water, deuterium, and deuterium compounds and specially designed or prepared assemblies and components for these plants. (See appendix E to this part).

(g) Other nuclear-related commodities are under the export licensing authority of the Department of Commerce. (See 15 CFR part 799).

§ 110.9a [Amended]

9. In § 110.9a, remove paragraph (e) "Uranium enrichment facilities."

§ 110.10 [Amended]

10. In § 110.10 paragraph (b), the reference to Subpart "L" is revised to read Subpart "K of this part".

11. The heading of Subpart C is revised to read as follows:

Subpart C—Licenses

12. A new § 110.19 is added to subpart C to read as follows:

§ 110.19 Types of licenses.

Licenses for the export and import of nuclear equipment and material in this part consist of two types: General and Specific. A general license is effective without the filing of an application with the Commission or the issuance of licensing documents to a particular person. A specific license is issued to a named person upon application filed pursuant to the regulations in this part.

13. In § 110.20, the section heading and paragraphs (a), (b), and (e) are revised and a new paragraph (f) is added to read as follows:

§ 110.20 General license information.

(a) A person may use an NRC general license as the authority to export or import nuclear equipment or material if the equipment or material to be exported or imported is covered by the NRC general licenses described in §§ 110.21–110.29. If an export is not covered by these sections, a person must file an application with the Commission for a specific NRC license in accordance with §§ 110.30–110.31.

(b) In response to a petition or on its own initiative, the Commission may issue a general license for export or import if it determines that any exports or imports made under the general license will not be inimical to the common defense and security or constitute an unreasonable risk to the public health and safety and otherwise meet applicable statutory requirements. A general license is issued as a regulation after a rulemaking proceeding under subpart K of this part. Issuance of a general license is coordinated with the Executive Branch.

* * * * *

(e) A person who uses an NRC general license as the authority to export or import may cite on the shipping documents the section of this part which authorizes the described export or import under general license, as a means of expediting U.S. Customs Service's processing of the shipment.

(f) As specified in §§ 110.21 through 110.26, 110.28, and 110.29, only certain countries are eligible recipients of equipment or material under NRC general licenses to export. The Commission will closely monitor these countries and may at any time remove a country from a general license in response to significant adverse developments in the country involved. A key factor in this regard is the nonproliferation credentials of the importing country.

14. In § 110.21, the section heading is revised to read as follows:

§ 110.21 General license for the export of special nuclear material.

15. In § 110.22, the section heading is revised to read as follows:

§ 110.22 General license for the export of source material.

16. In § 110.23, the section heading is revised to read as follows:

§ 110.23 General license for the export of byproduct material.

17. In § 110.24, the section heading is revised to read as follows:

§ 110.24 General license for the export of deuterium.

18. In § 110.25, the section heading and paragraph (b) are revised to read as follows:

§ 110.25 General license for the export of nuclear grade graphite.

* * * * *

(b) Unless licensed by the Department of Commerce, a general license is issued to any person to export nuclear grade graphite in fabricated, nonnuclear-related commercial products to any country not listed in § 110.28, except that graphite electrodes weighing more than 1 kilogram per electrode may not be exported to any country listed in § 110.29 under this general license. (Fabricated products are products in final manufactured form except for detailed machining and other final steps necessary for the intended end use of the product.)

19. In § 110.26, the section heading and paragraph (a) are revised to read as follows:

§ 110.26 General license for the export of nuclear reactor components.

(a) A general license is issued to any person to export to the following countries any nuclear reactor component described in paragraphs (5) through (9) of appendix A to this part if—

(1) The component will be used in a light or heavy water-moderated power or research reactor in those countries, or

(2) The component is in semifabricated form and will be undergoing final fabrication or repair in those countries for subsequent return to the United States for use in a nuclear power or research reactor in the United States:

Belgium	Luxembourg
Canada	Netherlands
Denmark	Philippines
France	Portugal
Germany	South Korea
Greece	Spain
Indonesia	Sweden
Ireland	Switzerland
Italy	Taiwan
Japan	United Kingdom

* * * * *

20. In § 110.27, the section heading and paragraph (c) are revised to read as follows:

§ 110.27 General license for imports.

* * * * *

(c) A person importing formula quantities of strategic special nuclear material (as defined in § 73.2 of this chapter) under this general license shall provide advance notification of the imports as specified in § 73.27 and § 73.72 of this chapter.

21. Section 110.28 is revised to read as follows:

§ 110.28 Embargoed destinations.

Cambodia, Cuba, Iran, Iraq, Libya, North Korea, Vietnam.

22. Section 110.29 is revised to read as follows:

§ 110.29 Restricted destinations.

Afghanistan	India
Algeria	Israel
Andorra	Mauritania
Angola	Niger
Argentina [1]	Oman
Brazil [1]	Pakistan
Burma (Myanmar)	St. Kitts
Chile	Syria
Comoros	United Arab Emirates
Djibouti	Vanuatu
Guyana	Yemen Arab Republic

23. Section 110.30 to subpart D is redesignated as § 110.30 to subpart C and revised to read as follows:

§ 110.30 Application for a specific license.

(a) A person shall file an application for a specific license to export or import with the Assistant Director for Exports, Security, and Safety Cooperation, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The application may be delivered to the Commission's offices at 11555 Rockville Pike, Rockville, Maryland 20852 or at 2120 L Street, NW. (Lower Level), Washington, DC 20037.

[1] Argentina and Brazil will be removed from the list of restricted destinations following implementation of the Argentina/Brazil/IAEA full-scope safeguards agreement.

(b) An application for a specific license to export or import must be accompanied by the appropriate fee in accordance with the fee schedule in § 170.21 and § 170.31 of this chapter. A license application will not be processed unless the specified fee is received.

(c) A license application should be filed on NRC Form 7, except that an import license application and a production or utilization facility export license application should be filed by letter.

(d) Each person shall provide in the license application, as appropriate, the information specified in § 110.31. The Commission also may require the submission of additional information if necessary to complete its review.

(e) An application may cover multiple shipments and destinations.

(f) The applicant shall withdraw an application when it is no longer needed. The Commission's official files retain all documents related to a withdrawn application.

24. Section 110.31 to subpart D is redesignated as § 110.31 to subpart C and the section heading is revised to read as follows:

§ 110.31 Information Required in an Application for a Specific License.

Subpart D—[Removed]

25. Subpart D is removed.

Subparts E, F, G, H, I, J, K, and L—[Redesignated]

26. Subparts E, F, G, H, I, J, K, and L are redesignated as subparts D, E, F, G, H, I, J, and K respectively.

27. In § 110.40, paragraphs (a), (b)(3), and (b)(4) are revised to read as follows:

§ 110.40 Commission review.

(a) Immediately after receipt of a license application filed under the regulations in this part, the Commission will initiate its licensing review and, to the maximum extent feasible, will expeditiously process the application concurrently with review by the Executive Branch.

(b) * * *

(3) 1,000 kilograms or more of nuclear grade graphite or deuterium oxide (heavy water), other than exports of heavy water to Canada.

(4) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors, or the fabrication of nuclear fuel containing plutonium, except for exports of source material or low-enriched uranium to EURATOM or Japan for enrichment up to 5 percent in the isotope uranium-235, and those categories of exports which the Commission has approved in advance as constituting permitted incidental assistance.

* * * * *

28. In § 110.41, the introductory text of paragraph (a) and paragraphs (a)(3) and (a)(5) are revised to read as follows:

§ 110.41 Executive Branch review.

(a) An application for a license to export the following will be promptly forwarded to the Executive Branch for review:

* * * * *

(3) Nuclear grade graphite, more than 100 curies of tritium, and deuterium oxide (heavy water), other than exports of heavy water to Canada.

* * * * *

(5) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors, or the fabrication of nuclear fuel containing plutonium, except for exports of source material or low-enriched uranium to EURATOM and Japan for enrichment up to 5 percent in the isotope uranium-235, and those categories of exports approved in advance by the Executive Branch as constituting permitted incidental assistance.

* * * * *

29. In § 110.42, footnote 3 is redesignated as footnote 2 and the text of the footnote is revised to read as follows:

§ 110.42 Export licensing criteria.

* * * * *

[2] Exports of nuclear reactors, reactor pressure vessels, reactor primary coolant pumps, "on-line" reactor fuel charging and discharging machines, and complete reactor control rod systems, as specified in paragraphs (1) through (4) of appendix A to this part, are subject to the export licensing criteria in § 110.42(a). Exports of nuclear reactor components, as specified in paragraphs (5) through (9) of appendix A to this part, when exported separately from the items described in paragraphs (1) through (4) of appendix A, are subject to the export licensing criteria in § 110.42(b).

30. Section 110.43 is revised to read as follows:

§ 110.43 Physical security standards.

(a) Physical security measures in recipient countries must provide protection at least comparable to the recommendations in the current version of IAEA publication INFCIRC/225/Rev.2, December 1989, "The Physical Protection of Nuclear Material," and is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of INFCIRC/225/Rev.2 may be obtained from the Assistant Director for Exports, Security, and Safety Cooperation, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and are available for inspection at the NRC library, 7920 Norfolk Avenue, Bethesda, Maryland 20814. A copy is on file at the library of the Office of the Federal Register, 800 N. Capitol Street, NW., suite 700, Washington, DC.

(b) Commission determinations on the adequacy of physical security measures are based on—

(1) Receipt of written assurances from recipient countries that physical security measures providing protection at least comparable to the recommendations set forth in INFCIRC/225/Rev.2 will be maintained; and

(2) Information obtained through country visits, information exchanges, or other sources. Determinations are made on a country-wide basis and are subject to continuing review. Appendix G to this part describes the different categories of nuclear material to which physical security measures are applied.

§ 110.50 [Amended]

31. In § 110.50(b)(3), "Assistant Director for International Security" which appears in the first, second, and third sentences is revised to read "Assistant Director for Exports, Security, and Safety Cooperation".

§ 110.70 [Amended]

32. In § 110.70 paragraph (c), "Assistant Director for International Security, Office of Government and Public Affairs," is revised to read "the Public Document Room,".

Appendix A to Part 110 [Amended]

33. In appendix A to part 110, paragraph (3) is revised to read as follows:

Appendix A to Part 110—Illustrative List of Nuclear Reactor Equipment Under NRC Export Licensing Authority

* * * * *

(3) Complete reactor control rod system, i.e., rods specially designed or prepared for the control of the reaction rate in a nuclear reactor, including the neutron absorbing part and the support or suspension structures therefor;

* * * * *

Appendix B to Part 110 [Amended]

34. In the title of appendix B to part 110, the word "Illustrative" is added before the word "List". In section 1, in sentence four of paragraph 1.2(a), the number "1.6.1" is revised to read "1.6:1" and in sentence five, the phrase "or a remanence of 98.5 percent or more," is added after the phrase "0.15 Henry/meter (120,000 in CGS units) or more,". In section 2, paragraph (a)1, "100 Kg/m² (15 lb/in.²)" is revised to read "100 kN/m² (15 psi) and at a rate of 1 kg/h or more." and in paragraph (a)2 "3 Kg/m²" is revised to read "3 kN/m²".

Appendix D to Part 110 [Amended]

35. In appendix D to part 110, in sentence one of paragraph (3), "contractors" is revised to read "contactors".

36. Appendix E to part 110 is redesignated as appendix G to part 110 and a new appendix E to part 110 is added to read as follows:

Appendix E to Part 110—Illustrative List of Equipment and Components Under NRC Export Licensing Authority for Use in a Plant for the Production of Heavy Water, Deuterium and Deuterium Compounds

Note: Heavy water can be produced by a variety of processes. However, two processes have proven to be commercially viable: the water-hydrogen sulphide exchange process (GS process) and the ammonia-hydrogen exchange process.

A. The water-hydrogen sulphide exchange process (GS process) is based upon the exchange of hydrogen and deuterium between water and hydrogen sulphide within a series of towers which are operated with the top section cold and the bottom section hot. Water flows down the towers while the hydrogen sulphide gas circulates from the bottom to the top of the towers. A series of perforated trays are used to promote mixing between the gas and the water. Deuterium migrates to the water at low temperatures and to the hydrogen sulphide at high temperatures. Gas or water, enriched in deuterium, is removed from the first stage towers at the junction of the hot and cold sections and the process is repeated in subsequent stage towers. The product of the last stage, water enriched up to 30 percent in deuterium, is sent to a distillation unit to produce reactor grade heavy water; i.e., 99.75 percent deuterium oxide.

B. The ammonia-hydrogen exchange process can extract deuterium from synthesis gas through contact with liquid ammonia in the presence of a catalyst. The systhesis gas is fed into exchange towers and then to an ammonia converter. Inside the towers the gas flows from the bottom to the top while the liquid ammonia flows from the top to the bottom. The deuterium is stripped from the hydrogen in the systhesis gas and concentrated in the ammonia. The ammonia then flows into an ammonia cracker at the bottom of the tower while the gas flows into an ammonia converter at the top. Further enrichment takes place in subsequent stages and reactor-grade heavy water is produced through final distillation. The synthesis gas feed can be provided by an ammonia plant that can be constructed in association with a heavy water ammonia-hydrogen exchange plant. The ammonia-hydrogen exchange process can also use ordinary water as a feed source of deuterium.

C.1. Much of the key equipment for heavy water production plants using either the water-hydrogen sulphide exchange process (GS process) or the ammonia-hydrogen exchange process are common to several segments of the chemical and petroleum industries; particularly in small plants using the GS process. However, few items are available "off-the-shelf." Both processes require the handling of large quantities of flammable, corrosive and toxic fluids at elevated pressures. Thus, in establishing the design and operating standards for plants and equipment using these processes, careful attention to materials selection and specifications is required to ensure long service life with high safety and reliability factors. The choice is primarily a function of economics and need. Most equipment, therefore, is prepared to customer requirements.

In both processes, equipment which individually is not especially designed or prepared for heavy water production can be assembled into especially designed or prepared systems for producing heavy water. Examples of such systems are the catalyst production system used in the ammonia-hydrogen exchange process and the water distillation systems used for the final concentration of heavy water to reactor-grade in either process.

C.2. Equipment especially designed or prepared for the production of heavy water utilizing either the water-hydrogen sulphide exchange process or the ammonia-hydrogen exchange process:

(i) Water-hydrogen Sulphide Exchange Towers

Exchange towers fabricated from carbon steel (such as ASTM A516) with diameters of 6 m (20 ft) to 9 m (30 ft), capable of operating at pressures greater than or equal to 2 MPa (300 psi) and with a corrosion allowance of 6mm or greater.

(ii) Blowers and Compressors

Single stage, low head (i.e., 0.2 MPa or 30 psi) centrifugal blowers or compressors for hydrogen-sulphide gas circulation (i.e., gas containing more than 70 percent H_2S). The blowers or compressors have a throughput capacity greater than or equal to 56 m³/second (120,000 SCFM) while operating at pressures greater than or equal to 1.8 MPa (260 psi) suction and have seals designed for wet H_2S service.

(iii) Ammonia-Hydrogen Exchange Towers

Ammonia-hydrogen exchange towers greater than or equal to 35 m (114.3 ft) in height with diameters of 1.5 m (4.9 ft) to 2.5 m (8.2 ft) capable of operating at pressures greater than 15 MPa (2225 psi). The towers have at least one flanged, axial opening of the same diameter as the cylindrical part through which the tower internals can be inserted or withdrawn.

(iv) Tower Internals and Stage Pumps Used in the Ammonia-hydrogen Exchange Process.

Tower internals include especially designed stage contactors which promote intimate gas/liquid contact. Stage pumps include especially designed submersible pumps for circulation of liquid ammonia within a contacting stage internal to the stage towers.

(v) Ammonia Crackers Utilizing the Ammonia-hydrogen Exchange Process.

Ammonia crackers with operating pressures greater than or equal to 3 MPa (450 psi).

(vi) Infrared Absorption Analyzers

Infrared absorption analyzers capable of "on-line" hydrogen/deuterium ratio analysis where deuterium concentrations are equal to or greater than 90 percent.

(vii) Catalytic Burners Used in the Ammonia-hydrogen Exchange Process.

Catalytic burners for the conversion of enriched deuterium gas into heavy water.

37. A new appendix F to part 110 is added to read as follows:

Appendix F to Part 110—Illustrative List of Byproduct Materials Under NRC Export/Import Licensing Authority

Actinium 225 (Ac 225)
Actinium 227 (Ac 227)
Actinium 228 (Ac 228)
Americium 241 (Am 241)

Americium 242m (Am 242m)
Americium 242 (Am 242)
Americium 243 (Am 243)
Antimony 124 (Sb 124)
Antimony 125 (Sb 125)
Antimony 126 (Sb 126)
Arsenic 73 (As 73)
Arsenic 74 (As 74)
Arsenic 76 (As 76)
Arsenic 77 (As 77)
Barium 131 (Ba 131)
Barium 133 (Ba 133)
Barium 140 (Ba 140)
Bismuth 207 (Bi 207)
Bismuth 210 (Bi 210)
Bromine 82 (Br 82)
Cadmium 109 (Cd 109)
Cadmium 113 (Cd 113)
Cadmium 115m (Cd 115m)
Cadmium 115 (Cd 115)
Calcium 45 (Ca 45)
Calcium 47 (Ca 47)
Californium 248 (Cf 248)
Californium 249 (Cf 249)
Californium 250 (Cf 250)
Californium 251 (Cf 251)
Californium 252 (Cf 252)
Carbon 14 (C 14)
Cerium 141 (Ce 141)
Cerium 143 (Ce 143)
Cerium 144 (Ce 144)
Cesium 131 (Cs 131)
Cesium 134m (Cs 134m)
Cesium 134 (Cs 134)
Cesium 135 (Cs 135)
Cesium 136 (Cs 136)
Cesium 137 (Cs 137)
Chlorine 36 (Cl 36)
Chlorine 38 (Cl 38)
Chromium 51 (Cr 51)
Cobalt 58m (Co 58m)
Cobalt 58 (Co 58)
Cobalt 60 (Co 60)
Copper 64 (Cu 64)
Curium 242 (Cm 242)
Curium 243 (Cm 243)
Curium 244 (Cm 244)
Curium 245 (Cm 245)
Curium 247 (Cm 247)
Dysprosium 165 (Dy 165)
Dysprosium 166 (Dy 166)
Erbium 169 (Er 169)
Erbium 171 (Er 171)
Europium 152 (Eu 152)
Europium 152 9.2 h (Eu 152 9.2 h)
Europium 152 13 yr (Eu 152 13 yr)
Europium 154 (Eu 154)
Europium 155 (Eu 155)
Fluorine 18 (F 18)
Gadolinium 153 (Gd 153)
Gadolinium 159 (Gd 159)
Gallium 72 (Ga 72)
Germanium 68 (Ge 68)
Germanium 71 (Ge 71)
Gold 198 (Au 198)
Gold 199 (Au 199)
Hafnium 172 (Hf 172)
Hafnium 181 (Hf 181)
Holmium 166m (Ho 166m)
Holmium 166 (Ho 166)
Hydrogen 3 (H 3)
Indium 113m (In 113m)
Indium 114m (In 114m)
Indium 115m (In 115m)
Indium 115 (In 115)
Iodine 125 (I 125)
Iodine 126 (I 126)
Iodine 129 (I 129)
Iodine 131 (I 131)
Iodine 132 (I 132)
Iodine 133 (I 133)
Iodine 134 (I 134)
Iodine 135 (I 135)
Iridium 192 (Ir 192)
Iridium 194 (Ir 194)
Iron 55 (Fe 55)
Iron 59 (Fe 59)
Krypton 85 (Kr 85)
Krypton 87 (Kr 87)
Lanthanum 140 (La 140)
Lead 210 (Pb 210)
Lutetium 177 (Lu 177)
Manganese 52 (Mn 52)
Manganese 54 (Mn 54)
Manganese 56 (Mn 56)
Mercury 197m (Hg 197m)
Mercury 197 (Hg 197)
Mercury 203 (Hg 203)
Molybdenum 99 (Mo 99)
Neodymium 147 (Nd 147)
Neodymium 149 (Nd 149)
Neptunium 237 (Np 237)
Nickel 59 (Ni 59)
Nickel 63 (Ni 63)
Nickel 65 (Ni 65)
Niobium 93m (Nb 93m)
Niobium 94 (Nb 94)
Niobium 95 (Nb 95)
Niobium 97 (Nb 97)
Osmium 185 (Os 185)
Osmium 191m (Os 191m)
Osmium 191 (Os 191)
Osmium 193 (Os 193)
Palladium 103 (Pd 103)
Palladium 109 (Pd 109)
Phosphorus 32 (P 32)
Phosphorus 33 (P 33)
Platinum 191 (Pt 191)
Platinum 193m (Pt 193m)
Platinum 193 (Pt 193)
Platinum 197m (Pt 197m)
Platinum 197 (Pt 197)
Polonium 208 (Po 208)
Polonium 209 (Po 209)
Polonium 210 (Po 210)
Potassium 42 (K 42)
Praseodymium 142 (Pr 142)
Praseodymium 143 (Pr 143)
Promethium 145 (Pm 145)
Promethium 147 (Pm 147)
Promethium 149 (Pm 149)
Radium 223 (Ra 223)
Rhenium 186 (Re 186)
Rhenium 188 (Re 188)
Rhodium 103m (Rh 103m)
Rhodium 105 (Rh 105)
Rubidium 86 (Rb 86)
Rubidium 87 (Rb 87)
Ruthenium 97 (Ru 97)
Ruthenium 103 (Ru 103)
Ruthenium 105 (Ru 105)
Ruthenium 106 (Ru 106)
Samarium 151 (Sm 151)
Samarium 153 (Sm 153)
Scandium 46 (Sc 46)
Scandium 47 (Sc 47)
Scandium 48 (Sc 48)
Selenium 75 (Se 75)
Silicon 31 (Si 31)
Silver 105 (Ag 105)
Silver 110m (Ag 110m)
Silver 111 (Ag 111)
Sodium 22 (Na 22)
Sodium 24 (Na 24)
Strontium 85 (Sr 85)
Strontium 89 (Sr 89)
Strontium 90 (Sr 90)
Strontium 91 (Sr 91)
Strontium 92 (Sr 92)
Sulphur 35 (S 35)
Tantalum 182 (Ta 182)
Technetium 96 (Tc 96)
Technetium 97m (Tc 97m)
Technetium 97 (Tc 97)
Technetium 99m (Tc 99m)
Technetium 99 (Tc 99)
Tellurium 125m (Te 125m)
Tellurium 127m (Te 127m)
Tellurium 127 (Te 127)
Tellurium 129m (Te 129m)
Tellurium 129 (Te 129)
Tellurium 131m (Te 131m)
Tellurium 132 (Te 132)
Terbium 160 (Tb 160)
Thallium 200 (Tl 200)
Thallium 201 (Tl 201)
Thallium 202 (Tl 202)
Thallium 204 (Tl 204)
Thulium 170 (Tm 170)
Thulium 171 (Tm 171)
Tin 113 (Sn 113)
Tin 123 (Sn 123)
Tin 125 (Sn 125)
Tin 126 (Sn 126)
Titanium 44 (Ti 44)
Tritium (H3)
Tungsten 181 (W 181)
Tungsten 185 (W 85)
Tungsten 187 (W 187)
Vanadium 48 (V 48)
Xenon 131m (Xe 131m)
Xenon 133 (Xe 133)
Xenon 135 (Xe 135)
Ytterbium 175 (Yb 175)
Yttrium 90 (Y 90)
Yttrium 91 (Y 91)
Yttrium 92 (Y 92)
Yttrium 93 (Y 93)
Zinc 65 (Zn 65)
Zinc 69m (Zn 69m)
Zinc 69 (Zn 69)
Zirconium 93 (Zr 93)
Zirconium 95 (Zr 95)
Zirconium 97 (Zr 97)

Dated in Rockville, Maryland, this 22nd day of February, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–5066 Filed 3–8–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91–ANE–62]

Amendment to Control Zone; Limestone, ME

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action amends the Limestone, Maine (ME) Control Zone. This action is prompted by a re-evaluation of the United States Standards for Terminal Instrument Procedures (TERPS) as applied to the airspace surrounding Northern Maine Regional Airport, Presque Isle, ME; Caribou Municipal Airport, Caribou, ME; and Loring Air Force Base, Limestone, ME. This action will keep the description of the Limestone, ME Control Zone operationally current.

EFFECTIVE DATE: May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 270–2428; fax (617) 272–0395.

SUPPLEMENTARY INFORMATION:

History

On April 7, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Limestone, Maine (ME) Control Zone. (57 FR 11700). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received no comments to the proposed rule. Except for the following minor changes, this amendment is the same as the proposed rule. The longitude and latitude coordinates used in the proposed rule were based on North American Datum 27. These coordinates have been updated to North American Datum 83. In addition, since the FAA issued the proposed rule, the Limestone, ME Control Zone was modified by the Terminal Airspace Reconfiguration rule (57 FR 38962), which converted the lateral unit of measurement from statute to nautical miles and redesignated the area intended to contain aircraft operations under instrument flight rules (IFR). Lastly, this final rule contains editorial changes from the proposed rule that do not change the scope or intent of the rule. Control Zone areas are published in section 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Limestone, ME control zone will be amended subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations is prompted by a re-evaluation of the requirements of the United States Standards for Terminal Instrument Procedures (TERPS) as applied to the airspace surrounding Northern Maine Regional Airport at Presque Isle, ME; Caribou Municipal Airport, Caribou, ME; and Loring Air Force Base, Limestone, ME. This action is intended to contain aircraft operating under instrument flight rules (IFR) within controlled airspace while transitioning between the terminal and en route environments.

The FAA has determined that this regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1)

is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ANE ME CZ Limestone, ME

Loring Air Force Base, Limestone, ME
(lat. 46°57′01″N, long. 67°53′10″W)
Loring TACAN
(lat. 46°55′30″N, long. 67°52′34″W)

That airspace extending upward from the surface to and including 3,200 MSL within a 5.5-mile radius of the center of Loring Air Force Base, excluding the airspace outside of the United States; and that airspace extending upward from the surface within 2 miles of each side of the Loring TACAN 168° radial extending from the 5.5-mile radius area to 5.6 miles south of the Loring TACAN.

* * * * *

Issued in Burlington, Massachusetts, on February 25, 1993.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 93–5370 Filed 3–8–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 236

[Docket No. R–93–1385; FR–2450–F–05]

RIN 2502–AE34

Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing; Technical Amendment

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; technical amendment.

SUMMARY: The purpose of this technical amendment is to clarify 24 CFR 236.60, that pertains to excess rental charges. It has been recently discovered that an incorrect regulatory amendment instruction caused § 236.60 to be erroneously codified in title 24 of the Code of Federal Regulations. This technical amendment should prevent further confusion with that section.

EFFECTIVE DATE: October 22, 1990.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708–2300. TDD Number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On September 21, 1990 (55 FR 38944), the Department published in the **Federal Register**, a final rule that set forth HUD's procedures governing the prepayment of a multifamily mortgage by an owner (mortgagor) of eligible low income housing, in cases where, but for the provisions of the Housing and Community Development Act of 1987 (the "1987 Act"), Public Law 100–242, enacted February 5, 1988, the owner would be free to prepay its mortgage without HUD's approval or would, within one year, become eligible to prepay without HUD's approval. That final rule contained multiple amendments to title 24 of the Code of Federal Regulations, and included a revision to § 236.60.

The amendatory instruction for § 236.60 of the September 21, 1990 published final rule stated that, "Section 236.60 is revised to read as follows:". It should have stated that, "Section 236.60 is being amended by revising the beginning of the sentence, to read as follows:". Therefore, to avoid further confusion, this technical amendment will revise and restate § 236.60 in its entirety.

List of Subjects in 24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, part 236 of title 24 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

2. Section 236.60 is revised to read as follows:

§ 236.60 Excess rental charges.

Except as agreed to by the Commissioner pursuant to a plan of action approved under part 248 of this chapter or in connection with an adjustment of contract rents under section 8(c)(10) of the United States Housing Act of 1937, the mortgagor shall agree to pay monthly to the Secretary the total of all rental charges collected in excess of the Basic Rent in accordance with instructions prescribed by the Secretary.

Dated: March 3, 1993.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 93–5340 Filed 3–8–93; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 988

Weather Modification

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending title 32, chapter VII of the CFR by removing part 988, Weather Modification. This rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to ensure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: April 8, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAIA, 1610 Air Force Pentagon, Washington, DC 20330–1610, telephone (703) 614–3431.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 988

Weather modification.

Authority: 10 U.S.C. 8013.

PART 988—[REMOVED]

Accordingly, 32 CFR, chapter VII, is amended by removing part 988.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–5293 Filed 3–8–93; 8:45 am]

BILLING CODE 3910–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD–FDL–4601–6]

National Ambient Air Quality Standards for Ozone—Final Decision

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final decision.

SUMMARY: In accordance with sections 108 and 109 of the Clean Air Act (Act), the EPA announced on August 10, 1992 its proposed decision under section 109(d)(1) that revisions of the national ambient air quality standards (NAAQS) for ozone (O_3) are not appropriate at this time. The level of the existing primary and secondary standards for O_3 is 0.12 parts per million (ppm). The standards are attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than 1, as determined by the Interpretation of the National Ambient Air Quality Standards for Ozone (appendix H). In the same notice, the EPA also announced its plans, in view of the large number of recent scientific papers and ongoing research on the health and welfare effects of O_3, to proceed as rapidly as possible with the next review of the air quality criteria and standards for O_3.

This document announces the EPA's final decision under section 109(d)(1) that revisions of the primary and secondary standards are not appropriate at this time. Since publication of the August 10 1992 notice, the EPA has initiated action to update the air quality criteria upon which this decision is based so that the recent information on health and welfare effects of O_3 can be considered as rapidly as possible in the next criteria and standards review.

EFFECTIVE DATE: This action is effective April 8, 1993.

ADDRESSES: A docket containing information relating to the EPA's review of the O_3 primary and secondary standards (Docket No. A–92–17) is available for public inspection in the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, room 4, 401 M Street SW., Washington, DC. The docket may be inspected between 8 a.m. and 3 p.m. on weekdays, and a reasonable fee may be charged for copying. The information in the docket constitutes the complete basis for the decision announced in this notice. For the availability of related information, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, Air Quality Management Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711, telephone (919) 541–5533.

SUPPLEMENTARY INFORMATION:

Availability of Related Information

Certain documents are available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Available documents include: the revised criteria document, Air Quality Criteria for Ozone and Other Photochemical Oxidants (five volumes, EPA–600/8–84–020aF–eF, August 1986; NTIS # PB–87142949, $168.00 paper copy), and the 1989 staff paper, Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information-OAQPS Staff Paper (EPA–450/2–92–001, June 1989; NTIS # PB–92–190446, $43.00 paper copy and $17.00 microfiche). (Add $3.00 handling charge per order.) The criteria document supplement, Summary of Selected New Information on Effects of Ozone and Other Photochemical Oxidants (EPA–600/8–88–105F) is available at no cost from the Center for Environmental Research Information (CERI), telephone (513) 569–7562. A limited number of copies of other documents generated in connection with this standard review can be obtained from: U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, NC, 27711, telephone (919) 541–2777. These and other related documents are also available in the EPA docket identified above.

The contents of this notice are listed in the following outline:

I. Background
A. Legislative Requirements Affecting This Rule
1. Primary and Secondary Standards
2. Related Control Requirements
B. Existing Standards for Ozone
C. Review of Air Quality Criteria and Standards for Ozone and Other Photochemical Oxidants; Development of the Staff Paper
D. Decision Docket
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II. Summary of the 1992 Proposed Decision
A. The Primary Standard
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IV. Rationale for Final Decision
A. The Primary Standard
B. The Secondary Standard
C. Final Decision
V. Regulatory Impacts
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B. Impact on Small Entities
VI. Other Reviews
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Appendix I
Appendix II

I. Background

A. Legislative Requirements Affecting This Rule

1. Primary and Secondary Standards

Two sections of the Act govern the establishment and revision of NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify pollutants which "may reasonably be anticipated to endanger public health and welfare" and to issue air quality criteria for them. These air quality criteria are to accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of a pollutant in the ambient air.

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria and allowing an adequate margin of safety, is requisite to protect the public health." A secondary standard, as defined in section 109(b)(2), must "specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air." Welfare effects as defined in section 302(h) (42 U.S.C. 7602(h)) include, but are not limited to, "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on

economic values and on personal comfort and well-being."

The U.S. Court of Appeals for the District of Columbia Circuit has held that the requirement for an adequate margin of safety for primary standards was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. [*Lead Industries Association* v. *EPA*, 647 F.2d 1130, 1154 (DC Cir. 1980), *cert. denied*, 101 S.Ct. 621 (1980); *American Petroleum Institute* v. *Costle*, 665 F.2d 1176, 1177 (DC Cir. 1981), *cert. denied*, 102 S.Ct. 1737 (1982)]. Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, by selecting primary standards that provide an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that she finds may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree.

In selecting a margin of safety, the EPA considers such factors as the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed. Given that the "margin of safety" requirement by definition only comes into play where no conclusive showing of adverse effects exists, such factors, which involve unknown or only partially quantified risks, have their inherent limits as guides to action. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA*, *supra*, 647 F.2d at 1161–62.

Section 109(d)(1) of the Act requires that not later than December 31, 1980, and at 5-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards and shall make such revisions in such criteria and standards as may be appropriate. Section 109(d)(2) (A) and (B) require that a scientific review committee be appointed and provide that the committee "shall complete a review of the criteria and the national primary and secondary ambient air quality standards and shall recommend to the Administrator any revisions of existing criteria and standards as may be appropriate."

The process by which the EPA has reviewed the existing air quality criteria and standards for O_3 under section 109(d) is described in a later section of this notice.

2. Related Control Requirements

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once the EPA has established them. Under title I of the Act (42 U.S.C. 7410), States are to submit, for EPA approval, State implementation plans (SIP's) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with the EPA, also administer the prevention of significant deterioration program (42 U.S.C. 7470–7479) and the visibility protection program (42 U.S.C. 7491–7492) for these and other air pollutants. In addition, Federal programs provide for nationwide reductions in emissions of air pollutants through the Federal motor vehicle control program under title II of the Act (42 U.S.C. 7521–7574), which involves controls for automobile, truck, bus, motorcycle, and aircraft emissions; the new source performance standards under section 111 (42 U.S.C. 7411); and the national emission standards for hazardous air pollutants under section 112 (42 U.S.C. 7412).

B. Existing Standards for Ozone

The principal focus of this standard review is on the health and welfare effects of O_3. Ozone produced in the ambient air is commonly referred to as tropospheric O_3. It is chemically identical to stratospheric O_3, which is concentrated miles above the earth's surface and provides a protective shield from excess ultraviolet radiation. In contrast, tropospheric O_3 produces harmful effects due to its oxidative properties and its proximity to humans, plants, and materials. Ozone is not emitted directly from mobile or stationary sources but, like other photochemical oxidants, commonly exists in the ambient air as an atmospheric transformation product. Ozone formation is the result of chemical reactions of volatile organic compounds (VOC's), nitrogen oxides (NO_x), and oxygen (O_2) in the presence of sunlight and generally at elevated temperatures.

Ozone is a highly reactive gas which at sufficient concentrations can produce a wide variety of harmful effects. At elevated concentrations, O_3 can adversely affect human health, vegetation, materials, economic values, and personal comfort and well-being. Hourly average ambient O_3 levels range from 0.03 ppm in the most remote rural areas to 0.30 ppm and higher in the most polluted urban areas. A detailed discussion of formation, concentrations, and effects of O_3 can be found in the 1986 Air Quality Criteria Document (U.S. EPA, 1986), the Criteria Document Supplement (U.S. EPA, 1992), and the Staff Paper (U.S. EPA, 1989).

On April 30, 1971, the EPA promulgated primary and secondary NAAQS for photochemical oxidants under section 109 of the Act (36 FR 8186). These were set at an hourly average of 0.08 ppm total photochemical oxidants not to be exceeded more than 1 hour per year. On April 20, 1977, the EPA announced (42 FR 20493) the first review and updating of the 1970 Air Quality Criteria Document for Photochemical Oxidants in accordance with section 109(d)(1) of the Act. In preparing the Air Quality Criteria Document, the EPA provided a number of opportunities for external review and comment. The EPA made two drafts of the document available for public comment, and these drafts were peer reviewed by the Subcommittee on Scientific Criteria for Photochemical Oxidants of the EPA Science Advisory Board. The EPA published the final revised Air Quality Criteria for Ozone and Other Photochemical Oxidants on June 22, 1978.

Based on the 1978 revised Air Quality Criteria Document (U.S. EPA, 1978) and taking into account the advice and recommendations of the Subcommittee, on June 22, 1978, the EPA proposed (43 FR 16962) revisions to the then-current primary and secondary NAAQS for photochemical oxidants. The proposed changes included raising the primary standard to 0.10 ppm, retaining the 0.08 ppm secondary standard, changing the chemical designation of the standards from photochemical oxidants to O_3, and changing to standards with a statistical form (i.e., expected exceedances) rather than a deterministic form (i.e., not to be exceeded more than *x* number of times per year).

After taking into account public comments, the EPA announced its final decision on the proposed revisions to the 1971 standards (44 FR 8202, February 8, 1979). The final rulemaking revised the level of the primary standard from 0.08 ppm to 0.12 ppm, set the secondary standard identical to the primary standard, changed the chemical designation of the standards from photochemical oxidants to O_3, and revised the definition of the point at which the standard is attained to when

the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than one as determined by appendix H.

C. Review of Air Quality Criteria and Standards for Ozone and Other Photochemical Oxidants; Development of the Staff Paper

On March 17, 1982 (47 FR 11561), the EPA announced that it was undertaking plans to revise the existing 1978 Air Quality Criteria Document for Ozone and Other Photochemical Oxidants and on August 22, 1983, announced (48 FR 38009) that review of primary and secondary standards for O_3 had been initiated. A detailed summary of the review and revision process was presented in the August 10, 1992 proposal notice (57 FR 35542).

The EPA subsequently provided a number of opportunities for public review and comment, including making available two drafts of the revised criteria document (49 FR 29845; 51 FR 11339), prepared by the EPA's Environmental Criteria and Assessment Office (ECAO), and holding two public meetings of the Clean Air Scientific Advisory Committee (CASAC) (March 4–6, 1985 and April 21–22, 1986). The EPA placed transcripts of the CASAC meetings in the docket (ECAO–CD–81–1) for the 1986 Air Quality Criteria Document. The EPA considered the numerous and often extensive comments received from the public and the CASAC members in preparing the final document. On October 22, 1986, the CASAC sent the Administrator a "closure letter," outlining key issues and recommendations and indicating that it was satisfied with the final draft of the 1986 Air Quality Criteria Document. Following closure, a number of scientific articles were published or accepted for publication and appeared to be of sufficient importance concerning potential health and welfare effects of O_3 to warrant preparation of a supplement to the criteria document. In early 1988, the ECAO began preparation of the Supplement and made draft copies available to the CASAC and the public in November 1988.

After the CASAC meeting on March 4–6, 1985, the EPA's Office of Air Quality Planning and Standards (OAQPS) began work on the first draft of the Staff Paper (Review of the National Ambient Air Quality Standards for Ozone:

Assessment of Scientific and Technical Information—OAQPS Staff Paper). The CASAC reviewed first and second drafts of the Staff Paper at public meetings of the CASAC held on April 21–22, 1986 and December 14–15, 1987, and transcripts of these meetings have been placed in the docket. Numerous written and oral comments were received on the drafts from the CASAC, representatives of organizations, individual scientists, and other interested members of the public. The CASAC concluded that sufficient new information existed to recommend incorporation of relevant new information into a third draft of the Staff Paper. In early 1988, the EPA began working on a third draft of the Staff Paper and made available copies to the CASAC and the public in November 1988.

The CASAC held a public meeting on December 14–15, 1988 to review the draft Supplement and draft Staff Paper. Major issues included: The definition of adverse health effects of O_3, the significance of health studies suggesting that exercising individuals exposed for 6 to 8 hours to O_3 levels at or below 0.12 ppm may experience inflammation and transient decreases in pulmonary function, the possibility that chronic irreversible effects may result from long-term exposures to elevated levels of O_3, and the importance of analyses which indicate agricultural crop damage may be better defined by a cumulative seasonal average than by a 1-hour peak level of O_3. In its "closure letter" of May 1, 1989, (reprinted as appendix I of this notice) the CASAC indicated that the draft Supplement and draft Staff Paper "provide an adequate scientific basis for the EPA to retain or revise primary and secondary standards for ozone" (CASAC, 1989).

D. Decision Docket

On March 17, 1992, the EPA created a docket (Docket No. A–92–17) for this decision. The docket incorporated the standard review docket (Docket No. OAQPS A–83–04), created in 1983, and the separate docket established for criteria document revision (Docket No. ECAO–CD–81–1), created in 1981.

E. Litigation

On October 22, 1991, the American Lung Association and other plaintiffs filed suit under section 304 of the Act to compel the EPA to complete its review of the criteria and standards for O_3 under section 109(d)(1) of the Act [*American Lung Association* v. *Reilly*, No. 91–CV–4114 (JRB) (E.D.N.Y.)]. The U.S. District Court for the Eastern District of New York subsequently issued an order requiring the EPA to sign a **Federal Register** notice announcing its proposed decision on whether to revise the standards for O_3 by August 1, 1992 and to sign a **Federal Register** notice announcing its final decision by March 1, 1993.

II. Summary of the 1992 Proposed Decision

On August 10, 1992 (57 FR 35542), the EPA published its proposed decision under section 109(d)(1) that revisions to existing 1-hour primary and secondary standards are not appropriate at this time. (Consistent with the order in the American Lung Association case, the Administrator signed the proposed decision on August 1, 1992.) The notice explained in some detail (see 57 FR 35546) that the proposed decision would complete the EPA's review of information on health and welfare effects of O_3 assembled over a 7-year period and contained in the 1986 Air Quality Criteria Document and its Supplement. The review included an evaluation of key studies published through early 1989, the 1989 Staff Paper assessment of the most relevant information in these documents, and the advice and recommendations of the CASAC as presented both in the discussion of these documents at public meetings and in the CASAC's 1986 and 1989 "closure letters."

Under section 109(b) of the Act, primary and secondary NAAQS are to be based on the air quality criteria issued under section 108. Additionally, under section 109(d), the EPA must periodically conduct a "thorough review" of the criteria taking into account the advice and recommendations of the CASAC as the basis for periodic decisions on whether revisions of NAAQS are appropriate. When Congress enacted the latter requirement in 1977, it was well aware that implementation of the NAAQS can have profound economic and social, as well as environmental, consequences. Understandably, it required that the EPA's periodic decisions on whether to revise the NAAQS be based on scientific studies that had been rigorously assessed and incorporated into air quality criteria and whose implications for public health and welfare had been carefully considered by both the EPA and the CASAC. In view of this, the August 10, 1992 notice made clear that the Administrator did not take into account recent studies on the health and welfare effects of O_3 because these studies had not been assessed in the 1986 Air Quality Criteria Document nor its Supplement, nor had they undergone the rigorous review process (including CASAC review) required to incorporate them into a new criteria document.

Because of the scientific and technical complexity of such assessments, the EPA estimated that 2 to 3 years would

be necessary to rigorously assess the over 1,000 new studies and incorporate key information into a revised criteria document, to evaluate the significance of the key information for decision-making purposes, to develop staff recommendations for the Administrator, and to provide appropriate opportunities for the CASAC review and public comment. Given the importance of these new studies and concern about the health and welfare effects of O_3, the August 10, 1992 notice also outlined the EPA's plans to proceed as rapidly as possible with the next review of the criteria and standards for O_3.

A. The Primary Standard

In reaching his August 10, 1992 proposed decision that revisions of the existing O_3 primary standard were not appropriate, the Administrator considered the health effects information assessed in the 1986 Air Quality Criteria Document, the Supplement that updated that information, the 1989 Staff Paper, and the advice and recommendations of the CASAC in its 1989 "closure letter." Based on his review of this information, the Administrator concurred with the staff and the CASAC conclusions that the preliminary information on effects of prolonged exposures to O_3 was not sufficient to support the establishment of a new 6- to 8-hour standard to protect against prolonged exposures, or a seasonal or other long-term standard to protect against chronic effects. In reaching this proposed determination, the EPA recognized that a number of new studies, particularly on 6- to 8-hour exposures to O_3, had been published in the scientific literature since early 1989. Mindful of this, as well as research in progress on the chronic effects of O_3, the EPA made clear in the proposal that it intended to proceed with the next periodic review of the air quality criteria as rapidly as possible. The notice added that when this new information had been incorporated into the air quality criteria, a more informed decision could be made as to whether adding a new 6- to 8-hour standard and/or a seasonal or other long-term standard would be appropriate.

The EPA also carefully considered the health effects information on 1- to 3-hour exposures to O_3 contained in the air quality criteria. Based on these assessments and taking into account the advice and recommendations of the CASAC in its 1989 "closure letter," the Administrator in August 1992 reached the proposed determination that revisions of the existing 1-hour primary standard were not appropriate to provide increased protection against 1- to 3-hour exposures to O_3. The standard level is below the levels where controlled human 1- to 3-hour exposure studies found substantial changes in pulmonary function and symptoms. In reaching this conclusion, the Administrator was mindful that the mean group response observed in the controlled human studies up to 0.15 ppm O_3 would at most be characterized as mild, and that most of the responders within this population of normal healthy individuals reportedly experienced only mild to moderate responses under very heavy exercise (U.S. EPA, 1989, pp. VII–53 to VII–56). Although there was a difference of opinion among the EPA's scientific advisors as to the significance of decrements in lung function in the range of 10 to 20 percent when accompanied by symptoms (CASAC, 1989), it was the Administrator's judgment that the lesser effects associated with exposure to O_3 in the range of 0.12 ppm to 0.15 ppm observed in the controlled human studies did not constitute adverse effects for purposes of section 109 of the Act.

The EPA also considered other sensitive population groups whose response to O_3 had not been fully characterized. Although some epidemiology studies considered in the 1986 Air Quality Criteria Document and its Supplement suggested that exposure to O_3 at ambient concentrations may result in the aggravation of asthma and preexisting respiratory disease, the Administrator concurred with the staff's view that the direct use of these studies was limited by uncertainties about individual exposure levels and the role of other pollutants. In addition, although individuals with preexisting lung disease are not more responsive to O_3 than healthy persons in controlled human exposure studies, the same small change in pulmonary function may have more impact on people whose lung function is already compromised. While certain others (field/epidemiology studies) suggested that these sensitive groups may be at somewhat greater risk at levels of 0.12 ppm O_3 and higher, compared to normal healthy individuals in controlled human exposure studies, the Administrator concluded these studies did not provide a sufficient basis for lowering the existing standard. The Administrator also considered and concurred with the staff recommendations that O_3 should remain as the surrogate for controlling ambient concentrations of photochemical oxidants and that the existing form of the standard should not be revised.

B. The Secondary Standard

In reaching the proposed decision that revision of the existing 1-hour O_3 secondary NAAQS was not appropriate, the EPA carefully considered the welfare effects information assessed in the 1986 Air Quality Criteria Document and its Supplement, the 1989 Staff Paper assessment, and the advice and recommendations of the CASAC in its 1989 "closure letter." A principal reason for the proposed decision was the Administrator's judgment that there was insufficient information in the air quality criteria to specify a new form, averaging period, and level of a secondary standard that would be more protective of forest tree species as well as agricultural crops. The notice added that when information had become available from research currently under way on key aspects of O_3 exposure dynamics that are important for assessing the effects of O_3 on forest tree species and had been incorporated into the air quality criteria during the next review, a more informed judgment could be made as to whether revision of the secondary standard is appropriate.

The EPA also carefully considered the available information on the effects of O_3 on agricultural crops alone. Although the National Crop Loss Assessment Network (NCLAN) studies have provided extensive data on the effects of O_3 on crops, the appropriateness of the seasonal mean exposure indicator used in these studies had been subject to much criticism during the development of revised air quality criteria. Because of this and other shortcomings of this exposure index that are discussed more fully in the August 10, 1992 proposal notice, the EPA concluded that the use of the 7-hour seasonal mean derived from NCLAN data for standard-setting purposes would be inappropriate. The CASAC also recognized this and recommended that retrospective analyses be undertaken in order to identify a more appropriate exposure index that would offer protection from both repeated O_3 peaks of concern and long-term O_3 exposures. While these analyses had identified several indicators that showed promise, the Administrator concurred with the staff's view that it would be premature to base a change in the form and averaging time of the secondary standard on the preliminary results presented in the Supplement to the 1986 Air Quality Criteria Document and the Staff Paper.

The Administrator also considered tightening the current secondary standard as an interim measure. He noted that, throughout the review of the air quality criteria and staff assessment,

no consensus had been reached on an appropriate range of alternative 1-hour standards. The staff had great difficulty throughout the review in developing and justifying alternative levels below that of the current standard due to the lack of data (U.S. EPA, 1989, p. XI–13). In the end, while the staff relied on the preliminary results of the Lee *et al.* (1988) study to conclude that the upper-end of the proposed range (0.12 ppm) offered little protection for vegetation (U.S. EPA, 1989, pp. XI–16 to XI–18), the staff also determined that the study was too preliminary to serve as a basis for recommending changes in the form and averaging time of the standard. Even if the results of the Lee *et al.* (1988) study provided a sufficient basis for revising the standard downward from 0.12 ppm to 0.10 ppm, as some had suggested, it was the Administrator's judgment that such a change would provide only marginal improvement because a 1-hour averaging period was not the most appropriate exposure indicator for the full range of exposures, as discussed in the August 10, 1992 proposal, and would be seriously reconsidered during the next standard review. In the interim, it would have imposed a disproportionate and largely meaningless burden on States to review and make appropriate revisions in applicable SIP's.

Given the above information, it was the Administrator's judgment that the most prudent course of action was to retain the current secondary standard until a more informed decision could be made during the next standard review.

III. Summary of Public Comments on the Proposed Decision

A limited number of comments were received on the August 10, 1992 proposed decision. Of 27 written submissions, 10 were provided by individual industrial companies or industry associations, eight by Federal and State government agencies and other entities, seven by environmental and public interest groups, one by the CASAC Chairman, and one by an interested individual. In addition, three persons presented testimony at the September 1, 1992 public hearing. Of the three presentations, one individual was highly critical of the EPA's proposed decision and presented basically the same arguments as those made in the written comments submitted by his organization; the second maintained that newly published studies supported the need for a revised standard; and the third individual supported the proposed decision and his testimony closely paralleled his organization's written comments. The public hearing transcript and a more detailed summary of the comments received and the EPA's responses have been placed in Docket No. A–92–17.

Of the 27 comments received, 11 concurred in general with the Administrator's proposed decision that revision of the primary and secondary standards is inappropriate at this time. Some of these commenters also maintained that any new studies published after closure on the air quality criteria should undergo rigorous evaluation, be reviewed by the CASAC and the public, and be incorporated into a revised criteria document before being considered for standard setting.

In contrast, 14 comments disagreed with the proposed decision that revision of the primary and secondary standards is inappropriate at this time. With respect to the primary standard, most of these commenters maintained that a new 6- to 8-hour standard should be established to protect against health effects associated with multihour or prolonged exposures to O_3. In support of their position, these commenters, for the most part, relied on recent studies that have not undergone the rigorous review in a criteria document, including the CASAC and public review, necessary before incorporation into the air quality criteria. Apparently in recognition of this, these commenters typically were critical of the EPA for not updating the criteria document before announcing its proposed decision, and some also maintained that the Act does not preclude the EPA and the CASAC from considering information not in the criteria document in setting standards. Several of these commenters also expressed the view that CASAC review was not required before such studies could be used. Many of the same commenters maintained that the recent studies should, at a minimum, be considered in determining whether the existing 1-hour standard provides an adequate margin of safety.

Another commenter in this group argued that the preliminary studies on prolonged exposures that were considered by the EPA strongly suggest and, in the judgment of the commenter, provide a sufficient basis for a new 6- to 8-hour standard. This commenter recognized, however, that newer studies (published after early 1989) that support these preliminary findings are not part of the air quality criteria that serve as the basis for the proposed decision. In view of this, the commenter urged the EPA not to wait the 2 to 3 years needed to fully evaluate these new studies, update the criteria document and staff paper and submit them to the CASAC and public review, but instead to develop an alternative primary standard more expeditiously.

Several commenters questioned the adequacy of the existing 1-hour primary standard, particularly with respect to protection it affords the elderly and children, and recommended that the standard be revised downward. One commenter noted that his State's advisory committee, with responsibilities similar to those of the CASAC, had recommended a more stringent 1-hour standard based on many of the same studies, including the preliminary studies on prolonged exposure, considered in this review.

Of the 14 comments that did not support the proposed decision, only four provided specific comments on the secondary standard. Of these four comments, two were highly critical of the EPA for not considering recently published information in reaching the proposed decision. As in the case of the primary standard, these commenters maintained that the EPA was not precluded from considering newly published peer-reviewed studies when reaching a decision on whether revisions to the secondary standard are appropriate. One of these commenters cited a number of newly published studies, as well as some in press, to support the position that the existing 1-hour secondary standard should be revised downward to a maximum of 0.10 ppm or be augmented by a new exposure index expressed as a cumulative seasonal standard of 14.2 ppm-hours. The same commenter was also critical of the EPA for not accepting staff and CASAC recommendations for revising the existing 1-hour standard.

A third commenter also urged the EPA to consider lowering the existing 1-hour secondary standard as an interim measure until such time as a new and more appropriate exposure index could be developed that would be protective of crops and forest tree species, and ultimately forest ecosystems. In support of this position, the commenter cited a series of newly published studies and some that are still in press or manuscript form on effects of O_3 on forest tree species. The fourth comment on the secondary standard expressed the view that a lower 1-hour primary standard would also substantially reduce the impact of O_3 on agricultural crops.

The final two comments on the August 10, 1992 proposal did not take an explicit position on the merits of the proposed decision. In the first of these, the commenter, a past Chairman of the CASAC, submitted a manuscript that

critically reviewed health effects information on O_3, with particular emphasis on studies published after the CASAC completed its review of the air quality criteria that served as the basis for the August 10, 1992 proposal, as well as other O_3 health effects information that is just emerging. Based on this review, the author concluded that the CASAC, after having the opportunity to review this new information, would be unlikely to reach the same conclusions as it did in 1989.

The second of these comments is an August 31, 1992 letter from the then-Chairman of the CASAC to the Administrator. In his letter (reprinted as appendix II of this notice) the Chairman noted with interest the EPA's plans not to revise the O_3 standards and to initiate a new assessment of the health and environmental effects of O_3. He added that the purpose of his letter was to express the Committee's willingness to assist the EPA in carrying out this new assessment in an expeditious manner. The Chairman also noted that a carefully planned strategy for preparation of the criteria document and staff paper would be essential in view of the magnitude and complexity of the task, particularly with respect to the review, integration, and interpretation of old and new scientific information.

IV. Rationale for Final Decision

A. The Primary Standard

The August 10, 1992 proposal discussed in some detail the underlying health effects information and the rationale for the EPA's proposed determination under section 109(d)(1) that revisions to the existing primary standard were not appropriate. After taking into account the public comments and for the reasons discussed below, the EPA again concludes, based on the rationale presented in the August 10, 1992 proposal notice, that revisions to the existing primary standard are not appropriate at this time.

For the most part, the commenters that objected to the proposed decision on the primary standard did not dispute the EPA's assessment of the health effects information that served as the basis for the proposed decision, nor did they maintain that the EPA erred in concluding that this information did not provide a sufficient basis for establishing a new 6- to 8-hour primary standard. Instead, they argued that the EPA improperly excluded from consideration studies that were published in the peer-reviewed literature after early 1989 and that as a result the proposed decision was based on "stale" data. In their view, the EPA should have updated the criteria document prior to reaching the proposed decision. Absent that, some maintained that the Act does not preclude the use of peer-reviewed studies in standard setting even though they have not been incorporated into the air quality criteria.

As discussed more fully in the proposal notice (57 FR 35546, 35554), the EPA was fully aware of the new studies on the health effects of O_3 and acknowledged that they had not been taken into account. Based on applicable statutory requirements and the volume of material requiring careful evaluation, the EPA estimated that it would take 2 to 3 years to incorporate these new health studies, as well as new studies on welfare effects, into a revised criteria document; to evaluate the significance of key information for decision-making purposes; to develop staff recommendations for the Administrator; and to provide for CASAC review and public comment. Given various legal constraints and the fact that the EPA had already missed both the 1985 and 1990 deadlines for completion of review cycles under section 109(d), the Administrator concluded that the best course of action was to complete the current review based on the existing air quality criteria and at the same time to proceed as rapidly as possible with the next review of the criteria and standards for O_3.

Having considered the comments on this issue, the EPA adheres to that conclusion. A number of commenters noted the complexity of the issues that the EPA would have to address when updating the air quality criteria document and staff paper, including the large volume of new material that would have to be evaluated, incorporated into the revised documents, and submitted for CASAC review and public comment (e.g., Docket No. IV–D–20). The CASAC also recognized that the preparation of a revised criteria document and staff paper would not be an easy undertaking. In his August 31, 1992 letter to the Administrator, the Chairman of the CASAC noted that "a carefully planned strategy for preparation of the criteria document and staff position is essential in view of the magnitude and complexity of the task." He added that "the review, integration and interpretation of the old and new information will be a substantial undertaking. In addition, it will be imperative that the next staff position paper carefully consider alternative forms of the ozone standard, both in terms of averaging times, such as daily (6–24 hour), as well as frequency of occurrence, and seasonal standards, in addition to the traditional one-hour standard. This too, will require substantial preparation effort and, I suspect, ample time for debate" (McClellan, 1992).

The EPA has considered the view urged by some commenters that health and welfare effects studies published in the peer-reviewed literature after early 1989 should be considered even though not incorporated into the air quality criteria. The language of section 109(b)(1) and 109(b)(2) makes clear that primary and secondary standards are to be based on scientific information assessed in air quality criteria issued under section 108 of the Act. Furthermore, under section 109(d), which was added to section 109 in 1977, the EPA must periodically conduct "a thorough review" of the air quality criteria taking into account the advice and recommendations of the scientific review committee known as the CASAC. Taking these provisions together, it is clear that the Act contemplates that the EPA base its NAAQS decisions on scientific studies that have been reviewed by the CASAC and incorporated into air quality criteria.[1]

The EPA's interpretation not only is the most straightforward reading of the statutory scheme, but it makes good sense in the context of this decision. As discussed in the August 10, 1992 proposal notice (57 FR 35546), implementation of the NAAQS can have profound economic and social as well as environmental consequences, and it is understandable that Congress would require them to be based on scientific studies that had been rigorously assessed not only by the EPA but also by an independent advisory committee (i.e., CASAC). Under the statute, the process for performing this assessment is preparation or revision of a criteria document [see *Lead Industries Association* v. *EPA*, 647 F.2d 1130, 1136–37 (DC Cir. 1980), *cert. denied*, 101 S. Ct. 621 (1980)]. During that process, a large number of studies, though published in peer-reviewed journals, are typically judged unsuitable for use in standard setting. In other

[1] Since the 1970 amendments, the EPA has taken the view that NAAQS decisions are to be based on scientific studies that have been assessed in air quality criteria [see, e.g. 36 FR 8186 (April 30, 1971) (the EPA based promulgation of original NAAQS for six pollutants on scientific studies discussed in the air quality criteria and limited consideration of comments to those concerning validity of scientific basis); 38 FR 25678, 25679–80 (September 14, 1973) (the EPA revised air quality criteria for sulfur oxides to provide basis for reevaluation of secondary NAAQS)]. This longstanding interpretation has been strengthened by the addition of the 1977 amendment that provides for CASAC review of air quality criteria.

words, publication in a peer-reviewed journal does not in itself establish the validity or usefulness of a given study. As Administrator Reilly noted, "it would be premature to draw conclusions on either the scientific merit or the ultimate implications of particular studies prior to a rigorous and comprehensive assessment * * * by the EPA and CASAC" (57 FR 35546).

For these reasons, the EPA concludes that it may not consider studies not incorporated into air quality criteria and reviewed by the CASAC when setting or revising NAAQS.[2] Given the extraordinary importance of the NAAQS for O_3, the EPA further concludes that consideration of such studies in this instance would be inappropriate even if permitted under section 109.

At times, the EPA has found it appropriate to supplement a criteria document before completing its review of the corresponding NAAQS. For example, the EPA in 1986 prepared addenda to the criteria document for particulate matter and sulfur oxides so that newly published studies could be incorporated and, thus, serve as part of the basis for determining whether revisions to the air quality standards were appropriate. Similarly, the EPA prepared the O_3 Supplement that is part of the basis for today's decision so that newly published studies could be properly considered. The EPA's discretion to delay completion of its periodic reviews under section 109(d) for such purposes is not unlimited, however, and at some point the process of incorporating new studies must end so that decisions can be made. The Chairman of the CASAC emphasized this in his August 31, 1992 letter when he noted "it is crucial that at a particular point in time, that is understood by all parties, the knowledge base on ozone be summarized and used for regulatory purposes" (McClellan, 1992).

The EPA also considered the comments that specifically address the protection afforded by the existing 1-hour standard against 1- to 3-hour exposures to O_3. Several commenters maintained that the EPA erred in reaching its proposed decision because potentially sensitive population groups such as children, the elderly, and women had not been properly considered. While age has been suggested as a factor which could modify responsiveness to O_3 exposure, controlled-exposure studies conducted on human subjects do not show children or the elderly to have greater changes in lung function than other subjects. In one study by McDonnell et al. (1985), changes in lung spirometry in children were similar to those found in adults exposed under similar conditions, except that no significant increases in symptoms were found in children (U.S. EPA, 1986, p. 12–35). With regard to the elderly, subjects 50 years of age or older were found by Bedi et al. (1988) and Bedi and Horvath (1987) to have smaller changes in lung function than younger subjects when exposed to similar O_3 levels, thus leading to the suggestion that a possible drop-off in responsiveness to O_3-induced pulmonary function changes occurs sometime in middle age (U.S. EPA, 1992, p. 3–61). As for gender differences, there were no significant differences in pulmonary function [forced expiratory volume (FEV_1) and forced vital capacity (FVC)] between men and women exposed to O_3 (Drechsler-Parks et al., 1987; Reisenauer et al., 1988), although the data suggest women may be somewhat more responsive to O_3 than men because women had slightly lower mean exercise rates during the studies (U.S. EPA, 1992, p. 3–61). For these reasons, the EPA concludes that the characterization of the sensitive populations most affected by short-term exposure to O_3 presented in the August 10, 1992 proposal notice (57 FR 35549) is in accordance with the air quality criteria.

Several commenters questioned the adequacy of the margin of safety provided by the existing 1-hour standard. In general, these commenters argued that the standard should be tightened to provide increased protection against effects of prolonged (6- to 8-hour) exposures. One commenter also referred to short-term exposures; he noted that his State's advisory committee, with responsibilities similar to those of the CASAC, had identified a lowest observed effects level of 0.12 ppm for exposures of 1 to 2 hours based on its assessment of McDonnell et al. (1983) and Gong et al. (1986). This commenter added that after considering an additional study indicating that multihour exposures at 0.12 ppm and below produced decrements in lung function (Lioy et al., 1985), as well as mounting evidence of cumulative effects from chronic exposure to O_3, his State agency had adopted a 1-hour O_3 standard of 0.09 ppm in 1987, citing the need to provide an adequate margin of safety to "prevent substantial risk of harm to human health as a result of short-term exposures and to provide protection against probable effects of long-term exposures." This commenter added that evidence for a more protective margin of safety is more compelling now because of multihour studies (Spektor *et al.*, 1988a,b) and controlled human exposure studies (Folinsbee et al., 1989; Horstman et al., 1989) reporting decrements in pulmonary function at 0.12 ppm and lower as well as multihour studies reporting biochemical indicators of inflammation (Koren et al., 1988a,b). This commenter concluded by noting that adoption of a 1-hour standard more stringent than the current one would provide a greater degree of protection against multihour exposures.

With respect to short-term exposures, the EPA also considered McDonnell *et al.* (1983) and Gong *et al.* (1986) in conjunction with other studies discussed in the air quality criteria and reached a quite different conclusion as to the significance of effects reported at 0.12 ppm O_3. As discussed in the proposal notice (57 FR 35547, 35548), controlled-exposure studies of human subjects (McDonnell et al. 1983; Gong et al. 1986) reported small but statistically significant, transient declines in pulmonary function (e.g., reductions in lung volume and air flow), which in some cases were accompanied by symptoms (e.g., cough, chest pain, throat irritation, shortness of breath) during exposure to O_3 in the range of 0.12 to 0.15 ppm. These effects, however, were reported only when subjects were engaged in very heavy exercise (V_e=68–89 liters per minute). Without heavy exercise, even the most sensitive subjects did not experience statistically-significant decrements in lung function ($FEV_{1.0}$) at low-level O_3 exposures (around 0.12 ppm after 1 to 3 hours). As discussed in the staff paper, the magnitude of effects which can be measured at these exposure levels, even with heavy exercise, is not generally considered to be adverse to health (U.S. EPA, 1989, pp. VII–53 to VII–56).

As discussed in the proposal notice, another key point that emerged during the review of these and other studies

[2] This conclusion does not vitiate the role of public comment in the standard-setting process, as several commenters have suggested. Broadly speaking, the EPA believes Congress intended the Administrator to consider comments that address such issues as the scientific merit, the implications, and the proper use of studies discussed in criteria documents, just as the Administrator might consider staff opinions or recommendations on such matters in a staff paper or other analytical document. By contrast, the EPA does not believe Congress intended to allow interested parties to add new studies to the basis for decision, circumventing the rigorous scrutiny they would otherwise undergo, by the simple expedient of attaching them to public comments. Of course, if new studies that appear to be important are brought to the EPA's attention in public comments or otherwise, it may be appropriate to supplement a criteria document as discussed below.

was the high degree of variability in responsiveness between individuals exposed to similar O_3 levels. This was evident from the number of studies (Gibbons and Adams, 1984; Linn et al., 1986; Avol et al., 1984; Schelegle and Adams, 1986) that found no statistically-significant response at exposures (0.12 to 0.15 ppm O_3) and exercise levels (V_e = 55 to 86 liters per minute) similar to those in McDonnell et al. (1983) and Gong *et al.* (1986). In two of these studies (Avol et al., 1984; Linn et al., 1986), statistically-significant changes in FEV_1 began to appear at 0.16 ppm O_3.

Recognizing that between 5 and 20 percent of otherwise healthy individuals may be more responsive to O_3 during exercise and, therefore, might be at higher risk, the EPA also examined the intersubject variability reported by McDonnell *et al.* (1983) and Kulle *et al.* (1985). For these studies, the effects experienced by even the most sensitive individuals exposed to 0.12–0.15 ppm O_3 for 1 to 3 hours ranged from −9 to −16 percent decline in $FEV_{1.0}$ with few, if any, symptoms. These effects have been characterized as only mild to moderate (U.S. EPA, 1989, pp. VII–53 to VII–56).

The EPA's assessment of these and other controlled-exposure studies of human subjects led Administrator Reilly to conclude, taking into account the differences of opinion among CASAC members on this point, that the lesser effects associated with 1- to 3-hour exposures to O_3 in the range of 0.12 to 0.15 ppm did not constitute adverse effects for purposes of section 109 of the Act. The EPA adheres to that judgment.

With respect to prolonged exposures, the EPA also evaluated Lioy *et al.* (1985) as part of its assessment of the emerging research in this area. Lioy *et al.* (1985) conducted a summer camp field study of children engaged in outdoor activities for periods of several days to weeks, during which they were exposed to ambient O_3 for several hours per day. This study reported that statistically-significant, short-term pulmonary function decrements, compared to initial baseline values, could be measured even when the O_3 NAAQS were not exceeded. The effects increased with exposure to increasing levels of O_3. The pulmonary function decrements reported, however, could be attributed in part to factors such as other pollutants or heat. Moreover, the health significance of pulmonary function decrements of the duration and magnitude reported in this study is unclear (U.S. EPA, 1989, pp. VII–53 to VII–56).

Based on the its assessment of McDonnell *et al.* (1983), Gong *et al.* (1986), and Lioy *et al.* (1985), the EPA does not agree that these three studies warrant revision of the 1-hour O_3 NAAQS, either to provide greater protection against short-term (1- to 3-hour) effects or to provide a margin of safety against the effects of multihour exposures. As noted above, the EPA adheres to Administrator Reilly's judgment that effects associated with 1- to 3-hour exposures in the range of 0.12 ppm to 0.15 ppm do not constitute adverse effects. The EPA also believes that tightening the 1-hour standard to provide "surrogate" protection against multihour exposures would be inappropriate for reasons discussed below. Under section 116 of the Act, of course, the States are free to establish ambient air quality standards that are more stringent than the NAAQS. Because decisions on such questions as whether detectable responses to air pollution are significant enough to be regarded as adverse health effects, whether a given margin of safety is adequate, or whether it is appropriate to use a short-term standard to provide surrogate protection against the effects of multihour exposures are inescapably judgmental (see, e.g., *Lead Industries Association* v. *EPA*, *supra*, 647 F.2d at 1144, 1160, 1161–62), different decision-makers may well come to different conclusions.

The preliminary information on multihour exposures cited by this commenter and others was considered by the CASAC in its assessment of the adequacy of the existing 1-hour standard (CASAC Transcript, 1988). The CASAC was divided on whether it would be appropriate to set a lower 1-hour standard as a surrogate to protect against multihour exposures. In any event, the CASAC could not reach a consensus on an appropriate range for such a standard. The CASAC noted in its "closure letter" that "this lack of consensus is reflective of major deficiencies in our knowledge base regarding health and welfare effects of long-term exposure (beyond a few hours) to ozone. The data base is very large and adequate for knowledgeable individuals to reach agreement on the effects of acute exposure to ozone in the range appropriate for setting a 1-hour standard. However, there is not an adequate data base on the effects of multiple hour or seasonal exposures to ozone * * *." (CASAC, 1989).

Administrator Reilly was very aware of the views of the CASAC on these points. Taking those views into account, he determined that the appropriateness of revising the existing 1-hour primary standard should be judged in terms of the large body of information on acute (1- to 3-hour) exposures to O_3, and that the preliminary information on multihour or prolonged exposures should be evaluated in terms of whether it provided a sufficient basis for setting a new multihour standard. This was the approach adopted in the proposal notice, and the EPA continues to believe it is the proper one. Tightening the 1-hour standard to a degree appropriate for surrogate protection against prolonged or multihour exposures would require many if not all of the same determinations that would be needed to establish a multihour standard. At a minimum, only after an appropriate multihour averaging period and concentration level of concern had been established, would it be possible to compute, based on O_3 air quality relationships, a 1-hour value that would generally (but not always) provide the same approximate level of protection. Given the preliminary nature of the information available, making such determinations now would be premature. As discussed above, the CASAC in essence undertook such an assessment in its deliberations and could not reach a consensus due to the lack of an adequate data base.

Based on its review of the record, the EPA concludes that there is insufficient information on prolonged or multihour exposures to provide a reasoned basis for lowering the existing 1-hour primary standard to serve as a surrogate for a longer-term standard. Even if there were sufficient information available, the adoption of a tighter 1-hour standard as a surrogate for a longer-term standard would be a poor policy choice. When establishing a new or revised standard, the averaging time selected should match to the extent practicable the exposure period associated with the health effects of concern. While 1-hour peak O_3 levels correlate well with longer-term O_3 levels in many areas of the country, the variability of air quality relationships means that the adoption of a 1-hour standard as a surrogate would not assure uniform protection for the entire country. As a result, some areas would have to over-control to meet the lower 1-hour value while others, even though they attained the lower 1-hour standard, would not necessarily receive the desired level of protection against prolonged or multihour exposures. For these reasons, the EPA concludes that the more reasoned approach is to proceed as rapidly as possible with the next review of the air quality criteria so that recently published studies can be appropriately considered. Being aware

of many of these new studies, the EPA believes they will provide important new information so that a more informed decision can be made with respect to the need for and specification of a new standard to address the public health concerns associated with prolonged or multihour exposures to O_3.

In the proposal notice, the Agency estimated that it would take 2 to 3 years to update the air quality criteria for ozone and develop staff recommendations for the Administrator, following the relatively complex process outlined in Section III of the notice. As previously noted, a number of commenters, including the immediate past Chairman of the CASAC, have stressed the magnitude and complexity of the task. Others have argued that the newer studies raise serious concerns about the adequacy of the existing standards. The Agency continues to believe that a rigorous assessment of the new studies is necessary to assure a sound decision. Because of the extraordinary importance of this public health issue, however, the Administrator intends to move the process ahead as quickly as possible and, if appropriate, to propose revisions of the standards at the earliest possible date. To that end, the Administrator has directed the Agency staff to examine all possible ways of accelerating the process consistent with assuring a sound decision.

B. The Secondary Standard

The rationale for the proposed determination under section 109(d)(1) that revisions to the existing secondary standard are not appropriate at this time was presented in some detail in the August 10, 1992 proposal (57 FR 35550). Based on this information, Administrator Reilly concluded that the most prudent course of action was to retain the current standard until a more informed decision could be made during the next standard review. After taking into account the public comments on the secondary standard and for the reasons discussed below, the EPA again concludes, based on the rationale presented in the August 10, 1992 proposal notice, that revisions to the existing secondary standard are not appropriate at this time. As discussed in the summary of public comments above, only four commenters opposed the proposed decision on the secondary standard. Several of these commenters argued that the EPA should have considered studies published in the peer-reviewed literature after completion of the air quality criteria and staff paper that served as the basis for the proposed decision. As in the case of the primary standard, and for the same reasons, the EPA concludes that secondary NAAQS must and should be based on information contained in the air quality criteria. Again, the EPA believes the proper course of action is to proceed as rapidly as possible with the next review of the air quality criteria so that the more recent studies can be fully evaluated. In this regard, the EPA notes the number of new studies, some of which are still in press, cited by one of the commenters (see Docket Number IV–D–27) on the effects of O_3 on forests. As discussed in the August 10, 1992 proposal, this is precisely the type of information that, once it has been incorporated into the air quality criteria, will assist the EPA in reaching a more informed decision on a new form, averaging period, and level of a secondary standard that would be more protective of forest tree species and agricultural crops. As in the case of the primary standard, once the review process is completed, the EPA will reach a determination as to whether revisions are appropriate and announce its proposed decision as quickly as possible thereafter.

Two commenters also argued that the EPA should give further consideration to the staff's and the CASAC's recommendations on tightening the existing 1-hour secondary standard. As discussed in the August 10, 1992 proposal, Administrator Reilly was aware that both the staff and the CASAC had great difficulty throughout their review of the air quality criteria and standards for O_3 in determining an appropriate range for a 1-hour secondary standard (U.S. EPA, 1989, p. XI–15). In the end, the staff had to rely on the preliminary results of the Lee *et al.* (1988) study to develop and specify a range of alternative levels below that of the current standard. Even after considering the staff's new assessment based on the Lee study, the CASAC could not reach a consensus (CASAC, 1989). As noted in the proposal notice, the staff found this study too preliminary to serve as the basis for recommending changes in the form and averaging time of the standard. Given the preliminary status of data that provided the basis for staff recommendations and the CASAC's clearly expressed view that a 1-hour averaging period was not the most appropriate exposure indicator, Administrator Reilly was initially inclined not to consider any revisions because of the absence of sufficient information to specify a new form, averaging time, and level for the secondary standard.

Being mindful of the opinion expressed by the CASAC in its "closure letter" Administrator Reilly did, however, consider lowering the 1-hour standard as an interim measure. As discussed in the August 10, 1992 proposal, even if the results of the Lee *et al.* (1988) study provided a sufficient basis for revising the standard downward from 0.12 to 0.10 ppm, as an interim measure, it was Administrator Reilly's judgment that such a change would provide only marginal improvement because a 1-hour averaging period is not the most appropriate exposure indicator for the full range of exposures that affect crops and forest tree species and will have to be reconsidered during the next review. Administrator Reilly also concluded that, in the interim, such a change would have imposed a disproportionate and largely meaningless burden on States to review and make appropriate revisions in applicable SIP's. Having considered the public comments on the issue, the EPA adheres to these judgments.

C. Final Decision

For the reasons discussed above and in the August 10, 1992 proposal notice (57 FR 35542), it is the Administrator's judgment under section 109(d)(1) that revisions to the existing primary and secondary NAAQS are not appropriate at this time. Because a large body of new information on the health and welfare effects of O_3 has been published in the scientific literature since completion of the air quality criteria upon which this decision is based, the EPA has already initiated action to update the air quality criteria (57 FR 38832, August 27, 1992). As discussed above, the EPA will proceed with the next review of the criteria and standards for O_3 and announce its proposed decision on revisions of the standards as rapidly as possible.

V. Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, the EPA must judge whether an action is a "major" regulation for which a Regulatory Impact Analysis (RIA) is required. For reasons set forth in the proposal notice, the EPA has judged that today's decision on the primary and secondary NAAQS is not a major action. The EPA, therefore, has deemed unnecessary the preparation of either a final RIA or a final Environmental Impact Statement.

B. Impact on Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., the EPA must prepare initial and final regulatory flexibility analyses assessing the impact of certain rules on small entities. For reasons set forth in the proposal notice, the EPA has determined that the impact assessment requirements of the RFA are inapplicable to this final decision.

VI. Other Reviews

This decision was submitted to the Office of Management and Budget (OMB) for review. Written comments from the OMB and the EPA written responses to these comments are available for public inspection at the EPA's Central Docket Section (Docket No. A–92–17), South Conference Center, room 4, Waterside Mall, 401 M Street SW., Washington, DC.

Dated: March 1, 1993.

Carol M. Browner,

Administrator.

REFERENCES

Avol, E.L.; Linn, W.S.; Venet, T.G.; Shamoo, D.A.; and J.D. Hackney (1984), Comparative respiratory effects of ozone and ambient oxidant pollution exposure during heavy exercise, J. Air Pollut. Control Assoc. 34: 804–809.

Bedi, J.F. and S.M. Horvath (1987), Longitudinal case study of pulmonary function response to ozone, Am. J. Med. 82: 860–861.

Bedi, J.F.; Horvath, S. M.; and D.M. Drechsler-Parks (1988), Reproducibility of the pulmonary function response of older men and women to a 2-hour ozone exposure, JAPCA 38: 1016–1019.

Clean Air Scientific Advisory Committee (1986), Closure Letter to Lee Thomas, October 22, 1986.

Clean Air Scientific Advisory Committee (1988), Transcript of meeting held in Washington, D.C. on December 14–15, 1988.

Clean Air Scientific Advisory Committee (1989), Closure Letter to William K. Reilly, May 1, 1989.

Drechsler-Parks, D.M.; Bedi, J.F.; and S.M. Horvath (1987), Pulmonary function responses of older men and women to ozone exposure, Exp. Gerontol. 22: 91–101.

Folinsbee, L.J., and M.J. Hazucha (1989), Persistence of ozone-induced changes in lung function and airway responsiveness, In: Schneider, T.; Lee, S.D.; Wolters, G.J.R.; Grant, L.D., eds., Atmospheric ozone research and its policy implications: proceedings of the 3rd US-Dutch international symposium; May 1988; Nijmegen, The Netherlands, Amsterdam, The Netherlands, Elsevier Science Publishers; pp. 483–492 (Studies in Environmental Science 35).

Gibbons, S.I. and W.C. Adams (1984), Combined effects of ozone exposure and ambient heat on exercising females, J. Appl. Physiol. 57: 450–456.

Gong, H., Jr.; Bradley, P.W.; Simmons, M.S.; and D.P. Tashkin (1986), Impaired exercise performance and pulmonary function in elite cyclists during low-level ozone exposure in a hot environment, Am. Rev. Respir. Dis. 134: 726–733.

Horstman, D.; McDonnell, W.; Folinsbee, L.; Abdul-Salaam, S.; and P. Ives (1989), Changes in pulmonary function and airway reactivity due to prolonged exposure to typical ambient ozone (O_3) levels, In: Schneider, T.; Lee, S.D.; Wolters, G.J.R.; Grant, L.D., eds. Atmospheric ozone research and its policy implications: proceedings of the 3rd US-Dutch international symposium; May 1988; Nijmegen, The Netherlands. Amsterdam, The Netherlands: Elsevier Science Publishers; pp. 755–762 (Studies in Environmental Science 35).

Koren, H.S.; Devlin, R.B.; Graham, D.E.; Mann, R.; and D.H. Horstman (1988a), Cellular and biochemical changes in the lower airways of subjects exposed to ozone, Research Triangle Park, NC: U.S. Environmental Protection Agency, Health Effects Research Laboratory; report no. EPA/600/D–88/031, Available from: NTIS; Springfield, VA; PB88–170048.

Koren, H.S.; Devlin, R.B.; Graham, D.E.; Mann, R.; Horstman, D.H.; Kozumbo, W.J.; Becker, S.; and W.F. McDonnell (1988b), Cellular and biochemical changes in the lower airways of subjects exposed to ozone, In: Sorg, C., ed. The alveolar macrophage, Local Immunity 4: 36–49.

Kulle, T.J.; Sauder, L.R.; Hebel, J.R.; and C.D. Chatham, M.D. (1985), Ozone response relationships in healthy nonsmokers, Am. Rev. Respir. Dis. 132: 36–41.

Lee, E.H.; Tingey, D.T.; and W.E. Hogsett (1988), Interrelationship of Experimental Exposure and Ambient Air Quality Data for Comparison of Ozone Exposure Indices and Estimating Agricultural Losses, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C.

Linn, W.S.; Avol, E.L.; Shamoo, D.A.; Spier, C.E.; Valencia, L.M.; Venet, T.G.; Fischer, D.A.; and J.D. Hackney (1986), A dose-response study of healthy heavily exercising men exposed to ozone at concentrations near the ambient air quality standard, Toxicol. Ind. Health 2: 99–112.

Lioy, P.J.; Vollmuth, T.A.; and M. Lippmann (1985), Persistence of peak flow decrement in children following ozone exposures exceeding the National Ambient Air Quality Standard, J. Air Pollut. Control Assoc. 35: 1068–1071.

McClellan, R.O. (1992), Letter from Chairman of Clean Air Scientific Advisory Committee to the EPA Administrator, dated August 31, 1992.

McDonnell, W.F.; Horstman, D.H.; Hazucha, M.J.; Seal, E., Jr.; Haak, E.D.; Salaam, S.; and D.E. House (1983), Pulmonary effects of ozone exposure during exercise: dose-response characteristics, J. Appl. Physiol: Respir. Environ. Exercise Physiol. 54: 1345–1352.

McDonnell, W.F., III; Chapman, R.S.; Leigh, M.W.; Strope, G.L.; and A.M. Collier (1985), Respiratory responses of vigorously exercising children to 0.12 ppm ozone exposure, Am. Rev. Respir. Dis. 132: 875–879.

Reisenauer, C.S.; Koenig, J.Q.; McManus, M.S.; Smith, M.S.; Kusic, G.; and W.E. Pierson (1988), Pulmonary responses to ozone exposures in healthy individuals aged 55 years or greater, J. Air Pollut. Control Assoc. 38: 51–55.

Schelegle, E.S. and W.C. Adams (1986), Reduced exercise time in competitive simulations consequent to low level ozone exposure, Med. Sci. Sports Exerc. 18: 408–414.

Spektor, D.M.; Lippmann, M.; Lioy, P.J.; Thurston, G.D.; Citak, K.; James, D.J.; Bock, N.; Speizer, F.E.; and C. Hayes (1988a), Effects of ambient ozone on respiratory function in active normal children, Am. Rev. Respir. Dis. 137: 313–320.

Spektor, S.M.; Lippmann, M.; Thurston, G.D.; Lioy, P.J.; Stecko, J.; O'Connor, G.; Garshick, E.; Speizer, F.E.; and C. Hayes (1988b), Effects of ambient ozone on respiratory function in healthy adults exercising outdoors, Am. Rev. Respir. Dis. 138: 821–828.

U.S. Environmental Protection Agency (1978), Air Quality Criteria for Ozone and Other Photochemical Oxidants: Office of Research and Development, Washington, D.C., EPA Report No. EPA–600/8–78–004.

U.S. Environmental Protection Agency (1986), Air Quality Criteria for Ozone and Other Photochemical Oxidants, Draft Final, Environmental Criteria and Assessment Office, EPA Report No. EPA–600/8–84/020a to 020e, Available from: NTIS, Springfield, VA; PB 87–142949.

U.S. Environmental Protection Agency (1989), Review of the National Ambient Air Quality Standards for Ozone Assessment of Scientific and Technical Information: OAQPS Staff Paper, Research Triangle Park, NC: Office of Air Quality Planning and Standards, EPA Report No. 450/2–92–001.

U.S. Environmental Protection Agency (1992), Summary of Selected New Information on Effects of Ozone on Health and Vegetation: Supplement to Air Quality Criteria for Ozone and Other Photochemical Oxidants, Research Triangle Park, NC: Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office; EPA/600/8–88/105A, Available from NTIS, Springfield, VA.

Appendix I

May 1, 1989

The Honorable William K. Reilly,
Administrator, U.S. Environmental Protection Agency,401 M Street SW., Washington, DC 20460

Dear Mr. Reilly: I am pleased to transmit via this letter the advice of the Clean Air Scientific Advisory Committee (CASAC) concerning the National Ambient Air Quality Standards for Ozone. CASAC has reviewed and offered comments directly to EPA staff on the EPA criteria document "Air Quality Criteria for Ozone and Other Photochemical Oxidants (1986)," the draft "Criteria Document Supplement (1988)," and the Office of Air Quality Planning and Standards staff position paper "Review of the National Ambient Air Quality Standards for Ozone Assessment of Scientific and Technical Information (1988)" and related support documents.

CASAC previously reached closure on the 1986 Criteria Document. At a meeting held on December 14–15, 1988, CASAC came to closure on the "Criteria Document Supplement (1988)" and the 1988 Staff Position Paper and concluded that they provide an adequate scientific basis for EPA to retain or revise primary and secondary standards for ozone. While reaching closure at this time, the Committee did note an emerging data base on the acute health effects resulting from 6-plus hours of ozone exposure, providing evidence of the possible need for a standard with a 6–8 hour averaging time. However, it was the Committee's view that it would be some time before enough of this developing information would be published in scientific journals to receive full peer review and, thus, be suitable for inclusion in a criteria document. CASAC concluded such information can better be considered in the next review of the ozone standards.

CASAC did not reach a consensus opinion on endorsement of the staff position paper recommendation that "the range of 1-hour average ozone levels of concern for standard setting purposes is 0.08–0.12 ppm for a primary standard." The opinion of the CASAC Ozone Review Committee was divided with regard to the upper range of the standard with eight individuals favoring a range with an upper value of 0.12 ppm, three individuals favored an upper bound in the range of 0.10–0.12 ppm, four individuals favored an upper bound value no higher than 0.10 ppm, and one individual abstained from offering an opinion. Several individuals who supported an upper value of 0.12 ppm as well as all of the other individuals who favored a lower value for the upper end of the range expressed the view that at 0.12 ppm there was little or no margin of safety. As you are aware, the margin of safety is intended to provide protection against adverse effects which have not yet been uncovered by research and effects whose medical significance is a matter of disagreement. Finally, several members of the subcommittee favored development of a standard with a more statistically robust upper bound on the annual distribution of ozone concentrations rather than reliance on the current expected exceedance form of the standard. While the Committee offers no further advice on what form the Agency should consider, we would caution you against any form which alters the degree of health protection afforded by the current standard.

CASAC had substantial discussion of the issue of what are or are not adverse health effects. This discussion was aided by the presentation of this issue in the staff position paper. Within CASAC there was diversity of opinion; some members felt that healthy individuals experience adverse effects when ozone exposure induced any of the responses categorized as moderate (i.e., >10% decrement in FEV_1 or mild to moderate respiratory symptoms) in the staff position paper, while a few members believed that adverse effects would not be experienced until ozone induced more severe effects (i.e., >20% decrement in FEV_1 and moderate to severe respiratory symptoms). The view of some individuals on this matter was influenced by recognition that resolution of the adverse health effect issue represents a blending of scientific and policy judgments and, thus, we feel it appropriate to inform you of the range of our views on this matter.

Of particular concern to CASAC is the potential for effects arising from exposures to ozone with daily peak concentrations at or near 0.12 ppm for periods of 6–8 hours and with co-exposure to other pollutants. This concern is due to air quality analyses which have shown that even in areas which do not repeatedly exceed the ozone standard, ozone concentrations can remain close to 0.12 ppm for several hours per day for extended periods of time in summer. There was concern based on recent controlled human exposure, epidemiology and toxicology studies, that such prolonged exposures could result in increased respiratory impairment. Further, for people exposed to these ozone concentrations over a lifetime, the possibility that chronic irreversible effects may result is of concern, although such changes have not been demonstrated.

The Committee noted that the Criteria Document Supplement failed to cite and discuss a group of "ecological" epidemiological studies of the effects of ozone on various measures of human health such as hospitalizations for respiratory illnesses or exacerbation of chronic respiratory problems. Although these studies have obvious limitations in establishing cause and effect relationships, they have certain strengths which can aid in regulatory decision-making. Studies of this type should be discussed and evaluated in future criteria documents as a complementary source of information.

While reaching closure on the staff position paper recommending a 1-hour standard, CASAC urged that the Agency provide increased support for research that will prove an improved scientific basis for evaluating the need for standards with multi-hour or seasonal averaging times. Clearly, the obvious, research on this critical environmental health issue must be supported now in order for results to be available for consideration in the next 5-year review cycle. CASAC has enumerated these research needs in some detail in a September 1987 submission to the Agency. The Committee feels these research recommendations are still valid and should be incorporated as expeditiously as possible into the Agency research program.

CASAC did not reach a consensus opinion on endorsement of the staff position paper recommendation of "a 1-hour averaging time standard in the range of 0.06–0.12 ppm" for a secondary standard. The CASAC Ozone Welfare Effects Subcommittee that considered this matter reached a divided opinion; two favored a range with an upper value of 0.12 ppm, three favored an upper value of less than 0.12 ppm, and five favored an upper value of 0.10 ppm. The Committee noted that the form of the standard was of critical importance in protecting against ozone effects on vegetation. The Committee was of the opinion that a cumulative seasonal standard would be more appropriate than a 1-hour standard and felt that such a standard could be developed. CASAC favored issuance of a cumulative seasonal standard form assuming its development would not further delay the standard setting process. If this form of standard cannot be developed in time for the current review, the Committee is of the opinion that you should give serious consideration to setting a 1-hour secondary standard with a maximum of 0.10 ppm. The Committee took note of the lack of information on the effects of ozone on forest ecosystems and urged support for research to remedy this deficiency.

In closing, I would like to briefly comment on CASAC's failure to reach a consensus as to the appropriate range for setting the ozone standards. This lack of consensus is reflective of major deficiencies in our knowledge regarding health and welfare effects of long-term exposure (beyond a few hours) to ozone. The data base is very large and adequate for knowledgeable individuals to reach agreement on the effects of acute exposure to ozone in the range appropriate for setting a 1-hour standard. However, there is not an adequate data base on the effects of multiple hour or seasonal exposures to ozone, especially as regards whether such exposures may produce chronic health effects. This is especially troubling since such long-term exposures to ozone occur in many parts of the United States and involve many millions of people and thousands of acres of crop and forest lands. As a result, there continues to be concern for the public health and welfare threat which may be posed by chronic exposure to ozone. It is critical that the data base on health and welfare effects related to multiple hour, seasonal and lifetime exposures of ozone be increased through an accelerated and expanded research effort. This must be done so that future considerations of ozone standards will derive from a stronger scientific base.

CASAC recognizes that your statutory responsibility to set standards requires public health policy judgments in addition to determinations of a strictly scientific nature. While the Committee is willing to further advise you on the ozone standards, we see no need, in view of the already extensive comments provided, to review the proposed ozone standards prior to their publication in the **Federal Register**. In this instance, the public comment period will provide

sufficient opportunity for the Committee to provide any additional comments or review that may be necessary.

CASAC would appreciate being kept informed of progress on establishing revised or new ozone standards and plans for research on ozone effects. Please do not hesitate to contact me if CASAC can be of further assistance on this matter.

Sincerely,

Roger O. McClellan, D.V.M.

Chairman, Clean Air Scientific Advisory Committee.

Appendix II

August 31, 1992

Hon. William K. Reilly,

Administrator, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Dear Mr. Reilly: The members of the Clean Air Scientific Advisory Committee (CASAC) have noted with interest the announcement that the Agency is not revising the national air quality standard for ground-level ozone at this time and is initiating a new assessment of the health and environmental effects of ozone. The purpose of this letter is to indicate the willingness of the CASAC to assist the Agency in carrying out a review of the new assessment in an expeditious manner. To facilitate CASAC involvement, it would be useful for the Committee to be briefed at an early date on the Agency's plans for development of the new criteria document on the health and environmental effects of ozone and the subsequent development of a staff position paper on the ozone standard(s).

A briefing for CASAC would provide the opportunity for both CASAC and other interested persons to comment on the Agency's plan for carrying out the important task of preparing new documents. With this as background, CASAC can plan its associated review of the criteria document and staff position paper in a timely manner. The briefing would also provide an opportunity for the Agency and other scientists to describe the state of research now in progress on ozone that will potentially be completed and subjected to peer-review in time for its inclusion in a new assessment. This is especially important since research on ozone is, and should be, ongoing because of the importance of ozone as a pollutant. Nonetheless, it is crucial that at a particular point in time, that is understood by all parties, the knowledge base on ozone be summarized and used for regulatory purposes. A side benefit of the summarization process is that it can also serve to identify information needs which in turn provides input for establishing the research agenda for the future.

The CASAC members are of the opinion that a carefully planned strategy for preparation of the criteria document and staff position paper is essential in view of the magnitude and complexity of the task. As you and your staff are aware, substantial new information has been published since the last criteria document and supplement and staff position paper were prepared. Other studies which may yield significant new information include the National Toxicology Program chronic bioassay with rodents exposed to ozone and new human exposure assessment models are nearing completion. The review, integration and interpretation of the old and new information will be a substantial undertaking. In addition, it will be imperative that the next staff position paper carefully consider alternative forms of the ozone standard, both in terms of averaging time, such as daily (6–24 hour), as well as frequency of occurrence, and seasonal standards, in addition to the traditional one hour standard. This, too, will require substantial preparation effort and, I suspect, ample time for debate.

The CASAC is anxious to assist in these important activities and looks forward to hearing from you as to when the Agency will be ready to brief CASAC on the proposed plans for preparation and review of the ozone criteria document and staff paper.

Sincerely,

Roger O. McClellan, D.V.M.,

Chairman, Clean Air Scientific Advisory Committee.

[FR Doc. 93–5266 Filed 3–8–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1303

RIN: 0970–AB00

Head Start Program; Technical Correction

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Technical correction to final rule.

SUMMARY: This document contains a technical correction that adds the Office of Management and Budget approval number for information collection requirements in the Head Start final rule on appeals, published December 14, 1992 (57 FR 59260).

DATES: This correction is effective March 9, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Mottolo, Acting Commissioner, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, (202) 205–8347.

SUPPLEMENTARY INFORMATION:

Background

The Administration on Children, Youth and Families published a final rule on December 14, 1992 (57 FR 59260) which revises and clarifies for Head Start grantees and delegate agencies the requirements concerning appeals by grantees from termination and denial of refunding actions. The final rule also includes provisions on appeals by current or prospective delegate agencies of grantee's rejections of, or failures to act on, applications, or grantee's terminations of grants or contracts.

Need for Correction

As published, §§ 1303.10 through 1303.23 contained information collection requirements for which an OMB approval number was required. OMB approved and assigned a number to those sections on January 22, 1993, which this correction will show in a section added at the end of the rule, specifically for the OMB number.

Correction of Publication

Accordingly, the publication of the Head Start Program final rule on appeals (57 FR 59260) is corrected as follows: On page 59271, at the end of § 1303.23, add:

§ 1303.24 OMB control number.

The collection of information requirements in sections 1303.10 through 1303.23 of this part were approved on January 22, 1993, by the Office of Management and Budget and assigned OMB control number 0980–0242.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 93–5301 Filed 3–8–93; 8:45 am]

BILLING CODE 4130–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[DA 92–1115]

Reorganization of the Field Operations and Private Radio Bureaus

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the Commission's Rules To incorporate the reorganization between the Private Radio Bureau and the Field Operations Bureau. The reorganization was necessary in order to promote a more efficient and effective organizational structure.

EFFECTIVE DATE: October 1, 1992.

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

SUPPLEMENTARY INFORMATION:

Order

In the matter of Amendment of Parts 0 and 1 of the Commission's Rules To Reflect a Reorganization of the Private Radio Bureau and the Field Operations Bureau.
Adopted: May 12, 1992.
Released: February 5, 1993.

By the Managing Director:

1. The Commission has before it for consideration proposed changes in the organizations of the Private Radio and Field Operations Bureaus. Implementation of the proposed changes requires amendments to parts 0 and 1 of the Commission's Rules and Regulations.

2. In order to provide faster and higher quality service in the Commission's enforcement and licensing programs, the Commission is hereby approving the transfer of commercial radio operator licensing and antenna marking and lighting clearance from the Field Operations Bureau to the Private Radio Bureau and the transfer of enforcement functions from the Private Radio Bureau's Compliance Branch to the Field Operations Bureau.

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

4. *It is ordered*, Effective October 1, 1992 that parts 0 and 1 of the Rules and Regulations are amended as set forth in the Final Rules hereto.

Federal Communications Commission.

Alan R. McKie,

Deputy Managing Director.

List of Subjects

47 CFR Part 0

Authority delegated, Location of commission offices, Inspection of records, Organization and functions.

47 CFR Part 1

Administrative practice and procedure, Operator licenses.

Final Rules

Part 0 and part 1 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.111 is amended by revising the introductory text to the section and paragraph (a); redesignating paragraphs (b) through (l) as paragraphs (d) through (n); adding new paragraphs (b) and (c); and revising newly redesignated (d) to read as follows:

§ 0.111 Functions of the Bureau

Responsible for all Commission engineering and enforcement activities performed by the Bureau in the field relating to all services including sanction, inspection, investigation and monitoring activities, interference suppression, communications user liaison and administration of the Emergency Broadcast System.

(a) Enforce the Commission's rules and regulations; monitor, inspect and investigate all non-government communications matters; issue sanctions.

(b) Formulate the Commission's Enforcement Plan in collaboration with other Bureaus and Offices and execute the portions of the plan for which the Bureau is responsible.

(c) Participate in the development of the Commission's User Information Services Plan in conjunction with other Bureaus and Offices and execute the portions of the plan for which the Bureau is responsible.

(d) Advise the Commission and act in matters regarding field liaison with the user public and local and federal government agencies (Part 0).

* * * * *

3. Section 0.131 is amended by adding paragraph (j) to read as follows:

§ 0.131 Functions of the Bureau

* * * * *

(j) Administers the Commission's commercial radio operator program (part 13) and the Commission's program for construction, marking and lighting of antenna structures (part 17).

4. Section 0.311 is amended by revising paragraph (a)(1) to read as follows:

§ 0.311 Authority delegated

* * * * *

(a) * * *

(1) Notices of proposed rulemaking and of inquiry and final orders in rulemaking and inquiry proceedings.

* * * * *

5. Section 0.314 is amended by removing paragraphs (a), (d), (f), (p), (q), (r), (v) and (w).

6. Section 0.331 is amended by revising paragraph (a)(1); and adding a new paragraph (c) to read as follows:

§ 0.331 Authority delegated

* * * * *

(a) * * *

(1) Notices of proposed rulemaking and of inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing except such orders involving non-substantive revisions to the rules, or orders involving changes clarifying a rule based on established Commission precedent, or conforming one rule within part 1, subpart F, part 13, part 17 and parts 80 through 97 with another rule or conforming any of these rules to formally adopted international convention or agreement where novel questions of policy or law are not involved. Also, the addition of new Marine VHF frequency coordinating committee(s) to § 80.514 of the Rules need not be referred to the Commission if they do not involve novel questions of policy or law.

* * * * *

(c) The Chief, Private Radio Bureau is delegated authority to:

(1) Act on requests for a waiver of the English language provisions of §§ 13.22 and 13.23 of this chapter in the case of Spanish-speaking applicants in and around Puerto Rico and Miami, Fla., and to issue licenses bearing appropriate restrictions to those applicants found qualified.

(2) Act on requests for waiver of the written examination requirements of §§ 13.21, 13.22 and 13.23 of this chapter and to authorize oral examinations in lieu thereof.

(3) Act on requests by blind applicants to appear at the appropriate field office for a radiotelephone license examination. (See §§ 13.11 and 13.23 of this chapter.)

7. Section 0.401 is amended by revising paragraphs (a)(3)(i) and (b)(1) to read as follows:

§ 0.401 Location of Commission Offices.

* * * * *

(a) * * *

(3) * * *

(i) The mailing address of the Private Radio Bureau Licensing Division is: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

(b) * * *

(1) Applications and filings submitted by mail shall be addressed to the Mellon Bank in Pittsburgh, Pennsylvania. The bank maintains separate post office boxes for the receipt of different types of applications. It will also establish special post office boxes to receive responses to special filings such as

applications filed in response to "filing windows" established by the Commission. The address for the submission of filings will be established in the Public Notice announcing the filing dates. In all other cases, applications and filings submitted by mail should be sent to the addresses listed in the appropriate fee rules: Section 1.1102 for Private Radio Services and Radio Operator Examinations; § 1.1103 for Equipment Approvals, Experimental Radio Applications and Ship Inspections; § 1.104 for Mass Media Services; and § 1.105 for Common Carrier Services.

* * * * *

8. Section 0.406 is amended by revising the first four sentences of paragraph (b) introductory to read as follows:

0.406 The rules and regulations.

* * * * *

(b) *Contents.* Parts 0–19 of the rules have been reserved for provisions of a general nature. Parts 20–69 of this chapter have been reserved for provisions pertaining to common carriers. Parts 70–79 have been reserved for provisions pertaining to broadcasting and cable television. Parts 80–99 of this chapter have been reserved for provisions pertaining to the Private Radio Services. * * *

* * * * *

9. Section 0.453 is amended by revising paragraph (l) to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(l) *The Private Radio Bureau Reference Room.* Commercial radio operator application files and all authorizations in the Private Radio Services and files relating thereto, which includes Land Mobile, Microwave, Aviation, Ground and Marine Coast applications. All of these materials are available in the Commission's offices in Gettysburg, Pennsylvania. See § 0.457(f)(3) of this chapter.

10. Section 0.455 is amended by removing paragraph (d).

11. Section 0.484 is revised to read as follows:

§ 0.484 Amateur radio operator examinations.

Generally, examinations for amateur radio operation licenses shall be administered at locations and times specified by volunteer examiners. (See § 97.509). When the FCC conducts examinations for amateur radio operator licenses, they shall take place at locations and times designated by the FCC.

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.61 is amended by revising paragraphs (a), (b), (c) and (f) to read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

(a) Antenna surveys are conducted by the Licensing Division of the Private Radio Bureau.

(b) Each operating bureau or office examines the applications for which it is responsible to ascertain whether or not antenna consideration is required. If such consideration is required, the antenna data is furnished to the Licensing Division.

(c) The Licensing Division then ascertains whether the applicant is required to submit a "Notice of Proposed Construction or Alteration" (FAA Form 7460–1) to the Federal Aviation Administration.

* * * * *

(f) Upon receipt from the Federal Aviation Administration approving a proposed antenna, the Licensing Division prescribes antenna tower painting and lighting specifications or other conditions in accordance with the provisions of part 17 of this chapter and forwards this information to the originating bureau or office. If the proposed tower is disapproved, a report of the disapproval is forwarded to the originating bureau or office.

* * * * *

3. Section 1.83 is amended by revising paragraph (b) to read as follows:

§ 1.83 Applications for radio operator licenses.

* * * * *

(b) Application filing procedures for commercial radio operator licenses are set forth in part 13 of this chapter. Detailed information about application forms, filing procedures, and where to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from the Private Radio Bureau, Licensing Division, Consumer Assistance Branch, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

4. Section 1.85 is amended by revising the first five sentences to read as follows:

§ 1.85 Suspension of operator licenses.

Whenever grounds exist for suspension of an operator license, as provided in section 303(m) of the Communications Act, the Chief of the Private Radio Bureau, with respect to amateur and commercial radio operator licenses, may issue an order suspending the operator license. No order of suspension of any operator's license shall take effect until 15 days' notice in writing of the cause for the proposed suspension has been given to the operator licensee, who may make written application to the Commission at any time within the said 15 days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have 15 days in which to mail the said application. In the event that physical conditions prevent mailing of the application before the expiration of the 15-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be designated for hearing by the Chief, Private Radio Bureau and said suspension shall be held in abeyance until the conclusion of the hearing.

* * *

5. Section 1.901 is revised to read as follows:

§ 1.901 Scope.

In the case of any conflict between the rules set forth in this subpart and the rules set forth in part 13 or the rules set forth for specific services in parts 80 through 99, the rules in this subpart shall govern.

[FR Doc. 93–5285 Filed 3–8–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–39; Notice 2]

RIN 2127–AE11

Federal Motor Vehicle Safety Standards; Windshield Wiping and Washing Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends Standard No. 104, *Windshield Wiping*

and Washing Systems, to substitute the term "seating reference point" for the term "manikin H point with seat in rearmost position" wherever that term appears in any SAE Standard or Recommended Practice as those SAE documents are incorporated by reference in the standard. As currently written, the Standard already substitutes the term "seating reference point" for the terms "manikin H point" and "H point."

DATES: *Effective Date:* The amendments become effective April 8, 1993.

Petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than April 8, 1993.

ADDRESSES: Any petition for reconsideration should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Crash Avoidance Division, NRM–11, room 5307, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590 (202–366–5276).

SUPPLEMENTARY INFORMATION: Standard No. 104, *Windshield Wiping and Washing Systems*, specifies requirements for windshield wiping and washing systems. Standard No. 104 references several SAE Recommended Practices and Standards. In particular, the standard references Figure 1 of SAE J903a to establish the minimum windshield area(s) which must be wiped or washed to meet the standard's requirements. Standard No. 103, *Windshield Defrosting and Defogging Systems*, references this section of Standard No. 104 in establishing the minimum windshield area(s) which must be defrosted or defogged. These minimum areas are determined using the location of the "seating reference point."

A final rule published concurrently with this proposal amended the definition of "seating reference point" (SgRP). (56 FR 38084, August 12, 1991) "Seating reference point" identifies a single adjustment point for each seating position. The seating reference point for a particular seating position in a vehicle is used to determine whether that vehicle complies with requirements set forth in several of the safety standards. The final rule made it clear in the definition that SgRP is not necessarily the absolute rearmost point to which a seat can be adjusted.

In response to a comment by General Motors to the rulemaking about seating reference points, NHTSA issued a notice of proposed rulemaking to amend the definition for seating reference point in Standard No. 104. (56 FR 38099, August 12, 1991). The agency believed that the proposal was necessary to eliminate potentially contradictory references relative to the definition for seating reference point in Standard No. 104, and by reference Standard No. 103. To avoid confusion, the agency proposed amending Standard No. 104 so that "seating reference point" would be substituted for the terms "manikin H point," "manikin H point with seat in rearmost position" and "H point." The agency believed that this amendment would prevent the change in the SgRP definition from changing the areas of a vehicle subject to Standards No. 103 and 104. The agency believed that the amendment would not affect the safety benefits provided by either standard. The agency further believed that the proposal would not result in any change in cost for manufacturers since it is consistent with industry practice.

In response to the NPRM, the agency received comments from General Motors, Ford, and Chrysler. The commenters supported the proposal, stating that the amendments would clarify the provision and eliminate potentially contradictory phrases in the referenced SAE standards.

Based on the reasons set forth in the NPRM and the comments which agreed with the proposal, NHTSA has decided to amend Standard No. 104, as proposed. Specifically, Standard No. 104 is amended by substituting the term "seating reference point" for the terms "manikin H point," "maintain H point with seat in rearmost position," and "H point."

This final rule will not have any retroactive effect. Under section 103(d) of The National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Effective Date

Because the amendment clarifies a term and imposes no additional burden on any party, it is hereby found that good cause is shown for an effective date earlier than 180 days after issuance of the final rule, and the final rule is effective 30 days after its publication in the Federal Register.

Rulemaking Analyses and Notices

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

NHTSA has examined the impact of this rulemaking action and determined that it is neither major within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency believes that this amendment prevents the change in the SgRP definition from changing the areas of a vehicle subject to Standards No. 103 and 104. The agency further believes that the amendment will not result in any increased or decreased cost for manufacturers, since it is consistent with industry practice.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. To the extent that any vehicle manufacturers qualify as small entities, their number would not be substantial. In any event, the agency does not anticipate any economic impacts from this rule, as explained above. Accordingly, this new definition will not affect the purchase price of new motor vehicles purchased by small organizations and small governmental units.

National Environmental Policy Act

NHTSA has also analyzed this rulemaking under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule would not have significant Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, part 571 of title 49 of the Code of Federal Regulations is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50 and 501.4.

§571.104 [Amended]

2. In S3, § 571.104, the definition for "seating reference point" is revised to read as follows:

§571.104 Standard No. 104; Windshield wiping and washing systems.

* * * * *

S3. *Definitions.* The term *seating reference point* is substituted for the terms *manikin H point, manikin H point with seat in rearmost position* and *H point* wherever any of these terms appear in any SAE Standard or SAE Recommended Practice referred to in this standard.

* * * * *

Issued on: March 2, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–5125 Filed 3–8–93; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

RIN 2127–AE35

[Docket No. 92–15; Notice 2]

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration, NHTSA (DOT).

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard No. 108 to delete the requirement for a minimum 4-inch edge to edge separation distance between amber motorcycle turn signals and stop or taillamps.

This action is taken pursuant to a petition from the Motorcycle Industry Council. It will allow the use of designs permissible elsewhere.

EFFECTIVE DATE: The effective date of the rule is April 18, 1993.

ADDRESSES: Petitions for reconsideration of the final rule must be received not later than 30 days after publication of this notice. Petitions should refer to Docket 92–15; Notice 2, be addressed to the Administrator, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Kenneth Hardie, Office of Rulemaking, 202–366–6987.

SUPPLEMENTARY INFORMATION: This notice amends the motorcycle turn signal lamp spacing requirements of Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to adopt Alternative 1 proposed on April 28, 1992 (57 FR 17871).

Table III of Standard No. 108 requires a motorcycle to be equipped with at least one stop lamp and one taillamp. Table IV requires that if a single lamp is used, it must be mounted on the motorcycle's vertical centerline. Table IV also requires that there be a minimum edge to edge separation distance of 4 inches between motorcycle turn signal lamps and a single tail or stop lamp. However, the agency has interpreted the minimum separation requirement as inapplicable when two stop lamps and/or taillamps are used, symmetrically disposed around the vertical centerline.

The Motorcycle Industry Council (MIC) petitioned "to remove the requirement for a (4) inch minimum edge to edge separation distance * * *." MIC argued that the present requirement is, in effect, design restrictive, prohibiting use of lamp designs employed elsewhere in the world. MIC stated that these interpretations preclude the installation of a modular unit such as a center mounted tail/stop lamp with adjacent turn signals, or integration of the rear lamps into the body panel design. The 4-inch requirement also limits the practical size of the tail/stop lamp, with the effect of limiting nighttime rear conspicuity. MIC noted that these configurations are allowed worldwide, except in the U.S. and Canada. It stated that in Canada, rulemaking has been initiated to eliminate the 4-inch spacing requirement. Canada's rationale for its approval is that the current 4-inch spacing limitation effectively prevents the use of integrated rear lamp assemblies which would contain larger tail and stop lamps, thereby improving the rear conspicuity of the motorcycle. Canada also commented that experience with passenger cars had shown that adjacent turn signals and tail/stop lamps are easily perceptible.

NHTSA granted MIC's petition, noting that an amendment of the nature requested would allow the use of designs in use elsewhere, thus no longer requiring a specialized design, at extra cost, for the U.S. MIC also commented that, for harmonization purposes, current motorcycles are equipped with amber rear turn signal lamps. Further, a motorcycle fitted with amber rear turn signal lamps adjacent to a single centered red lamp would remain subject to the 9-inch spacing requirement. Thus, a final rule would not reduce the existing level of safety.

NHTSA tentatively agreed that the signals from a motorcycle fitted with amber rear turn signal lamps adjacent to a single, centered red tail/stop lamp would be easily interpreted by following vehicles. The agency agreed further that such a configuration would not likely degrade the existing safety of the vehicle. The agency viewed such an amendment as consistent with its policy to remove design restrictions not needed for safety, and with the policy of international harmonization.

However, MIC's request and comment left NHTSA unsure whether MIC was requesting the limitation of the requirement as it applies to amber turn signal lamps only, or the total elimination of the requirement, regardless of the color. NHTSA therefore decided to evaluate each alternative, and tentatively concluded that the deletion of the 4-inch spacing requirement for amber turn signal lamps ought not to have a negative effect upon safety. However, NHTSA also tentatively concluded that the 4-inch spacing requirement should be maintained for red turn signal lamps when the stop/taillamp are mounted on the vertical centerline. Maintaining the existing requirement of more than 20 years standing would ensure that there is no masking of the light from one red lamp by the light from another, impairing the information that each seeks to impart.

However, there was an alternative that interested NHTSA: Eliminating both the 4-inch spacing requirement and the use of red as a permissible alternative to amber for rear motorcycle turn signal lamps. It appeared that none of the MIC member companies manufactured motorcycles with red rear turn signal lamps. Nor does Harley-Davidson, a non-MIC company. The use of amber is mandated in Europe. Therefore, as Alternative 2, NHTSA proposed an amendment of Table III to specify only amber, and of Table IV to specify only amber and to remove the 4-inch limit.

There were four commenters on the proposal: MIC, American Honda Motor Co., Inc., American Suzuki Motor Corp., and Yamaha Motor Corp. USA. All commenters supported Alternative 1: The elimination of the 4-inch spacing requirement when amber turn signal lamps are used, and continuation of the requirement when red turn signal lamps are used with a single centered stop/

taillamp. Suzuki commented that there was a possibility that there could be future regulatory changes elsewhere in the world which would make red turn signal lamps a desirable option. Accordingly, it saw no benefit in eliminating the option, as proposed in Alternative 2.

NHTSA concurs in this recommendation. Although there is no apparent use of red rear motorcycle turn signals at present, maintaining the option affords greater design freedom to manufacturers. Accordingly, NHTSA is adopting Alternative 1 as proposed.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Effective Date

Because the amendment relieves a restriction and creates no additional burden upon any regulated party, it is found that good cause is shown for an effective date earlier than 180 days after issuance of the final rule. Accordingly, the effective date is 30 days after publication of the final rule in the **Federal Register.**

Rulemaking Analyses

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

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation", or significant under Department of Transportation regulatory policies and procedures. Providing manufacturers with the option of locating amber turn signal lamps closer to stop/taillamps mounted on the vertical centerline permits either modular units equipped with stop, tail and turn signal lamps, or integration of the rear lamps into the body panel. Because of uncertainties regarding the designs, savings per vehicle, and the number of vehicles that will be manufactured to take advantage of the relaxation, NHTSA is unable to quantify the potential cost reduction associated with this rulemaking action. However, the design flexibility that the amendment affords should yield some slight manufacturing cost savings which could be passed on to consumers. Tooling costs can be reduced for modular and integrated rear lighting systems. Also, fewer and simpler steps in the vehicle assembly process will result in reduced labor costs. Finally, greater production economies of scale can be achieved since regulatory requirements will be internationally harmonized.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. For the reasons noted above, I certify that this rulemaking action will not have a significant economic effect upon a substantial number of small entities. Motorcycle manufacturers are generally not small businesses within the meaning of Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of new motorcycles will be no more than minimally impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

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

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment, as it will not change the equipment currently required for motorcycles.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 is amended as follows:

In Table IV, in the entry "Turn signal lamps", the second sentence in the second paragraph under the column headed "Motorcycles" is revised to read: "Minimum edge to edge separation distance between lamp and tail or stop lamp is 4-inches, when a single stop and taillamp is installed on the vertical centerline and the turn signal lamps are red."

Issued on March 3, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–5219 Filed 3–8–93; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 58, No. 44
Tuesday, March 9, 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 155

Proposed Regulation Prohibiting Dual Trading by Floor Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing § 155.5, which would prohibit dual trading in contract markets with average daily trading volume equal to or in excess of 8000 contracts, except to the extent permitted by contract market rules made effective under section 5a(a)(12) of the Commodity Exchange Act ("Act") and § 1.41. The proposed regulation would permit a contract market to petition the Commission for an exemption from the dual trading prohibition. The contract market would be required to demonstrate in its petition that its trade monitoring system satisfies specified standards, or that there is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market and that it will implement corrective actions to achieve compliance with the specified standards. Each contract market that meets the average daily volume threshold and that is not exempted would be required to adopt rules pursuant to section 5a(a)(12) of the Act and § 1.41 to prohibit dual trading in accordance with the provisions of proposed § 155.5. These provisions are intended to implement the mandate in section 4j(a) of the Act as amended by section 101 of the Futures Trading Practices Act of 1992 ("Futures Trading Act").[1]

[1] Pub. L. No. 102–546, 101,106 Stat. 3590 (1992). The Futures Trading Act was enacted on October 28, 1992.

DATES: Comments on proposed § 155.5 must be received on or before [insert date *60 days after publication*].

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: De'Ana H. Dow, Special Counsel, or Linda Kurjan, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION

I. Background

A. Dual Trading Studies

Dual trading and its effects have been studied extensively by the Commission, its staff, the futures industry and academics for nearly 20 years. The Commission's first extensive study of dual trading was completed by the Advisory Committee on the Regulation of Contract Markets and Self-Regulatory Associations ("Advisory Committee"). The Advisory Committee's report, issued on December 23, 1976, while recommending that the Commission continue to permit dual trading because the practice provided liquidity and promoted expertise among floor brokers, concluded that more information was needed on the effect of dual trading on liquidity.[2] The Advisory Committee also recommended that all contract markets be required to promulgate rules to protect customers from potential trading abuses that may result from dual trading.

Similarly, in the Commission's 1984 report entitled A Study of the Nature, Extent and Effects of Futures Trading by Persons Possessing Material Nonpublic Information ("Insider Trading Study"), the Commission concluded that to the extent dual trading by floor brokers was to be permitted, an improved audit trail was needed to ensure that surveillance of potential trade practice abuses was more effective.[3] In implementing the Insider Trading Study's recommendation, the Commission amended its regulations, effective October 1, 1986, to require that exchange audit trails include one-minute execution times.[4] By July 1988, each exchange had implemented a one-minute timing system. The Commission staff reviewed each exchange's audit trail system as of November 1989. Based on its review, the Commission stated that it believed that the then-current one-minute trade timing systems were not capable of detecting all abuses related to dual trading.[5]

A separate study conducted by the Division of Economic Analysis ("EA"), Economic Analysis of Dual Trading on Commodity Exchanges (November 1989) ("Dual Trading Study"), examined an extensive record of trading activity in U.S. futures and option markets.[6] EA analyzed, among other things, whether there was statistical support for the assertion that dual trading is necessary for adequate market liquidity. In this regard, EA found that dual traders' performance in providing market liquidity is not superior to that of exclusive traders and that dual trading is not a critical ingredient in providing liquidity.

EA also concluded in that study that floor members tend to be highly specialized and as such are primarily engaged in either customer trading or personal trading, *i.e.*, for dual traders whose primary business is trading for their own accounts, their secondary trading (for customers) is relatively small. EA further concluded that the incidence of dual trading is not higher in low volume markets or more distant trading months. In this regard, EA found that dual traders are more likely to trade in markets which already have considerable trading volume.

Finally, EA concluded that dual traders do not, on average, secure better trade execution prices for their customer orders than do exclusive brokers. EA's analysis indicated that personal trading—both dual and non-dual—

[2] Advisory Committee, Report of the Chairman of the Commodity Futures Trading Commission Advisory Committee on Market Regulation at 6–18 (December 23, 1976).

[3] Commodity Futures Trading Commission, A Study of the Nature, Extent and Effects of Futures Trading by Persons Possessing Material Nonpublic Information at 85–108 (September 1984).

[4] 51 FR 2684 (January 21, 1986). Prior to this time, the Commission had required that trades be timed within 30-minute brackets.

[5] 55 FR 1049 (January 11, 1990).

[6] EA reviewed all transactions for 15 complete trading days during the fourth quarter of 1988 for all commodity exchanges, with the exception of one small exchange that could not provide the records in machine-readable form. The data set consisted of approximately 4.2 million futures transactions and 400,000 option transactions.

facilitates low-cost trade executions for customers.[7]

In 1987, the Chicago Mercantile Exchange ("CME") effectively restricted dual trading in its S&P 500 futures contract pursuant to its Rule 541 ("Top Step Rule").[8] CME's Special Committee to Review Trading Practices subsequently reviewed the impact of the Top Step Rule and, according to a report issued in April 1989, found that the rule had no appreciable impact on the S&P 500 futures contract's average daily price range, average daily volume or liquidity despite the fact that the percentage of dual trading volume fell from over 50 percent to approximately 10 percent under the Top Step Rule.[9]

B. Trading Abuses Facilitated by Dual Trading

Commission enforcement actions, federal indictments, and plea agreements resulting from the joint Commission and Federal Bureau of Investigation undercover investigation of floor trading practices at the CME and the Chicago Board of Trade ("CBT") also raised concerns about dual trading and highlighted the broad scope of dual trading-related abuses. Although dual traders might abuse customer orders directly by trading ahead of committing other violations of contract market rules required under § 155.2, Trading Standards for Floor Brokers, the indictments and plea agreements resulting from that investigation described a number of instances in which floor brokers committed trading abuses that were facilitated by the ability to trade in a dual capacity. These particular cases include examples of indirect abuse by brokers using their personal accounts to receive profits passed back to the broker through the noncompetitive execution of customer trades opposite an accommodating trader.

1. Indirect Trading Against Customer Orders

The most common trading abuse reflected in the indictments was indirect trading against a customer order. In one type of such abuse, the dual-trading broker buys (or sells) for the customer account opposite the accommodating trader, then sells (or buys) the same number of contracts for his own account opposite the same accommodating trader. Such a transaction results in the broker taking the opposite side of his customer's order and the accommodating trader with no position. Profits may be passed back to the dual trading broker through other illegal trades.[10]

2. Offsetting Customer Orders Illegally

In this violation, a dual-trading floor broker crosses customer orders by matching or "offsetting" a customer buy with a separate customer sell and executing them noncompetitively opposite an accommodating trader. These trades can be arranged to facilitate a money pass, such that the profits can be passed back to the broker through other illegal trades for the broker's personal account.[11]

3. Misallocating Customer Orders

The indictments and plea agreements also describe trades in which dual traders misallocated customer orders or changed the price on customer orders already executed in order to benefit an accommodating trader. The accommodating trader then passes a portion of the profit back to the broker through trades for the broker's personal account.[12]

4. Withholding Customer Orders

Dual traders also withheld customer stop orders in order to execute those orders noncompetitively with accommodating traders often after the close of trading. The brokers executed the orders at prices calculated to provide a profit for accommodating traders, part of which again was passed back to the broker's personal account through other illegal trades.[13]

5. Disclosing Customer Orders

The plea agreements do not describe specific customer orders disclosed illegally. However, they describe the practice of "secretly advising a local of various customer orders held by the broker, thereby enabling the local to assume a market position that becomes profitable when traded against the secretly disclosed customer orders * * *."[14] The plea agreements indicate that dual trading permits the broker who disclosed the orders to receive a portion of the profits resulting from conversion of customer fair market opportunities through later trades for the broker's personal trading account.

C. Commission's Prior Dual Trading Proposal

On January 11, 1990, the Commission published proposed § 155.5, Restriction on Dual Trading by Floor Brokers, in the **Federal Register** for public comment.[15]

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[7] The Commission is aware of other studies that reveal the costs of restricting dual trading. See, e.g., Grossman, An Economic Analysis of Dual Trading, mimeo, Wharton School of Business, University of Pennsylvania (1989) (presenting arguments supporting dual trading as a flexible system providing increased liquidity and lower order execution costs); Fishman and Longstaff, Dual Trading in Futures Markets, Journal of Finance 47 (1992) (intending to show theoretically how dual trading may enhance price discovery in futures markets by finding that dual traders in Chicago Board of Trade ("CBT") soybeans tend to receive better prices for customers and appear to be superior in their personal trading, as well); Chang, Locke and Mann, Dual Trader Business Choices and the Effect of CME Rule 552, Commission Working Paper 92–16 (1992) (finding that dual traders in currency futures at the Chicago Mercantile Exchange appeared to suffer significant income losses related to the dual traders' apparent inability to increase their customer business or to migrate to other trading pits when the dual trading restriction in CME Rule 552 was imposed in May 1991 (see part I.D. infra)); and Walsh and Dinehart, Dual Trading and Futures Market Liquidity: An Analysis of Three Chicago Board of Trade Contract Markets, Journal of Futures Markets 11 (1991) (finding that the activity of dual traders appears to increase liquidity in CBT's soybean futures contract market).

[8] CME's Top Step Rule limits access to the top step of the CME S&P 500 futures pit to brokers who do not trade for their own accounts or an account in which such brokers have an interest. Since the majority of brokerage in the most active month occurs on the top step, dual trading effectively is prohibited in the most active month of the S&P 500 futures contract.

[9] See CME Special Committee to Review Trading Practices Report to the Board of Governors at 8 (April 19, 1989). The Commission also is aware of another study that found that the CME's Top Step Rule has led to decreased liquidity in the S&P 500 index futures market. Smith and Whaley, Assessing the Costs of Regulation: The Case of Dual Trading, mimeo, Fuqua School of Business, Duke University (1991).

[10] *See* "Plea Agreement," *United States* v. *Eggum*, 89 CR 666–7 (N.D. Ill. Oct. 2, 1989). *See also* "Plea Agreement," *United States* v. *Kosar*, 89 CR 667–2 (N.D. Ill. Dec. 1, 1989); "Plea Agreement," *United States* v. *Patten*, 89 CR 656–10 (N.D. Ill. Sept. 7, 1989); "Plea Agreement," *United States* v. *Skrodzki*, 89 CR 666–12 (N.E. Ill. Aug. 25, 1989); *United States* v. *Ashman*, No. 91–2390, slip op. at 6–8, 13–14 (7th Cir. Oct. 30, 1992). Similar abuses have been found to have been committed in New York contract markets. *See* Transcript of Plea Allocution, *United States* v. *City*, No. 91 Cr. 605, at 10–16 (S.D.N.Y. Sept. 4, 1991); Transcript of Plea Allocution, *United States* v. *Renner*, No. 91 Cr. 475, at 11–17 (S.D.N.Y. Dec. 4, 1991).

[11] For example, a broker purchases for a customer two Japanese yen contracts from a local at a designated price of 6874 and simultaneously sells two contracts for a customer to the local at a designated price of 6872. *See* "Plea Agreement," *United States* v. *Braniff*, 89 CR 668 at 3 (N.D. Ill. Aug. 8, 1989).

[12] *See* "Plea Agreement," *United States* v. *Fuhrman*, 89 CR 669 at 2. (N.D. Ill. Aug. 10, 1989). *See also* "Plea Agreement," *United States* v. *Callahan*, 89 CR 668–5 at 2 (N.D. Ill. Aug. 25, 1989). Similar abuses have been found to have been committed in New York contract markets. *See* Transcript of Plea Allocution, *United States* v. *Federbush*, No. 91 Cr. 475 (PKL), at 13–17 (S.D.N.Y. Sept. 26, 1991); Transcript of Plea Allocution, *United States* v. *Semel*, No. 91 Cr. 475 (PKL), at 13–19 (S.D.N.Y. Oct. 18, 1991).

[13] *See, e.g.*, "Plea Agreement," *United States* v. *Braniff*, 89 CR 668 at 2 (N.D. Ill. Aug. 8, 1989) "Plea Agreement," *United States* v. *Skrodzki*, 89 CR 666–12 at 2–3 (N.D. Ill. Aug. 25, 1989)

[14] *See*, "Plea Agreement," *United States* v. *Callahan*, 89 CR 668–5 at 3 (N.D. Ill. Aug. 25, 1989) "Plea Agreement," *United States* v. *Skrodzki*, 89 CR 666–12 at 4 (N.D. Ill. Aug. 25, 1989); "Plea Agreement," *United States* v. *Eggum*, 89 CR 666–7 at 4 (N.D. Ill. Oct. 2, 1989).

[15] 55 FR 1047 (January 11, 1990).

Regulation 155.5, as then proposed, would have prohibited a floor broker from trading or placing an order for a futures or option contract for an account interest[16] and holding or executing an order for a futures or option contract in the same commodity for a customer, during the same trading session.

A contract market would have been permitted to adopt rules providing exceptions to the dual trading restriction, subject to section 5a(a)(12) of the Act and § 1.41. The proposed regulation specified several exceptions considered appropriate by the Commission. An exception for member customers was deemed permissible provided that the contract market could identify member customers on its trade register. This exception recognized that the purpose of the proposed regulation was to protect public customers and that, generally, members are better able than public customers to assure the proper handling of their orders. An exception for customer consent would have been permitted provided that the consent was the result of individual decision-making. To this end, the customer consent would have been required to be in writing, identify the broker by name, and be executed within the previous 12-month period. An exception for correction of errors would have been permitted so that a floor broker could place trades executed to fill customer orders that resulted in errors into his personal error account.

The Commission proposed to implement the dual trading restriction in accordance with a 12-month phase-in plan with the restriction applying to one or two of the most actively traded commodities on each of the then seven largest exchanges. The implementation plan was intended to permit the Commission to collect and analyze data on the effect of the dual trading restriction and to permit an adequate assessment of the advantages and disadvantages of the proposed restriction.

The Commission's request for comment on proposed regulation 155.5 elicited 314 comment letters. Three hundred commenters opposed the regulation, ten supported, and four were neutral. Most of the commenters opposed any restriction on dual trading noting that the dual trading restriction could have numerous potential negative effects, most notably reduced market liquidity.[17] Commenters supporting the dual trading restriction generally noted that dual trading presents the greatest potential for a variety of abuses and benefits no one except the brokers permitted to dual trade. Other supporters noted the loss of public confidence in the markets resulting from dual trading and the information advantage that dual trading brokers have over locals.

At a public meeting on November 5, 1992, the Commission announced it had terminated its original rulemaking as superseded by recent legislation that includes specific provisions governing the prohibition of dual trading. As noted earlier, that legislation, the Futures Trading Act, was enacted into law on October 28, 1992.[18] Consequently, the Commission has developed a new proposed regulation 155.5 that responds to the mandate of the Futures Trading Act.

D. CME's Dual Trading Prohibition

In 1991, in light of Congressional attention to dual trading practices and of the Commission's originally proposed rulemaking, the CME adopted Rule 552, Dual Trading Restrictions, to expand its restriction on dual trading beyond the S&P 500 pit to all of its "mature and liquid" contract months, with certain exceptions. CME Rule 552 defines dual trading as "trading or placing an order for one's own account, an account in which one has a direct or indirect financial interest or an account which one controls, in any contract month in which such person previously executed, received or processed a customer order on the Exchange floor during the same Regular Trading Hours session."[19] Generally, exceptions are provided for instances in which customer permission has been granted, for member-customers, for correction of errors and for certain spread brokers.

A "mature and liquid" contract month is defined as one which has had an average daily volume of 10,000 contracts during the prior six calendar months. By applying the dual trading restriction to mature and liquid contract months, the CME intended to limit the potential for customer abuse in the most active contract months without risking the viability of the less active months. In this regard, CME staff has reported to Commission staff that is has observed no significant impact on liquidity in the contract months subject to restriction.

The CME's dual trading rule differs from the Commission's originally proposed rule in several significant respects. Most notably, the Commission's proposed rule would have applied a broader definition of dual trading, which classifies as dual traders those persons who on the same day trade for themselves and customers in the same commodity. This definition proposed by the Commission would have encompassed brokerage and trading activity in all expiration months of both futures and option contracts in a restricted commodity. In contrast, the CME's rule applies a narrower definition of dual trading, which pertains to trading by a broker for himself and customers on the same day in the same contract month. The narrow definition does not prevent a broker from trading for himself and for a customer in a different contract month of the same commodity. It also does not preclude trading and brokerage across futures and options in the same commodity.[20]

II. Statutory Mandate

A. Overview

Section 101 of the Futures Trading Act amends section 4j of the Act (7 U.S.C. 6j) to require the Commission to issue regulations to prohibit dual trading on each contract market which has not been exempted. The amendments to section 4j of the Act are not intended to override the Commission's existing authority granted under section 4j(1), which was retained in new section 4j(b), to determine whether or not to permit dual trading by floor brokers and, if so, under what

[16] "Account interest" was defined as the floor broker's own account, an account: (1) for which the floor broker by power of attorney or otherwise actually directs trading; (2) from which the floor broker is entitled to receive ten percent or more of the profits resulting from such account's trading; (3) of a partnership if the floor broker is a general partner of the partnership; (4) of a corporation or an association if the floor broker owns ten percent or more of the capital stock, or has contributed ten percent or more of the capital of the corporation or association; or (5) owned by a spouse or minor dependent of the floor broker living in the same household.

[17] Some of the other comments opposing the restriction included: (1) Brokers would switch to trading strictly as locals or leave the futures business; (2) futures commission merchants would withdraw their commitment to financially guarantee trading by certain brokers; (3) there would be fewer and less experienced brokers to execute customer orders; (4) the quality of order fills could decline; (5) brokerage rates could increase with fewer brokers competing for customer orders; (6) a broker's profit-making capability but not his risk exposure would be limited which might result in an increase in commission rates; (7) certain orders including spread orders could become more difficult to execute; and (8) reduced market liquidity would prompt customers to shift their orders to overseas markets.

[18] *See* n. 1 *supra*.

[19] "Regular Trading Hours" are the hours designated by the CME Board of Governors for pit trading on the CME for particular contracts.

[20] In response to a membership movement to repeal the dual trading prohibition by the CME's membership, the CME submitted Rule 552 to a referendum of its membership to determine whether to retain the restriction. Seventy percent of the membership (1344) voted to retain the dual trading restriction, and 30 percent (574) voted against the restriction.

conditions.[21] New section 4j(a), however, includes specific directives to the Commission regarding the primary means by which the Commission is to address adequate monitoring for prevention of violations attributable to dual trading.

Section 4j(a) of the Act, as amended, reflects an intent to balance the recognition that the practice of dual trading facilitates floor brokers defrauding their futures customers by engaging in illegal practices at the customers' expense with the belief that dual trading provides market liquidity necessary for the efficient operation of the markets. Accordingly, the amendments require the Commission initially to impose the dual trading prohibition only in contract markets with an average daily trading volume of 8000 contracts or more. Furthermore, it is intended to foster improvements by contract markets to their trade monitoring systems, including audit trails, by allowing the Commission, in accordance with specific statutory standards, to exempt those contract markets that have trade monitoring systems capable of detecting and deterring trading abuses attributable to dual trading.[22] The Commission's regulation prohibiting dual trading is required to be placed into effect within 270 days after enactment of the Futures Trading Act. The 270-day period ends on July 25, 1993.

B. Dual Trading Prohibition

Section 4j(a) of the Act, as amended, generally requires the Commission to prohibit dual trading in each contract market with an average daily trading volume equal to or in excess of 8000 contracts[23] and to specify the methodology for determining the contract market's average daily trading volume based on a moving daily average of either six or 12 months.[24] "Dual trading" is defined by the statute as the execution of customer orders by a floor broker during any trading session in which the floor broker executes any trade in the same contract market for: (1) The account of such floor broker; (2) an account for which such floor broker has trading discretion; or (3) an account controlled by a person with whom the floor broker is subject to trading restrictions under section 4j(d) of the Act, as amended (Restrictions on Trading Among Members of Broker Associations).

The statutory definition restricts dual trading on a contract market basis and, therefore, would not prohibit trading and brokerage activity in futures and options in the same commodity, unless both the futures and option contracts were restricted markets. The statutory restriction, therefore, is narrower than the Commission's originally proposed commodity-based restriction, which would have applied to dual trading in all expiration months of both futures and options in a restricted commodity. However, the statutory definition is not as narrow as the CME's contract month-based restriction, which permits a broker to trade for himself in one contract month and for a customer in a different contract month of the same commodity.

C. Exceptions to Dual Trading Prohibition

Section 4j(a)(1)(B) requires that the Commission provide for exceptions to the dual trading prohibition as it determines are necessary and appropriate to ensure fairness and orderly trading in affected contract markets.[25] The exceptions set forth in the statute include: (1) Transition measures and a reasonable phase-in period; (2) spread transactions and the correction of trading errors; (3) allowance for a customer to designate in writing not less than once annually a named floor broker to execute orders for such customer; and (4) other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest.

D. Exemption Procedures

A contract market could be granted an exemption from the dual trading prohibition, in accordance with section 4j(a)(3), based on the sufficiency of its trade monitoring system. Section 4j(a)(1)(C) requires the Commission to establish procedures for a contract market to petition for an exemption from the dual trading prohibition and to specify the relevant data to be submitted by the contract market with each petition. Pursuant to section 4j(a)(8)(A), the Commission may not apply the prohibition against dual trading to a contract market that submits such a petition for exemption prior to the effective date of the prohibition under the Commission's regulations until a decision is rendered on the petition.

For an exemption to be granted, the petition must demonstrate, and the Commission must find, that the contract market's trade monitoring system is capable of and is used for detecting and deterring violations attributable to dual trading. The trade monitoring system must include: (1) Physical observation of trading area; (2) audit trail and recordkeeping systems able to capture essential data on the terms, participants, and sequence of transactions (including relevant data on unmatched trades and outtrades);[26] (3) systems capable of reviewing and used to review data on trades effectively on a regular basis to detect violations attributable to dual trading; (4) the use of information gathered through such systems on a consistent basis to bring appropriate disciplinary actions against violators; (5) the commitment of necessary resources for such systems to be effective in detecting and deterring violations attributable to dual trading, including adequate staff to develop and prosecute disciplinary actions; and (6) the assessment of meaningful penalties against violators and the referral of appropriate cases to the Commission.[27]

Section 4j(a)(3)(B) provides an alternative means of obtaining an

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[21] H.R. Rep. No. 978, 102d Cong., 2d Sess., at 49 (1992).

[22] *Id.* at 50.

[23] Section 4j(a)(4). The statute authorizes the Commission to increase the 8000 volume threshold or, at any time following the date three years after enactment of the relevant paragraph, to decrease the threshold level for specific contract markets after taking into consideration the actual or potential effects of a dual trading ban on the public interest in hedging or price basing at the affected contract market.

[24] Section 4j(a)(1)(D).

[25] In general, exceptions could apply to trading in a contract market that is subject to the dual trading prohibition and is not otherwise exempted under Commission procedures required by section 4j(a)(1)(C). *See* part II.D. *infra*.

[26] Within three years of enactment of the Futures Trading Act, each contract market, in order to qualify for an exemption from the dual trading prohibition, will be required to meet stricter audit trail standards, except to the extent the Commission makes exemptions by rule or order or determines that circumstances beyond the control of the contract market prevent compliance despite the contract market's affirmative good faith efforts to comply. Specifically, each contract market will be required to record accurately and promptly the essential data for all trades on terms, participants, and times through a means that: (1) Records such data in a form that cannot be altered except in a manner that will leave a complete and independent record of such alteration; (2) continually provides such data to the contract market; (3) identifies such time, to the extent practicable as determined by the Commission, independently of the person making the trade, through a mechanism that records the time automatically when entered by the person making the trade or through such means that will capture a similarly reliable time; and (4) is adequately precise to determine, to the extent practicable as determined by the Commission by rule or order, the sequence of all trades by each floor trader and floor broker. In addition, to the extent practicable as determined by Commission rule or order, the contract market's audit trail system will have to meet comparable requirements concerning the receipt, execution and reporting of customer orders. See section 5a(b)(3) of the Act, 7 U.S.C. 7a(b)(3), as amended by section 201 of the Futures Trading Act.

[27] Section 5a(b)(1) of the Act, 7 U.S.C. 7a(b)(1), as amended by section 201 of the Futures Trading Act.

exemption for a contract market that does not meet the specified trade monitoring standards. In that case, a contract market must demonstrate in its exemption petition, and the Commission must find, that there is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market and that other corrective actions are sufficient and appropriate to bring the contract market into compliance with the required trade monitoring system standards.

Before the Commission may deny a contract market's exemption application or grant an exemption subject to conditions, section 4j(a)(5) requires that the Commission provide the affected contract market with notice of the reason that the exemption petition was not approved as submitted. Such notice must state the reason that the Commission believes that the contract market's trade monitoring system does not satisfy the stated standards, any corrective action that the Commission believes the contract market must take to satisfy the standards with an acceptable timetable for such action, and any conditions or limitations that the Commission proposes to attach to the exemption.

Section 4j(a)(5) also requires the Commission to provide the contract market with an opportunity for a hearing through submission of written data, views or arguments before denying an exemption or granting a conditional exemption. At the request of the contract market, under terms set by the Commission, the contract market may make an oral presentation of views and comments to the Commission. Finally, the Commission must make findings based on the information, views and arguments placed before it in connection with the application as to whether any standard for exemption set forth in section 4j(a)(3) applies and whether any conditions or limitations attached to any exemption are appropriate.

Section 4j(a)(8)(B) requires the Commission to approve or deny any petition for an exemption within 75 days after receipt of the petition, or as soon as practicable. Further, under section 4j(a)(5), any Commission order denying a petition or conditionally exempting a contract market is not permitted to take effect for at least 20 days following its issuance, unless the Commission determines that more immediate action is appropriate in the public interest.

In addition, section 4j(a)(1)(E) directs the Commission to establish an expeditious procedure for revoking exemptions. Such procedure must provide sufficient notice, opportunity for hearing, and findings to assure fundamental fairness. Finally, section 4j(a)(7) states that a board of trade may seek judicial review of the denial or conditional grant of an exemption or the revocation of an exemption by the U.S. Court of Appeals for the District of Columbia circuit or the circuit in which the board of trade has its principal place of business.

III. Proposed New Regulation 155.5: Prohibition of Dual Trading by Floor Brokers

Proposed new § 155.5 would implement the statutory mandate of section 4j(a) of the Act, as amended by section 101 of the Futures Trading Act. The Commission's proposal incorporates those provisions expressly mandated by the statute, and where appropriate, the Commission has exercised its discretion to achieve the purposes of the statute.

The Commission proposes that the provisions setting forth the dual trading prohibition become effective 90 days after publication of the final regulation. This is intended to provide a reasonable phase-in period to enable contract markets to adopt the required rules to prohibit dual trading and provide for permissible exceptions and to implement the necessary surveillance programs to monitor compliance with these rules.

The Commission further intends, however, that the exemption procedures of the proposed regulation become effective immediately upon publication of the final rule. Thus, a contract market could submit a petition for an exemption from the prohibition any time following publication of the final rule. In accordance with section 4j(a)(8)(A) of the Act, if a contract market submits a petition for exemption prior to the effective date of the dual trading prohibition, application of the prohibition to the contract market would be suspended unless and until the Commission denied the petition.

A. Definitions

1. Dual Trading

Proposed § 155.5(a)(4) would define dual trading as the execution of customer orders by a floor broker during the same trading session in which the floor broker executes directly or indirectly a transaction in the same contract market for: (1) The floor broker's own account; (2) any account in which the floor broker's ownership interest or share of trading profits is ten percent or more; (3) an account for which the floor broker has trading discretion; (4) or an account controlled by a person with whom such floor broker is subject to trading restrictions under section 4j(d) of the Act, as amended, to the extent section 4j(d) has been applied by Commission rule or order.[28]

The statutory definition of dual trading refers to the "execution" of orders by the floor broker. The Commission's proposed definition would include trades executed directly by the broker for any of the accounts listed in proposed § 155.5(a)(4) discussed above, as well as trades executed indirectly for such accounts with other members. The Commission believes that this construction is necessary to ensure that trading activity that is in fact dual trading would be encompassed by the proposed regulation's definition and, therefore, potentially subject to the dual trading prohibition.

The proposed definition is intended to encompass accounts that are similar to the floor broker's own account in terms of his interest or control over the accounts. Toward that end, the Commission has included within the dual trading definition accounts in which the floor broker has an ownership interest or share of trading profits of 10 percent or more.[29] By including these accounts, the Commission intends to prevent a floor broker from abusing a customer order by circumventing the dual trading prohibition through the use of other accounts in which he has a significant financial interest. For example, a broker would not be permitted to execute in the same trading session a customer order and an order for a partnership account in which he has a ten percent or greater interest,

[28] Section 4j(d) of the Act, as amended, pertains to restrictions on trading among members of broker associations. The Commission recently published proposed regulation 156.1 in the **Federal Register** to define "broker association" and to require such entities to register with their respective contract markets pursuant to contract market rules. 57 FR 57116 (December 3, 1992). The Commission's proposal would define "broker association" to include "two or more contract market members with floor trading privileges who: (a) Are employees of the same employer, (b) are employer and employee, (c) share profits and losses associated with their brokerage or trading activity, or (d) regularly share a deck of orders." 57 FR 57116, 57123 (December 3, 1992). That proposed regulation, however, would not restrict the activities of broker associations. Consequently, the dual trading definition as proposed would not apply to broker associations unless the Commission determined to restrict the trading activities of broker associations.

[29] This 10 percent threshold is consistent with the ownership level currently used in the Commission's definition of proprietary account (Commission regulation 1.3(y)).

regardless of whether the broker participates in any trading decisions concerning that account.

2. *Customer*

"Customer" would be defined in proposed regulation 155.5 as an account owner for which a trade is designated with the customer type indicator ("CTI") prescribed under § 1.35(e)(4).[30] The proposed definition of customer would make clear that only those trades required by Commission regulation to be identified as CTI 4 trades would be considered customer trades. Therefore, for purposes of this proposed regulation, "customer" would not include accounts of other exchange members present on the floor (CTI 3 trades) or the house account of the broker's clearing member (CTI 2 trades). Orders for such accounts could be executed during the same trading session in the same contract market in which the broker was acting as a principal. The Commission believes that such member-customers and clearing members are in a better position to protect themselves against potential abuse of their orders by brokers. The Commission, however, invites comment as to whether the definition of "customer" should include trades for the house account of the broker's clearing member (CTI 2 trades).

3. *Trading Session*

The statute prohibits dual trading during a trading session. The Commission proposes to define "trading session" as the hours during which a contract market is scheduled to trade continuously[31] during a trading day, as set forth in contract market rules, including any related post-settlement trading session.[32] A contract market may have more than one trading session during a trading day, for example a regular session and an evening session. The same broker could trade for a customer and an account in which he has an interest in the same contract market during different trading sessions.[33]

Although dual trading-related abuses could occur over more than one trading session, the Commission believes that a dual trading restriction based on a single trading session should render dual trading-related abuses more difficult to commit.[34] Further, to the extent that dual trading has been regulated in the securities and option markets, the period of the restriction generally has been limited to a single trading session.[35] The trading session-based restriction has been considered sufficient to address abusive trading activity in those markets.

4. Contract Market

Proposed regulation 155.5 would define "contract market" as any contract separately designated by the Commission, provided that two or more contracts trading concurrently pursuant to a single designation order on other than a transitory basis and for which the contract terms differ significantly other than as to delivery or expiration months would each be considered a contract market. The proviso clarifies that in the situation in which there is more than one contract pursuant to one designation order, the contracts would be identified as separate contract markets. For example, the Commission recently designated the CBT to trade futures on catastrophic insurance indices. The Commission issued four designation orders. Pursuant to each designation order, three separate indices contracts—quarterly, semi-annual, and annual—can trade. These three indices contracts would be treated as three separate contract markets despite the single designation order.[36] The Commission requests that boards of trade identify in their comments any such contracts that they believe would constitute separate markets under the proposed definition.

B. Computation to Determine Affected Contract Markets

Each contract market that may be subject to a dual trading prohibition would be required to compute on a quarterly basis its average daily trading volume for each of four quarters during the most recent volume year to determine whether it was an "affected contract market."[37] An "affected contract market" would be a contract market in which the average daily trading volume equalled or exceeded the threshold level of 8000 contracts, as specified in section 4j(a)(4) of the Act, for each of four quarters during the most recent volume year.[38] Dual trading would be prohibited in affected contract markets, unless exempted under the proposed regulation. The Commission expects that approximately 25 contract markets on five boards of trade would meet the definition initially.[39]

"Daily trading volume" would mean the total number of sells (buys) executed in any contract market during a trading day for all trading sessions. Ex-pit transactions would be excluded from the computation of daily trading volume, as described in the discussion on the dual trading prohibition, below. "Average daily trading volume" would mean an arithmetic average of daily trading volume in a contract market over the specified time period on any day when any option expiration or futures delivery month was listed for trading. "Volume year" would be defined as a continuous 12-month period that includes the last calendar

[30] The CTI is a numerical code required by Commission regulation 1.35(e) that is used to identify the source of a trade. CTI 1 designates a trade by a broker for his personal account; CTI 2, a trade for his clearing member's house account; CTI 3, a trade for another member present on the floor or an account controlled by such other member; and CTI 4, a trade for any other type of customer.

[31] The use of "continuously" in this definition does not mean that a trading session would change as a result of an emergency shut-down during the course of regularly scheduled trading hours.

[32] Seven contract markets (CBT; CME; Commodity Exchange, Inc.; New York Futures Exchange, Inc.; Kansas City Board of Trade; Minneapolis Grain Exchange; and MidAmerica Commodity Exchange) have adopted post-settlement trading session rules that permit trading to resume for a limited time after the close of regular trading hours. The post-settlement trading session allows floor brokers to execute "unable" or partially filled orders that were executable but not filled during the close, and locals to "even-up" their positions for the day. For purposes of proposed regulation 155.5, the post-settlement session would be considered a part of the same trading session that it follows.

[33] Under proposed § 155.5, with certain exceptions, a broker could not trade and do brokerage in the same trading session. In contrast, the CME dual trading rule permits a broker to switch from trading to brokerage upon receipt of a customer order during the trading session; however, a broker may not switch from brokerage to trading.

[34] The trading session-based restriction also appeared in the prior proposed dual trading regulation. In its **Federal Register** notice, the Commission specifically inquired as to whether any improvement in customer protection that might be obtained from extending the prohibition beyond an individual trading session would warrant requiring a broker to make an election as to his status for a more extended period of time. No commenters believed that the duration of the restriction should be extended.

[35] *See, e.g.*, New York Stock Exchange Rule 112; Chicago Board Options Exchange Rule 8.8.

[36] Other examples of multiple contracts pursuant to a single designation order include the New York Mercantile Exchange New York Harbor and Rotterdam heating oil contracts, and the Coffee, Sugar & Cocoa Exchange sugar #11 and sugar #14 contracts.

[37] EA also would compute the average daily trading volume for each contract market on a routine basis for Commission surveillance and oversight purposes.

[38] This proposed method for defining "affected contract market" is designated to reflect section 4j(a)(1)(D) of the Act, which requires that the Commission "specify the methodology" for determining the average daily trading volume on a contract market based on either six or 12 months, and section 4j(a)(3)(B), which requires that the threshold trading level "be set initially at 8000 contracts."

[39] Currently, there are approximately 166 contract markets actively trading on 11 boards of trade. The five boards of trade expected to have affected contract markets are CBT, CME, New York Mercantile Exchange, Commodity Exchange, Inc., and Coffee, Sugar & Cocoa, Inc.

month-end date prior to the computation date.[40]

The proposed computation formula responds to the statutory requirement that the regulation provide transition measures for when a contract market's volume increases to or above, or decreases below, the threshold trading level. The use of a 12-month period would identify more fully than a six-month period those contract markets that can be expected to continue at the threshold trading level on a relatively permanent basis. Further, the specification that the average trading volume meet the threshold in each quarter of a 12-month period will distinguish affected markets from those that may reach the threshold level based on only seasonal phenomena or as a result of other temporary surges in trading volume, rather than on a more long-term basis. In addition, for those affected markets where the trading volume falls below the threshold trading level, the quarterly requirement would result in a more prompt removal from affected contract market status. For example, if the average trading volume in an affected contract market dropped below the threshold during the most recent quarter, the contract market would be removed from the dual trading prohibition during the next quarter. In comparison, the prohibition would take effect on a newly affected contract market (*i.e.*, a contract market that becomes affected on a current computation date after not having been affected on the immediately preceding computation date) no later than 30 days following the current computation date for that contract market.

At least five days before the effective date of the dual trading prohibition under this section or under a Commission order denying an exemption petition or revoking an exemption, and thereafter within at least two business days of each computation date, each contract market would be required to publish, in a manner sufficient to reach all members, a list of the affected contract markets. Such publication also must include the effective date of the dual trading prohibition. Further, the contract market would be required to provide that information in writing to the Director of the Division of Trading and Markets or an employee of the Commission designated by the Director.

[40] "Computation date" would mean the date on which a contract market computes its average daily trading volume for the most recent volume year prior to the computation date.

C. Dual Trading Prohibition

Proposed § 155.5(b) would provide that no floor broker shall dual trade in an affected contract market, except as provided in contract market rules, unless that contract market is exempted. This prohibition would not affect ex-pit transactions such as exchange of futures for physicals, transfer trades and office trades. This is because the dual trading prohibition is intended to curb trading abuses on the trading floor that result from the ability of an executing broker to trade in a dual capacity.

The Commission requests comments on whether any Commission-approved electronic trading system also should be excluded from the prohibition and the definition of daily trading volume. The Commission notes that trading conducted through a competitive auction process pursuant to an algorithm applying non-discretionary rules of priority for an electronic trading system, such as GLOBEX (the CME's and CBT's screen-based trading system) and NYMEX ACCESS, which independently matches orders, may substantially decrease the possibility of engaging in some abuses tied to dual trading and should provide a superior audit trail to detect other forms of abuse.

Regulation 155.5(c) would require each affected contract market, unless exempted, to adopt rules pursuant to section 5a(a)(12) of the Act and Commission regulation 1.41 to prohibit dual trading in accordance with the proposed regulation. The contract market would be required to adopt such rules prior to the effective date of the dual trading prohibition or the effective date set forth in a Commission order denying a contract market's exemption petition or revoking an exemption. Absent such contract market rules, Commission regulations 155.5 (a) and (b) would be deemed to be the contract markets's rules upon the effective date of the dual trading prohibition.

1. *Exceptions*

As discussed above, section 4j(a)(1)(B) of the Act requires that the Commission's regulations provide for exceptions to the dual trading prohibition as the Commission determines are necessary and appropriate to ensure fair and orderly trading in affected contract markets. A list of potential exceptions is set forth in the statute. Proposed § 155.5(c)(4) sets forth the exceptions to the prohibition, including those specified in the statute, that would be permitted pursuant to contract market rules. To provide for any of the exceptions, a contract market would submit proposed rules to the Commission. Any permissible exception set forth in a contract market's rules also would limit the Commission's restriction on dual trading with respect to that contract market's floor brokers.

a. Correction of Errors. Consistent with the exceptions set forth in the statute, proposed § 155.5 would permit a floor broker to offset trading errors by placing trades executed to fill customer orders that resulted in errors into his personal error account.[41] A floor broker would be required to liquidate the position in his personal error account resulting from that error as soon as practicable, but not later than the close of business on the business day following the discovery of the error. In the event that the daily price fluctuation limit is reached and a floor broker is unable to offset the error trade, however, the floor broker would be required to liquidate the position as soon as practicable thereafter.

The Commission proposes to limit the period of time for which a broker could hold a position in an error account in order to reduce the potential use of that account for personal trading.[42] In this regard, the Commission would expect each contract market that adopts the error correction exception to maintain an effective audit trail for error trades, including identification of such accounts, to ensure that error accounts are not being used to accomplish abuses.[43]

b. Customer Consent. A contract market could adopt rules pursuant to which a customer could consent to receiving brokerage services from a dual-trading broker. The customer would be required to designate in writing not less than once annually a specifically identified floor broker who would be authorized to dual trade while executing orders for such customer's account.[44] These proposed requirements

[41] As a matter of practice, floor brokers maintain personal accounts designated as error accounts into which they place positions resulting from errors committed in the execution of customer orders. A floor broker who does not maintain such a designated error account could not avail himself of a contract market exception for correction of errors.

[42] This time restriction for liquidation of positions in error accounts is consistent with Commission regulation 1.46(d)(8), which was amended effective December 24, 1992. 57 FR 55082 (November 24, 1992).

[43] The Commission previously published an interpretation requiring contract markets to have audit trail and surveillance programs for errors, unmatched trades and outtrades. 54 FR 37004 (September 6, 1989).

[44] The statute expressly refers to "named" floor brokers. The Commission requested comment on this exception in its prior dual trading proposal. Most of the commenters favored the exception but believed that the requirement that a broker be identified by name was unduly burdensome and

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are intended to ensure that the customer's consent resulted from individual decision-making. In this regard, each contract market that would adopt rules to effectuate this exception should establish procedures for monitoring compliance. The Commission contemplates that the floor brokers or others, as designated under contract market rules, would be responsible for filing customer consent forms with the contract market.

Congress provided this exception "[i]n order that the dual trading prohibition will not disrupt relationships established between a customer and a broker."[45] The Commission believes that any customer who is aware, and willing to accept the risk, of the potential conflicts associated with dual trading should be free to maintain business relationships with dual-trading brokers.

Under the proposed exception, the consent would come from the ultimate customer. In some contractual agreements, however, a customer may give his account controller (*e.g.*, a commodity trading advisor) discretionary authority to trade his account pursuant to a power of attorney. In such instances, it may be appropriate for consent to come from the account controller, particularly if the customer does not know the floor broker selected by his account controller to trade his account. The Commission invites comment as to whether a controller of an account by virtue of a power of attorney should be permitted to provide consent on behalf of his customer for a floor broker to dual trade while executing orders for such customer's account. In this regard, consideration should be given as to whether the agreement with the account controller must specify the controller's authority to permit a broker to dual trade while trading such customer's account. Commenters also should address the extent to which an account controller might provide such consent on the basis of the potential benefits to himself as distinguished from his fiduciary duty to the ultimate customer.

c. Spread Transactions. The statute also directs the Commission to provide an exception for spread transactions. The Commission, relying on its experience and considering the purpose of the prohibition, proposes to except those spread transactions that are necessary to preserve market efficiency. The Commission has identified two limited circumstances in which it believes that an exception for spread transactions would be necessary and appropriate. First, dual trading would be permitted so that a broker who unsuccessfully attempts to leg into a spread transaction for a customer could take the executed leg into his personal account and offset the resulting position. Second, dual trading would be permitted so that a broker could execute for his personal account a spread transaction recognized by a contract market if at least one leg of the spread is in a non-affected contract market. The Commission proposes to allow exceptions in these two instances based on its determination that the facilitation of customer order execution appears to outweigh the threat of possible customer abuse.

The proposed exception for "legged in" spreads is intended to address the situation in which a broker is unable to fill a customer spread order, as requested, as a single transaction and attempts to leg into the position. If, for example, the market shifts after one leg of the spread is executed such that the broker is unable to leg into the remaining position at a price permissible under the terms of the customer order, the proposed exception would permit the broker to take the executed leg into his personal account and offset the position. The Commission believes that brokers should be allowed to continue engaging in this practice in filling their customers' orders.

For surveillance purposes and to ensure that this exception is not abused, a record should be prepared and maintained to demonstrate that the customer order specified a spread trade. In addition, the broker should be required by the contract market to identify such a trade on both his trading card and the customer order that gave rise to the excepted position. This would enable the contract market and the Commission in its oversight role to verify the legitimacy of the transaction by reviewing the customer order and analyzing trading activity at the time.

The second prong of the proposed spread exception would permit a broker to execute a spread transaction for his personal account where one leg is in an affected market and the other leg in a non-affected market. As a result, the member would be permitted to do brokerage in an affected market and still participate in, and provide additional liquidity to, non-affected contract markets. The proposed exception would be limited to exchange-recognized spreads.[46]

d. Member Customers. The Commission's proposal also would allow an exception for transactions for members of the contract market not present on the floor. This exception recognizes that, in general, members are better able than public customers to assure the proper handling of their orders.

Under § 1.35(e), a transaction executed for the account of any type of customer, including a member customer not present on the floor, is required to be designated as a CTI 4 trade. Previously, it has not been necessary to differentiate between a floor broker's activity for member customers off the exchange floor and for public customers. Without differentiating these two categories of customers, however, it would be difficult to monitor an exception for member customers under the proposed rule. Accordingly, in order to facilitate surveillance, a contract market adopting this exception would be required, on the trade register required under § 1.35(e), specifically to identify such excepted transactions through account numbers, a separate customer type indicator, or otherwise for surveillance purposes.

e. Low Volume Months. The Commission also proposes to permit an exception to the dual trading prohibition for futures delivery months or option expirations in affected contract markets that reasonably can be expected to have an average daily trading volume of less than 500 contracts.[47] The volume in such potentially excepted months, however, would be counted for purposes of computing the contract market's average daily trading volume to determine affected contract market status.

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unnecessary. The commenters noted that the vast majority of customers do not know who their floor brokers are and that it is unlikely that most floor brokers have direct dealings with the underlying customer.

[45] H.R. Rep. No. 707, 102d Cong., 1st Sess. 20 (1991).

[46] An exchange-recognized spread is a spread for which exchanges have established lower margin rates because such positions carry less risk that outright futures positions, *e.g.*, T–Bills/Eurodollars, wheat/corn, hogs/pork bellies, and soybean futures/option spreads.

[47] The Commission intends that this exception could apply either to specific futures delivery months or option expirations (*e.g.*, December delivery in commodity X) or more generically to designated delivery months or expirations specified in proximity to the nearby month (*e.g.*, "the fourth month out"). In the first case, historical data may indicate that the daily trading volume of certain specific delivery months or option expirations typically are less than the level specified throughout their lifetime. A likely example would be "serial trading months," which are listed near maturity and are positioned between more actively traded months. In the second case, a contract market, having established that the Xth month out from expiration or delivery (*e.g.*, the third "position month") trades at average levels below 500 contracts, could seek an exception for this and more distant options expirations and futures delivery months.

Determination of these exceptions would be based on historical data and an analysis thereof provided by the contract market and other factors identified by the contract market. The contract market would be required to keep full and systematic records supporting these determinations and, as part of its trade surveillance program, to establish special procedures including appropriate reports to monitor dual trading activity in the relevant futures delivery months and option expirations.

In addition, the Commission would expect any contract market rule providing for the exception to address related transition and other issues. Further, the contract market would have to publish a list of any excepted low volume months, in conjunction with the quarterly publication of affected contract markets, in a manner sufficient to reach all members.

Preliminary analysis by the Commission staff indicates that among those contract markets that equal or exceed the overall threshold volume level of 8000 contracts, approximately 55 percent of the individual contract months exhibited average trading volume of less than 500 contracts. This represents approximately 150 contract months, but less than one and a half percent of the total trading volume in such potentially affected contract markets. This level also is compatible with an earlier Commission determination establishing 3000 futures contracts per week as the threshold volume level for the test of liquidity of the underlying futures contract before designation of its option.[48]

This provision is intended to eliminate the effect of a dual trading prohibition in those contract months where additional liquidity of any origin may be most significant. In those months, the Commission believes that the limited amount of trading activity should facilitate surveillance. The Commission nonetheless requests comment as to the extent to which such exception might dilute the effectiveness of the prohibition.

f. Market Emergencies. A contract market would be permitted to suspend the dual trading prohibition in the event of a market emergency that required the contract market to take a temporary emergency action under § 1.41(f).[49] The Commission believes that a contract market should be able to suspend the dual trading prohibition through emergency action to maintain an orderly market in the event of emergency conditions, such as a precipitous drop in volume or extreme price volatility. For example, when economic news or other developments cause unexpected and extreme price volatility in a futures market, the ability of speculative traders providing liquidity to the marketplace often diminishes.[50] During such times, the suspension of the dual trading prohibition could allow brokers the opportunity to trade and potentially to provide needed liquidity.

Temporary emergency actions taken pursuant to § 1.41(f) would be subject to Commission review and various new requirements mandated by the Futures Trading Act.[51] Consequently, the Commission would have the opportunity to review the circumstances surrounding any suspension of the dual trading prohibition by a contract market pursuant to its emergency authority.

D. Exemptions

A contract market could petition the Commission for an exemption from the dual trading prohibition under proposed § 155.5(d)(1). To obtain an exemption, the contract market would be required to demonstrate that its trading monitoring system is capable of detecting and deterring, and is used on a regular basis to detect and deter, all types of violations attributable to dual trading. The contract market's trade monitoring system also must be capable to generating an audit trail that satisfies the requirements of § 1.35. Thus, the exemption process is designed to encourage contract markets to continue to improve their trade monitoring systems in order to qualify for an exemption from the dual trading prohibition.

Each individual contract market would be required to satisfy the specified trade monitoring standards in order to be granted an exemption. For convenience and to the extent that the demonstration relative to each contract market's trade monitoring system would not be impaired, however, an exemption petition could include data that describe collectively the trade monitoring systems for each of the contract markets seeking an exemption. Different contract markets covered in a single petition nevertheless could be addressed separately by the Commission.

1. Exemption Petition Content Requirements

To determine the sufficiency of each component of a contract market's system, proposed § 155.5(d)(2) would require that each exemption petition be in writing, be signed by the contract market's chief operating officer, and include a full description of each component of the trade monitoring system including the systems in place, rules, policies and procedures in effect, standards applied, types of trading violations targeted, and the results achieved. In order to facilitate the Commission's review of exemption petitions, the Commission would request that a contract market address in its petition each of the components of the contract market's trade monitoring system in the order listed in the proposed regulation.

The text of an exemption petition should include all facts and reasoning on which the contract market intends to rely. The petition should include performance statistics covering the 12-month period ending with the month preceding the petition date. If such statistics are not available, specific, representative performance examples should be provided. A contract market may further support its petition with other attached materials, such as excerpts from recent rule enforcement reviews, and information regarding any programs adopted independently by the contract market to monitor certain trading activity, such as the activities of broker associations.

The proposed regulation also would require that the contract market set forth in its petition the program or plan and projected implementation timetable for its intended compliance with the audit trail requirements of section 5a(b)(3) of the Act, as amended. Generally, section 5a(b)(3) sets forth heightened audit trail standards that would take effect in three

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[48] 51 FR 17464, 17467–68 (May 13, 1986) (adopting the threshold in Commission regulation 33.4(a)(5)(iii)). See also 56 FR 43694 (Sept. 4, 1991) (removing Commission regulation 33.4(a)(5)(iii) and the liquidity test for options designation).

[49] Proposed amendments to regulation 1.41(f) that would establish new procedures for contract market temporary emergency actions, as directed by section 5a(a)(12)(B) of the Act, as amended by section 213 of the Futures Trading Act, were published in the Federal Register on February 4, 1993. 58 FR 7056. among other things, the proposed amendments would add suspension of the dual trading prohibition to the list of permissible actions to address market emergencies (proposed regulation 1.41(f)(8)(x)). *Id.* at 7059, 7061.

[50] The capacity of such individuals to trade is primarily due to three factors: (1) Increased risk of trading losses during the volatile price swings; (2) increased risk of large monetary losses from outtrades because of the wider trading ranges; and (3) insistence of clearing firms that locals restrict their trading or not trade during such times because of the increased risks.

[51] The proposed amendments to § 1.41(f) also would require contract markets to make every effort practicable to give the Commission notice of its intention to implement, modify, or terminate a temporary emergency rule before taking action. A temporary emergency rule would remain in effect unless the Commission suspended the effect of the rule pending review under section 5a(a)(12)(A) based upon a determination that the emergency action was arbitrary, capricious, or an abuse of discretion; lacking reasonable basis in fact; or taken in bad faith by the contract market or its officials. 58 FR 7056 (February 4, 1993).

years and would be applied in the context of the dual trading exemption standard.[52]

2. Standards for Exemption

Section 4j(a)(3)(A) of the Act states that the Commission shall exempt a contract market from the dual trading prohibition upon a finding that the contract market's trade monitoring system satisfies the requirements of section 5a(b) of the Act with regard to violations attributable to dual trading. Section 5a(b)(1) of the Act requires that a contract market's trade monitoring system include the following components: (1) Physical observation of trading area; (2) audit trail and recordkeeping systems able to capture essential data on the terms, participants, and sequence of transactions (including relevant data on unmatched trades and outtrades); (3) surveillance system to detect violations committed in making trades and executing customer orders on the floor or subject to the rules of the contract market, including dual trading-related abuses; (4) use of information gathered through such system to bring appropriate disciplinary actions; (5) commitment of resources necessary for such system to be effective in detecting and deterring such violations, including adequate staff to develop and prosecute disciplinary actions; and (6) assessment of meaningful penalties against violators and the referral of appropriate cases to the Commission.

The requirements for contract market surveillance and compliance programs set forth in the Futures Trading Act, although consistent with standards applied in practice previously, constitute a more comprehensive and particularized statutory statement with respect to trade monitoring systems, with an emphasis on improved audit trails and other compliance procedures and systems to detect trading abuses.[53] Given the requirement that the Commission exempt from the dual trading prohibition those contract markets that have met the specified trade monitoring system standards insofar as they may relate to dual trading, the Commission intends to give content to the new statutory framework to facilitate consistent disposition of contract market exemption petitions and to ensure that the trade monitoring systems are capable of detecting and deterring dual trading related abuses.

The Commission proposes to establish guidelines as to what would be required for a contract market to demonstrate successfully that its trade monitoring system components are sufficient to detect and deter violations attributable to dual trading. The proposed guidelines, which appear as appendix A to the proposed regulation and are described below, would set forth minimum standards with respect to each component of the contract market's trade monitoring system. The Commission intends to apply these guidelines in determining whether a particular contract market's trade monitoring system satisfies the exemption requirements. The Commission in its discretion, however, would consider the contract market's trade monitoring system as a whole in determining whether to grant a conditional or unconditional exemption. Nevertheless, the guidelines would establish objective criteria pursuant to which each contract market could evaluate the efficacy of its trade monitoring system in determining how to address the proposed regulation and, to the extent possible, would facilitate consistency by the Commission in its evaluation of the exemption petitions received and its assessment of the various trade monitoring programs notwithstanding differences among the petitioning contract markets. The Commission invites comments on the proposed guidelines for the trade monitoring system components.

a. Physical Observation of Trading Areas. A contract market would be required to demonstrate that its trade monitoring system includes adequate floor surveillance. The compliance staff should perform floor surveillance, to the extent practicable, on each open and close, randomly at other times during each trading session, and otherwise as required by unusual market conditions. A contract market could demonstrate the adequacy of its floor surveillance program, for example, by maintaining a daily floor surveillance log on which the compliance staff would record for each visit to the floor the investigator's name, date, time, contract market, and, if appropriate, observations. The contract market would have to demonstrate further that information developed through such floor surveillance is integrated into other compliance activities as appropriate.

b. Audit Trail System. The contract market would be required to provide a detailed description of the methodology and procedures followed to verify the accuracy of recorded trade execution times. Further, the contract market would be required to demonstrate that its one-minute trade execution times, as required under § 1.35(g), were accurate to the highest degree practicable (but in no event less than 90 percent accurate) during four consecutive months within the 12-month period ending with the month preceding the petition date. This standard as well as others would be subject to change as, for example, new statutory standards become effective and exchange systems evolve.[54]

If trade execution times are recorded manually at the contract market, the contract market would be required to demonstrate its accuracy rate through, at a minimum, a comparison of times recorded for both the executing and opposite sides of the trade to the times reported in the time and sales register. If trade execution times are imputed at the contract market, the contract market would be required to demonstrate its accuracy rate through, at a minimum, the accuracy of the date inputted and a description of the contract market's trade imputation algorithm program. Such description should include information as to how and why the program based on input data reliably establishes the accuracy of the imputed trade execution times.

c. Recordkeeping System. The contract market would be required to demonstrate that a "representative sample" of documentation required to be prepared and maintained by each floor member and member firm regarding the execution of customer orders and other trading is reviewed for compliance with § 1.35 at least once each year. A contract market should provide a checklist used in the annual reviews to evidence the performance of its floor members over the review period, as well as the contract market's completion of the reviews as required. A contract market would have to demonstrate also that information developed regarding inadequate or violative recordkeeping is incorporated into other compliance activities as appropriate.

d. Surveillance Systems. The exemption petition would be required to include a description of the contract market's surveillance system and procedures to detect the dual trading-related abuses enumerated in the proposed regulation.[55] The contract market also would be required to provide evidence that the surveillance system is used on a daily basis for the intended purpose and regarding the extent to which available trade data, including account numbers, are reviewed. Such evidence should

[52] *See* n. 26 for a summary of the requirements of section 5a(b)(3) of the Act, as amended.

[53] H.R. Rep. No. 707, 102d Cong., 1st Sess. 21 (1991).

[54] *See* n. 26.

[55] The Commission, in particular, would take into account any existing restrictions on dual trading and related surveillance programs.

include logs that reflect daily reviews of trade registers and computerized surveillance reports to detect dual trading-related abuses. In that regard, the contract market would need to include a description of the cycle and generic content of such computerized reports. In addition, the contract market should indicate the number of investigations and disciplinary proceedings generated as a result of its daily reviews during the 12-month period ending with the month preceding the petition date.

e. Dual Trading-Related Disciplinary Actions. A contract market's exemption petition would be required to demonstrate use, on a consistent basis, of surveillance information to bring dual trading-related disciplinary actions. For this showing, a contract market should submit a list of each investigation and disciplinary proceeding involving one or more dual trading-related abuses. The list should include investigations and disciplinary proceedings closed or in an open status at any time during the 12-month period ending with the month preceding the petition date. Further, the list should indicate the source of the investigation, the type of dual trading abuse alleged or found, and the disposition at each level of the process. For each settlement or adjudication, the list should state any penalties assessed.

f. Commitment of Resources. The contract market would be required to demonstrate that it has committed the necessary resources for its trade monitoring system to be effective in detecting and deterring violations attributable to dual trading. In particular, the contract market should show that it has committed sufficient resources to maintain an adequate staff to investigate and prosecute disciplinary actions. In this regard, the contract market, among other things, could demonstrate the adequacy of its staff by including statistics regarding the timeliness of the completion of investigations and the initiation of disciplinary proceedings.

The Commission also would consider whether the contract market has committed sufficient resources to ensure that any computerized surveillance programs in use at the contract market are effective. If deficiencies in such programs have been identified previously (*e.g.*, in recommendations contained in rule enforcement reviews of the contract market), the contract market should provide information to show that necessary resources were allocated to correct identified problems. The contract market also should provide information reflecting the allocation of resources to implement other improvements independent of any Commission recommendations.

3. Alternative Requirements for Exemption

Section 4j(a)(3)(B) of the Act sets forth alternative requirements for a contract market to obtain an exemption. It requires that the Commission exempt a contract market from the dual trading prohibition upon a finding that there is a substantial likelihood that a dual trading suspension would harm the public interest in hedging or price basing at the contract market, and that other corrective actions are sufficient to bring the contract market into compliance with the trade monitoring standards.

Accordingly, proposed § 155.5(d)(3) would provide that if a contract market believed that its trade monitoring system would not meet the standards set forth in the proposed regulation (including the standards in the guidelines of appendix A), the contract market's petition must include the following: (a) A full description of each component of the contract market's trade monitoring system, as enumerated above; (2) a specific description of the corrective actions the contract market will take that it believes to be sufficient and appropriate to bring the contract market into compliance with the trade monitoring system standards in the regulation; and (3) data and an economic analysis of that data to demonstrate any adverse impact of the dual trading prohibition on hedging and price basing at the contract market. With respect to corrective actions, the petition also would have to include an explanation of the sufficiency and appropriateness of such actions, including specific implementation dates and related changes in systems, operations, staffing policies, rules, procedures, and budget allocations.

4. Remittal of Exemption Petition

The proposed regulation would authorize the Director of the Division of Trading and Markets (or a designee) to remit to the contract market and not to accept any petition for exemption that does not comply with the content requirements set forth in the regulation. The remittal letter would provide, where practicable, an appropriate explanation of the remittal and would identify the content deficiencies. The contract market would have 20 days following receipt of the remittal letter in which to resubmit the exemption petition with the deficiencies corrected. If the corrected petition is not resubmitted within this timeframe, the Commission could exercise its discretion to permit the dual trading prohibition to become effective as to the affected contract market. The Commission believes that a time period for resubmission of the petition is necessary to ensure that a contract market's petition does not remain in remitted status for an extended period of time without the affected market being subject to the dual trading prohibition. The Commission's review period would be calculated from the date of resubmission.

5. Procedures for Issuance or Denial of Exemptions

In accordance with section 4j(a)(5) of the Act, the proposed regulation would provide that a notice of the submission of each exemption petition deemed complete under the content requirements would be published in the **Federal Register** by the Commission or the Director of the Division of Trading and Markets (or a designee). Upon publication of the notice, copies of the petition (except for any information or materials determined by the Commission to be subject to confidential treatment) would be available to the public through the Office of the Secretariat in accordance with the provisions of part 145 of the Commission's regulations ("Commission Records and Information").[56]

The proposed regulation sets forth procedures governing Commission action on exemption petitions. The Commission would make its determination based on the information, views and arguments placed before it by the contract market in writing in the petition and any attachments and supplements thereto and orally in any presentation made in accordance with the regulation, as well as any other relevant information identified by the Commission in its final order. The three possible actions are granting an exemption without conditions, granting an exemption with conditions, and denying an exemption.

Consistent with the requirement of section 4j(a)(3) of the Act, the proposed regulation states that, in order to grant an unconditional exemption, the Commission would have to find that the contract market has demonstrated compliance with the trade monitoring standards set forth in the regulation. An unconditional exemption would take effect upon issuance of a Commission order stating the findings. The order would be published promptly in the **Federal Register** for public notice, in

[56] 17 CFR Part 145.

accordance with section 4j(a)(5) of the Act.

As required by section 4j(a)(5), the proposed regulation sets forth procedures to ensure notice and opportunity for hearing before the Commission denies a petition or conditionally exempts a contract market. Specifically, the Commission would notify the contract market in writing that the Commission intends to deny or condition the exemption and state: Specific deficiencies in the contract market's trade monitoring system; any corrective actions to the trade monitoring system that the Commission believes the affected contract market must take to satisfy the trade monitoring standards of paragraph (d)(1) of the proposed regulation, together with a timetable for such actions; and any conditions or limitations that the Commission proposes to attach to an exemption. Unless the Commission were to inform the contract market otherwise, the contract market would have 20 days from its receipt of the notice to submit any supplemental written data, views or arguments to the Commission. A request for an oral presentation would have to be submitted by the contract market in writing within five days of receipt of the Commission's notice. The Commission would establish the date and terms under which the contract market would make its oral presentation. In addition, a notice of the Commission's proposed action would be published promptly in the **Federal Register** in accordance with section 4j(a)(5) of the Act.

The Commission could grant an exemption with conditions or deny an exemption following notice to the contract market of the Commission's intent to condition or deny the exemption and opportunity for the contract market to make a written submission and oral presentation. To grant a conditional exemption, the Commission would have to find, consistent with the requirements of sections 4j(a) (3) and (5)(C) of the Act, that there is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market and, although the contract market has not demonstrated that its trade monitoring system satisfies the standards in paragraph (d)(1), other corrective actions by the contract market are sufficient and appropriate to bring the contract market into compliance with those standards. In addition, as required by section 4j(a)(5)(C)(ii), the Commission would have to find that the conditions being attached to the exemption by the Commission are appropriate. The conditions and the Commission's findings would be set forth in an order, which would be provided to the contract market and published promptly in the **Federal Register**. A conditional exemption order would be effective 20 days after issuance, unless the Commission determines that more immediate action is appropriate in the public interest.

The Commission could deny an exemption petition following notice to the contract market of the Commission's intent to deny the petition and opportunity for the contract market to make a written submission and oral presentation. The proposed procedures, intended to be consistent with section 4j(a)(5)(C) of the Act, state that an exemption petition would be denied by the Commission upon finding that:

(A) The contract market has not demonstrated that its trade monitoring system satisfies the standards set forth in the proposed regulation, and there is not a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market; or

(B) The contract market has demonstrated that there is a substantial likelihood that a dual trading prohibition may harm the public interest in hedging or price basing at the contract market, but has not demonstrated that any corrective actions are sufficient or appropriate to bring the contract market's deficient trade monitoring system into compliance with the standards in paragraph (d)(1).

The Commission's order denying the exemption would state the Commission's findings and the date that the dual trading prohibition would be imposed upon the contract market. As required by section 4j(a)(5)(C) of the Act, the order would take effect at least 20 days after issuance to the contract market unless the Commission determines that more immediate action is appropriate in the public interest. The order also would be published promptly in the **Federal Register**.

6. Exemption Revocation

As required by section 4j(a)(1)(E) of the Act, the proposed regulation would establish an expeditious procedure for the Commission to revoke an unconditional or conditional exemption. The proposed revocation procedure would provide for reasonable written notice to the exempted contract market, opportunity for written submission and oral presentation, and findings to assure fundamental fairness. The Commission would be authorized to revoke an exemption if, after considering information relevant to the proposed revocation, the Commission finds that the contract market is not in compliance with the standards in the regulation for granting exemptions or if any condition of the exemption has not been met.[57] A Commission order revoking an exemption would be effective at least 20 days after issuance, unless the Commission determines that more immediate action is appropriate in the public interest, and would state findings in support of the revocation and the date that the dual trading prohibition would be imposed upon the contract market.

IV. Conclusion

The Commission believes that proposed regulation 155.5 satisfies the statutory directives of section 4j(a) of the Act as amended by the Futures Trading Act. The proposed regulation would prohibit dual trading by contract market members and require the affected contract markets to adopt rules to prohibit dual trading. To preserve market efficiency, contract markets would be permitted to adopt exceptions to the prohibition, as implemented by contract market rules made effective pursuant to section 5a(a)(12) of the Act and Commission regulation 1.41. The proposed exemption process, consistent with the statutory mandate, would permit a contract market to petition the Commission for an exemption to the prohibition by demonstrating that its trade monitoring system satisfies the specified standards. Finally, the proposed regulation includes the procedural due process safeguards required by the statute in the event the Commission determines to deny an exemption, grant a conditional exemption, or revoke an exemption.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that federal agencies (including the Commission), in proposing rules, consider the impact of those rules on small businesses.[58] Proposed regulation 155.5 would implement the statutory mandate in section 4j(a) of the Act, as amended by the Futures Trading Act. To do so, the proposed regulation necessarily would affect contract markets and floor brokers directly. The Commission previously

[57] Alternative mechanisms that the Commission may use to address such contract market noncompliance include deficiency orders which may be issued under section 8e of the Act, as amended by the Futures Trading Act, and enforcement proceedings as authorized by sections 6b and 8 of the Act, as amended by the Futures Trading Act.

[58] 5 U.S.C. 601 *et seq.* (1988).

has established that contract markets are not "small entities" for purposes of the RFA.[59] The Commission also stated that it would determine on a case-by-case basis whether floor brokers should be considered small entities in connection with particular rule proposals.[60]

Although certain floor brokers might be considered small entities for purposes of the RFA in the present context, [61] the Commission believes that the proposed regulation is designed so that it can be implemented without imposing a significant economic burden on a substantial number of floor brokers. The proposed regulation would apply only to floor brokers who trade for accounts in which they have an interest and for customers during the same trading session. Moreover, the regulation would not restrict dual trading in all futures and option contracts traded on all exchanges. Only floor brokers who trade in contract markets with average daily trading volume of 8000 contracts or more during each of four recent, consecutive calendar quarters might be affected by the dual trading prohibition.[62] Such floor brokers, however, would not be prohibited from dual trading if the affected contract market in which they trade receives an exemption from the Commission, as permitted under the proposal. The prohibition also would not apply while the Commission reviews a contract market's exemption petition, so long as the petition is submitted prior to the effective date of the prohibition. Furthermore, any affected contract market that does not receive an exemption would be permitted to adopt exceptions into its rules as specified by the proposed regulation, so that floor brokers who trade in that contract market would not be restricted from trading in a dual capacity under circumstances covered by such exceptions.[63]

Any economic burden imposed on floor brokers otherwise subject to the dual trading prohibition might not be otherwise subject to the dual trading prohibition might not be significant because, as noted in EA's 1989 Dual Trading Study, dual-trading floor brokers already generally exhibit a high degree of specialization in their trading activity.[64] Thus, in general, floor brokers may be required to forego only a small portion of their trading activity (*i.e.*, their secondary business).

Moreover, as noted above, the proposed prohibition would be trading session- and contract market-specific. Accordingly, a floor broker subject to the prohibition could trade for his own account and for customers in different contract markets during the same trading session. Similarly, a floor broker could trade for his own account and for customers in the same affected, non-exempt contract market during different trading sessions. Accordingly, based on an initial review of available information, the Acting Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b) that § 155.5, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA") imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.[65] In compliance with the PRA, the Commission has submitted the proposed regulation and its associated information collection requirements of the Office of Management and Budget ("OMB"). The burden associated with the entire collection, including this proposed regulation, is as follows:

Average burden hours per response.	611.26
Number of respondents	4201
Frequency of response	on occasion

The burden associated with the proposed regulation is as follows:

Average burden hours per response.	528.00
Number of respondents	2813
Frequency of response	on occasion

Persons wishing to comment on the information that would be required by the proposed regulation should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 155

Commodity futures, Commodity options, Contract markets, Customers, Dual trading, Floor brokers, Futures commission merchants, Members of contract markets.

For the reasons set out in the preamble and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4b, 4c, 4e, 4g, 4j, 5, 5a, 8 and 8a thereof, 7 U.S.C. 6, 6b, 6c, 6e, 6g, 6j, 7, 7a, 12 and 12a, the Commission proposes to amend Part 155 of title 17 of the Code of Federal Regulations as follows:

PART 155—TRADING STANDARDS

1. The authority citation for part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6g, 6j and 12a, unless otherwise noted.

2. Section 155.5 is proposed to be added to read as follows:

§ 155.5 Prohibition of Dual Trading by Floor Brokers.

(a) *Definitions.* For purposes of this section:

(1) *Trading session* means the hours during which a contract market is scheduled to trade continuously during a trading day, as set forth in contract market rules, including any related post settlement trading session. A contract market may have more than one trading session during a trading day.

(2) *Customer* means an account owner for which a trade is designated with the customer type indicator prescribed under Commission regulation 1.35(e)(4).

(3) *Contract market* means any contract separately designated by the Commission provided that two or more contracts trading concurrently pursuant to a single designation order on other than a transitory basis and for which the contract terms differ significantly other than as to delivery or expiration months shall each be considered a contract market for purposes of this section.

(4) *Dual trading* means the execution of customer orders by a floor broker during the same trading session in which the floor broker executes directly or indirectly a transaction in the same contract market for:

(i) The floor broker's own account;

(ii) Any account in which the floor broker's ownership interest or share of trading profits is ten percent or more;

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[59] 47 FR 18618, 18619 (April 30, 1982).

[60] *Id.*

[61] Any floor broker employed by a futures commission merchant ("FCM"), however, is part of the FCM's business and, therefore, generally would not be considered a separate business entity for purposes of the RFA. The Commission previously determined that FCMs are not "small entities" under the RFA. *Id.*

[62] Based on the trading volume of the various contract markets during 1992, the Commission estimates that approximately 25 contract markets at five boards of trade, reflecting approximately 85 percent of the total volume, would be subject to the dual trading prohibition absent any exemptions granted by the Commission or exceptions authorized by contract market rules.

[63] For example, if an affected, non-exempt contract market adopted the proposed "consenting customer" exception, a floor broker could trade in that contract market for his own account and for any consenting customers during the same trading session. A customer with an established business relationship with a specific floor broker might decide to maintain that relationship, in which case the floor broker's ability to trade for his personal benefit as well as for the customer would be unaffected by the proposed regulation.

[64] The Dual Trading Study at 3.

[65] 44 U.S.C. 3501 *et seq.* (1988).

(iii) An account for which the floor broker has trading discretion; or

(iv) Any other account controlled by a person with whom such floor broker is subject to trading restrictions under section 4j(d) to the extent section 4j(d) has been applied by Commission rule or order.

(5) *Daily trading volume* means the total number of sells (or buys) executed in any contract market during a trading day, excluding from the computation ex-pit transactions as permitted under contract market rules that have been made effective under the Act.

(6) *Average daily trading volume* means an arithmetic average of daily trading volume in a contract market over a specified time period on any day when any expiration or delivery month was listed for trading.

(7) *Volume year* means a continuous 12-month period that includes the last calendar month-end date prior to the computation date.

(8) *Computation Date* means the date on which a contract market computes its average daily trading volume for the most recent volume year.

(9) *Affected contract market* means a contract market in which the average daily trading volume equals or exceeds the threshold level of 8000 contracts for each of four quarters during the most recent volume year.

(b) *Dual Trading Prohibition.* No floor broker shall dual trade in an affected contract market, except as provided in contract market rules that have been made effective pursuant to section 5a(a)(12) of the Act and § 1.41, unless that contract market is exempted under paragraph (d) of this section. This prohibition shall not affect ex-pit transactions as described in paragraph (a)(5) of this section.

(c) *Contract markets.* (1) Contract market rules. Prior to the effective date of the dual trading prohibition under this section or under a Commission order denying an exemption petition filed pursuant to paragraph (d) of this section or revoking an exemption pursuant to paragraph (e) of this section, each affected contract market, unless exempted under paragraph (d) of this section, shall adopt rules that have been made effective pursuant to section 5a(a)(12) of the Act and § 1.41 to prohibit dual trading in accordance with the provisions of this section. In the absence of such contract market rules, upon the effective date of the dual trading prohibition as implemented either under this section or by Commission order, paragraphs (a) and (b) of this section shall be deemed to be rules of the contract market.

(2) Volume computation. Each contract market that may be subject to a dual trading prohibition shall determine whether it is an affected contract market by computing at least quarterly its average daily trading volume for each of four quarters during the most recent volume year. In addition, the contract market shall:

(i) At least five days before the effective date of the dual trading prohibition under this section or under a Commission order denying an exemption petition or revoking an exemption, and thereafter within at least two business days of each computation date, publish, in a manner sufficient to reach all members, a list of the affected contract markets and the effective date of the dual trading prohibition and, on the same date, provide that information in writing to the Director of the Division of Trading and Markets, or an employee of the Commission under the supervision of such Director, as may be designated by the Director; and

(ii) Maintain a record of its average daily trading volume computations required hereunder. Such record shall include the computation date, the beginning and ending dates for the volume year under consideration, the beginning and ending dates for each quarter in the volume year and the average daily trading volume for each quarter.

(3) Newly affected contract market. If a contract market that was not affected on the immediately preceding computation date becomes affected as of the current computation date, the effective date of a dual trading prohibition for that contract market shall be no more than 30 calendar days after the current computation date for that contract market.

(4) Permitted exceptions. Notwithstanding the applicability of a dual trading prohibition under this section, dual trading shall be permitted in affected contract markets in accordance with rules that have been submitted to the Commission pursuant to section 5a(a)(12) of the Act and § 1.41 as follows:

(i) Correction of errors. To offset trading errors resulting from the execution of customer orders, *Provided, that* the floor broker must liquidate the position in his personal error account resulting from that error by open and competitive means as soon as practicable, but not later than the close of business on the business day following the discovery of the error. In the event that the daily price fluctuation limit is reached and a floor broker is unable to offset the error trade, however, the floor broker must liquidate the position in his personal error account resulting from that error as soon as practicable thereafter.

(ii) Customer consent. To permit a customer to designate in writing not less than once annually a specifically identified floor broker to dual trade while executing orders for such customer's account.

(iii) Spread transactions. To permit a broker who unsuccessfully attempts to leg into a spread transaction for a customer to take the executed leg into his personal account and to offset such position, and to permit a broker to execute for his personal account a spread transaction recognized by a contract market if at least one leg of the spread is in a non-affected market, *Provided, that* a record is prepared and maintained to demonstrate that the customer order was for a spread trade.

(iv) Member-customers. To permit transactions for members of the contract market not present on the floor, *Provided, that* the contract market, within the single record required by § 1.35(e), specifically identifies such transactions through account numbers, a separate customer type indicator, or otherwise for surveillance purposes.

(v) Low volume months. To recognize any expiration or delivery month which, on the basis of historical data and an analysis thereof and other factors identified by the contract market, reasonably can be expected to have an average daily trading volume of less than 500 contracts during the period beginning with the current computation date and ending with the next computation date, *Provided, that* the contract market keeps full and systematic records supporting these determinations and, as part of its trade surveillance program, establishes special procedures including appropriate reports to monitor dual trading activity in the relevant low volume contract months.

(vi) Market emergencies. To address emergency market conditions resulting in a temporary emergency action under § 1.41(f).

(d) *Exemption Petitions.* (1) Standards. A contract market may apply for an exemption from the dual trading prohibition of paragraph (b) of this section by filing a written petition, signed by the contract market's chief operating officer, which states facts sufficient to demonstrate that its trade monitoring system, consistent with the standards articulated in guidelines set forth in Appendix A to this section, is capable of detecting and deterring, and is used on a regular basis to detect and deter, all types of violations attributable to dual trading, and is capable of

generating an audit trail that satisfies the requirements of § 1.35. The petition shall be directed to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, with a copy to the Director of the Division of Trading and Markets.

(2) Content requirements. An exemption petition must identify each contract market that is, or is projected to be, affected. The petition must include a full description of each component of the contract market's trade monitoring system including the systems in place, rules, policies and procedures in effect, standards applied, trading violations targeted, and the results achieved. To the extent practicable, the petition shall include performance statistics covering the 12-month period ending with the month preceding the petition date. Where such statistics are not available, specific, representative performance examples should be provided. The petition also must set forth the contract market's program or plan and projected implementation timetable for its intended compliance with the requirements of section 5a(b)(3) of the Act. An exemption petition must address, in the order listed below, the following components of a contract market's trade monitoring system:

(i) Physical observation of trading areas;

(ii) Audit trail and recordkeeping systems able to, and which are used to, capture essential data on the terms, participants, and sequence of transactions (including relevant data on unmatched trades and outtrades) and otherwise satisfy the requirements of § 1.35 and section 5a(b)(3) of the Act, as implemented by Commission regulations and orders;

(iii) Systems capable of reviewing, and used to review, trading data effectively on a regular basis to detect rule violations attributable to dual trading committed in the execution of trades and customer orders on the floor or subject to the rules of the contract market, including:

(A) Trading ahead of customer orders directly or indirectly;

(B) Trading against customer orders directly or indirectly in violation of contract market rules;

(C) Disclosing, misallocating or withholding customer orders;

(D) Failing to resolve errors, unmatched trades or outtrades properly and promptly; and

(E) Crossing customer orders by matching or "offsetting" customer orders directly or indirectly in violation of contract market rules;

(iv) The use of information gathered through such systems on a consistent basis to bring appropriate disciplinary actions against violators;

(v) The commitment of resources necessary for such systems to be effective in detecting and deterring violations attributable to dual trading, including adequate staff to investigate and prosecute disciplinary actions; and

(vi) The assessment of meaningful penalties against violators and the referral of appropriate cases to the Commission.

(3) Alternative requirements. If a contract market believes that its trade monitoring system does not meet the standards set forth in paragraph (d)(1) of this section, the contract market's petition must include, in addition to the information required to be provided under paragraph (d)(2) of this section:

(i) A specific description of the corrective actions the contract market will take that it believes to be sufficient and appropriate to bring the contract market into compliance together with an explanation of the sufficiency and appropriateness of such actions, including specific implementation dates, any related changes in systems, operations, staffing, policies, rules, procedures, and budget allocations; and

(ii) Data and an economic analysis of that data to demonstrate any adverse impact of a dual trading prohibition on hedging and price basing at the contract market.

(4) Remittal. The Director of the Division of Trading and Markets (or an employee of the Commission under the supervision of such Director as may be designated by the Director) may remit to the contract market, with an appropriate explanation where practicable, and not accept pursuant to paragraph (d) of this section, any petition for exemption that does not comply with the content requirements of paragraphs (d)(2) and (3) of this section, as identified in the remittal letter. The affected contract market must resubmit its exemption petition with deficiencies corrected no more than 20 days after receipt of the remittal notice. If the exemption petition is not resubmitted within the prescribed 20-day period, the Commission, at its discretion, may permit the dual trading prohibition provided for in paragraph (b) of this section to become effective as to any such affected contract market. The Commission's review period shall be calculated from the date of resubmission.

(5) Deferred application of the prohibition. If a contract market submits a petition for exemption that satisfies the content requirements of paragraphs (d)(2) and (3) of this section prior to the effective date of the dual trading prohibition, the Commission will suspend application of the prohibition against the contract market unless and until the petition is denied, pursuant to the effective date set forth in the denial order.

(6) Publication. A notice of the submission of each exemption petition deemed complete under paragraphs (d)(2) and (3) of this section will be published promptly by the Commission or the Director of the Division of Trading and Markets (or by an employee of the Commission under the supervision of the Director, as may be designated by the Director) in the **Federal Register**. Upon publication of such notice, copies of each petition, with the exception of any information or materials determined by the Commission to be subject to confidential treatment, will be publicly available through the Office of the Secretariat in accordance with the provisions of part 145 of this chapter.

(7) Grant of Exemption without Conditions. (i) Findings and Order. A contract market's exemption petition will be granted without conditions by Commission order if the Commission finds that, based on the information, views and arguments placed before it by the contract market in writing in its petition and any attachments or supplements thereto, and orally in any presentation pursuant to paragraph (d)(8)(c)(iii) of this section, and other relevant information identified by the Commission, the contract market has demonstrated compliance with the standards contained in paragraph (d)(1) of this section. The Commission's order will state the Commission's findings.

(ii) Publication. A Commission order granting an exemption pursuant to this paragraph (d)(7) of this section will be published promptly in the **Federal Register**.

(iii) Effective Date. A Commission order granting an exemption without conditions pursuant to this paragraph (d)(7) shall be effective upon issuance.

(8) Proposed Conditional Exemption or Petition Denial. (i) Notice. If the Commission intends to deny an exemption petition or to exempt a contract market subject to conditions, the Commission will notify the contract market in writing that it intends to deny or condition the petition and state:

(A) Specific deficiencies in the contract market's trade monitoring system;

(B) Any corrective actions to the trade monitoring system that the Commission believes the affected contract market must take to satisfy the standards of

paragraph (d)(1) of this section, and a timetable for such corrective actions; and

(C) Any conditions or limitations that the Commission proposes to attach to an exemption under paragraph (d) of this section.

(ii) Publication. A notice issued to a contract market under this paragraph (d)(8) will be published promptly in the **Federal Register.**

(iii) Opportunity for Written Submission and Oral Presentation. Within five days of receipt of the notice from the Commission, the contract market may request in writing the opportunity to make an oral presentation to the Commission. The contract market will be notified promptly by the Commission of the date and the terms under which the contract market may make an oral presentation. The contract market must submit any written supplemental data, views, or arguments within 20 days of receipt of the Commission's notice, unless the Commission notifies the contract market otherwise.

(9) Grant of Conditional Exemption.

(i) Findings and Order. A contract market's exemption petition will be granted subject to conditions by Commission order if the Commission determines, based on the information, views and arguments placed before it by the contract market in writing in its petition and any attachments or supplements thereto, and orally in any presentation pursuant to paragraph (d)(8)(c)(iii) of this section and other relevant information identified by the Commission, that:

(A) The contract market's trade monitoring system does not satisfy the standards set forth in paragraph (d)(1) of this section, but other corrective actions are sufficient and appropriate to bring the contract market into compliance with the standards in paragraph (d)(1) of this section;

(B) There is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market; and

(C) The conditions or limitations being attached to the grant of exemption by the Commission are appropriate in light of the purposes of this section.

The Commission's order will state the Commission's findings and the conditions or limitations placed upon the contract market.

(ii) Publication. A Commission order granting a conditional exemption pursuant to this paragraph (d)(9) will be published promptly in the **Federal Register.**

(iii) Effective Date. A Commission order granting a conditional exemption pursuant to this paragraph (d)(9) shall become effective 20 days after issuance, unless the Commission determines that more immediate action is appropriate in the public interest and states an earlier effective date in the order.

(10) Denial of Petition. (i) Findings and Order. A contract market's exemption petition will be denied by Commission order if the Commission determines, based on the information, views and arguments placed before it in connection with the petition and other relevant information, that:

(A) The contract market has not demonstrated that its trade monitoring system satisfies the standards set forth in paragraph (d)(1) of this section, and there is not a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market; or

(B) The contract market has demonstrated that there is a substantial likelihood that a dual trading prohibition may harm the public interest in hedging or price basing at the contract market, but has not demonstrated that other corrective actions are sufficient or appropriate to bring the contract market into compliance with the standards in paragraph (d)(1) of this section.

The Commission's order denying the exemption will state the Commission's findings and the date on which the dual trading prohibition will take effect on the contract market.

(ii) Publication. A Commission order denying an exemption pursuant to this paragraph (d)(10) will be published promptly by the Commission in the **Federal Register.**

(iii) Effective Date. A Commission order denying a contract market's petition for an exemption pursuant to this paragraph (d)(10) of this section shall become effective at least 20 days after issuance, unless the Commission determines that more immediate action is appropriate in the public interest.

(e) *Exemption revocation.* An exemption may be revoked if the Commission determines that a contract market is not in compliance with the standards in paragraph (d)(1) of this section or if any condition of the exemption has not been met. The Commission shall notify the contract market in writing of its intent to issue an order to revoke the contract market's exemption. Such notice shall include the reasons for the proposed revocation and the procedures under which the contract market shall have the opportunity to be heard. After considering information relevant to the proposed revocation, the Commission shall determine whether to revoke the exemption. Any Commission revocation order shall state findings in support of the revocation and be effective at least 20 days after issuance unless the Commission determines that more immediate action is appropriate in the public interest. Such order shall state the date on which the dual trading prohibition shall take effect.

Appendix A to § 155.5—Guidelines Regarding Contract Market Petition for Exemption From Dual Trading Prohibition Based on Sufficiency of the Trade Monitoring System

Regulation 155.5 permits a contract market to petition the Commission for exemption from the dual trading prohibition on the basis that its trade monitoring system satisfies certain standards. Appendix A is intended to provide additional guidance to a contract market as to what is necessary to demonstrate that the components of a contract market's trade monitoring system, as enumerated in the regulation, are sufficient to detect and deter violations attributable to dual trading. Although these guidelines include certain standards that the Commission intends to apply in determining whether a particular contract market's trade monitoring system meets the exemption standards in § 155.5, the Commission may, in its discretion, consider a contract market's trade monitoring system as a whole.

I. Physical Observation of Trading Areas

Demonstrate (*e.g.*, by daily floor surveillance log) that compliance staff performs floor surveillance:

(1) To the extent practicable, on each open and close;

(2) Randomly at other times during each trading session; and

Demonstrate further that information developed through such surveillance is integrated into other compliance activities as appropriate.

(3) When special market conditions warrant.

II. Audit Trail System

Provide a detailed description of the methodology and procedures followed to generate and assure the accuracy of recorded trade execution times. Demonstrate the highest degree of accuracy practicable (but in no event less than 90% accuracy) of trade execution times required under regulation 1.35(g) (within one minute, plus or minus, of execution) during four consecutive months within the 12-month period ending with the month preceding the submission of the exemption petition.

If trade execution times are recorded manually at the contract market, demonstrate accuracy rate through, at a minimum, a comparison of the times recorded for both the executing and opposite sides of each trade to the times reported in the time and sales register.

If trade execution times are imputed for recordation at the contract market, demonstrate accuracy rate through, at a minimum, accuracy of the data inputted and a description of the contract market's trade

imputation algorithm, including how and why it reliably establishes the accuracy of the imputed trade execution times.

III. Recordkeeping System

Demonstrate that a "representative sample" of documentation required to be prepared and maintained by each floor member and member firm regarding the execution of customer orders and other trading is reviewed for § 1.35 compliance at least once each year. Provide checklist used in the review of the documentation. Demonstrate that information developed regarding inadequate or violative recordkeeping is incorporated into other compliance activities as appropriate.

IV. Surveillance Systems to Detect Dual Trading-Related Abuses

Demonstrate (*e.g.*, by description of procedures and by logs) that the contract market, on a daily basis, reviews trade registers and computerized surveillance reports to detect dual trading-related abuses. The contract market also must describe:

A. The extent to which available trade data, including account numbers, are reviewed; and

B. The cycle and generic content of such computerized reports.

V. Use, on Consistent Basis, of Information to Bring Dual Trading-Related Disciplinary Actions and Assessment of Meaningful Penalties

Provide a list of each investigation and disciplinary proceeding involving one or more dual trading-related abuses, which investigation or disciplinary proceeding was in an open status at any time during the 12-month period ending with the month preceding the submission of the exemption petition. Include in list:

A. Source of investigations (*e.g.*, customer compliant or inquiry; automated report; manual review; floor surveillance);

B. Type of abuse alleged or found; and

C. Disposition at each level of the process. For each settlement or adjudication, state any penalties (monetary or other) assessed.

VI. Commitment of Resources

Include statistics regarding the timeliness of the completion of investigations and the initiation of disciplinary proceedings.

Issued in Washington, DC, on March 2, 1993, by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 93–5238 Filed 3–8–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 103, 129, 165 and 184

[Docket No. 88P–0030]

Beverages; Bottled Water; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for a proposed rule to amend its regulations for bottled water that published in the **Federal Register** of January 5, 1993 (58 FR 393). This proposal would establish a standard of identity for bottled water; recodify the standard of quality for bottled water; include "mineral water" in the definition of bottled water; and define "artesian water," "distilled water," "mineral water," "purified water," "spring water," and "well water." FDA is taking this action in response to several requests to allow additional time for public comment.

DATES: Written comments by April 7, 1993.

ADDRESSES: Submit 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: Henry Kim, 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: In the **Federal Register** of January 5, 1993 (58 FR 393), FDA proposed to amend its regulations for bottled water, in part, to respond to a petition submitted by the International Bottled Water Association. FDA believes that the proposed regulations will promote honesty and fair dealing in the interest of both consumers and the regulated industry. Interested persons were given until March 8, 1993, to comment on this proposed rule.

In response to the proposal, the agency received several requests for an additional 60 days for public comment to allow for sufficient time to collect information from industry consultants, state agencies, and the Environmental Protection Agency, and sufficient time to complete a spring water consumer survey. The agency also received comments that urged the agency not to grant an extension because it would cause unnecessary delay in this rulemaking.

After careful consideration of these requests, the agency has decided to allow additional time for interested persons to submit comments to enable interested persons to collect data, to conclude the pending survey and to prepare comments. However, given that the agency has already provided 60 days for comments, the nature of the activities pointed to, in the request for extension, and the public interest in resolving the issues in this rulemaking in a timely manner, FDA is extending the comment period until April 7, 1993.

Interested persons may, on or before April 7, 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.

Dated: March 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–5436 Filed 3–5–93; 11:15 am]

BILLING CODE 4160–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

MSS Above 1 GHz Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of additional meetings of the MSS Above 1 GHz Negotiated Rulemaking Committee ("Committee").

DATES: Wednesday, March 24, 1993 at 9:30 a.m.; Tuesday, March 30, 1993 at 9:30 a.m.; Wednesday, March 31, 1993 at 9:30 a.m.; Friday, April 2, 1993 at 9:30 a.m.; Monday, April 5, 1993 at 9:30 a.m.

ADDRESSES: The meetings scheduled on March 24 and 30 and April 2 and 5 will be held at the Federal Communications Commission, Rm. 856, 1919 M Street NW., Washington, DC 20554. The meeting scheduled for March 31 will be held at 1330 Connecticut Avenue NW.,

Concourse Level Conference Room, Washington, DC.

FOR ADDITIONAL INFORMATION CONTACT: Kathleen Campbell, Administrative Assistant to the Committee, at (202) 634–1952.

SUPPLEMENTARY INFORMATION: The agenda for each meeting of the MSS Above 1 GHz Negotiated Rulemaking Committee is as follows:

1. Opening Remarks/Comments
2. Adoption of Agenda
3. Minutes/Records of Previous Meeting
4. Introduction of Documents
5. Informal Working Group Reports—Issues
6. Acceptance/Approval of Recommended Rules
7. Acceptance/Approval of Report Text
8. Agenda for future meetings—Schedule for future meetings
9. Other Business

Members of the general public may attend this meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to available seating. There will be no public oral participation, but the public may submit written comments to Fern J. Jarmulnek, the Committee's Designated Federal Officer, before the meeting.

Other meetings of the Committee have previously been announced. (See Public Notice, DA 93–163 (58 FR 8927 (February 18, 1993)).

All of the meetings begin at 9:30 a.m. The complete schedule of full Committee meetings is as follows:

Day and date	Location
Tuesday, March 9, 1993	856.
Thursday, March 18, 1993	856.
Wednesday, March 24, 1993	856.
Thursday, March 25, 1993	856.
Tuesday, March 30, 1993	856.
Wednesday, March 31, 1993	1330 Connecticut Ave., NW. Concourse Level Conference Room
Friday, April 2, 1993	856.
Monday, April 5, 1993	856.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–5284 Filed 3–8–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–15; Notice 1]

RIN 2127–AE38

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes that the requirement that plastic materials used in lenses show no haze after a 3-year outdoor exposure test be changed to specify not more than 7 percent haze, the level at which haze becomes discernable to the naked eye. This amendment would not change the stringency of the standard as it has been applied, but it would increase the objectivity of the standard.

DATES: The comment closing date for the proposal is April 23, 1993. The proposed effective date for the final rule is 12 months after its publication in the **Federal Register**. Any request for an extension of time to comment must be received not later than 10 days before the published expiration date of the comment period.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202–366–6346).

SUPPLEMENTARY INFORMATION: Sierra Products of Livermore, California ("Sierra"), in response to a compliance investigation initiated by NHTSA, filed a "Petition to Amend FMVSS 108 Updating Weather & Heat Testing of Vehicle Lights & Reflectors." Three principal issues and several lesser issues merit public consideration and comment. Thus, the agency has granted the petition and seeks comment about those issues in this notice. One issue raised by the petition regarding the permissibility of a minimum amount of haze has been determined to merit the issuance now of a proposal to amend Standard No. 108. Should any of the other issues merit the initiation of rulemaking, NHTSA will issue a supplemental notice of proposed rulemaking.

1. Haze Limit for Reflex Reflectors

S5.1.2 of Standard No. 108 establishes requirements for plastic materials used for optical parts such as lenses and reflectors. One of the requirements (subsection (c)) is that plastic materials used for reflex reflectors shall meet the appearance requirements of paragraph 4.2.2 of SAE Recommended Practice J576c, May 1970, after the 3-year exposure test specified in the Recommended Practice. Paragraph 4.2.2 states in pertinent part that "The exposed samples, when compared with the unexposed control samples, shall not show * * * haze * * *." Whether a sample shows haze has traditionally been determined by whether haze is visible to the naked eye. However, all plastics will develop an amount of haze during the weathering test that is not visible to the naked eye, but which is measurable by instrumentation.

General Electric, the manufacturer of "Lexan," a polycarbonate plastic resin used in reflex reflectors, has stated that its plastics will not pass the weathering test unless the fabricator of the product in which the plastic is used coats it. According to the SAE, the eye is not sensitive to haze less than roughly 7 percent. Coated polycarbonates develop about 6 percent haze, and acrylics develop about 3 percent haze. Since the haze is not visible to the naked eye, the plastics are considered to pass the weathering test.

Sierra does not coat the "Lexan" polycarbonate plastic that it uses in its reflex reflectors, raising the possibility, under investigation by the agency, that its reflectors will not meet the 3-year weathering test. It has petitioned to be excluded from the "coating requirement," either through establishment of a less demanding standard for trucks and trailers, allowing compliance instead with a requirement for larger reflectors to compensate for degradation, or with a requirement for providing vehicle owners with instructions for haze removal.

Neither Standard No. 108 nor SAE J576c "requires" coating, although that process may, in fact, be the most practicable way to meet the requirements of both. Sierra believes that the prescribed outdoor exposure test is inappropriate for truck and trailer lamps because their service life is alleged to be too short for haze formation. Sierra did not document the service life of trucks and trailers. However, NHTSA used the figure of 14 years as the average life of a heavy trailer in its cost/benefit analysis of proposed conspicuity requirements.

There is no reason to believe that vehicles in occasional use, such as boat trailers and utility trailers, have a shorter life. Since the average service life of an automobile is about 11 years, a reduced weathering requirement for trailer reflectors does not appear justifiable.

Sierra's second suggestion, the allowance of larger reflectors of uncoated polycarbonate, does not appear practicable. To compensate for expected loss of reflectivity, NHTSA estimates that the reflectors would have to be six times larger than at present. The agency deems insufficient Sierra's suggestion that cleaning instructions be furnished with the vehicle. These instructions do not compensate for the provision of inadequate materials in the first instance, nor do they take into account the likelihood that haze will develop during the possession of the trailer by its second and subsequent owners.

However, Sierra's petition does illustrate that an absolute requirement of zero haze is inappropriate. Industry studies used by the SAE Lighting Committee have demonstrated that degradation of reflex reflector performance can be limited to less than 17% by preventing haze in excess of 7%, but that degradation increases rapidly with further haze to a loss of over 80% of initial performance at 21% haze. To control reflex reflector degradation and to make the haze test more objective, the SAE Lighting Committee has concluded that the SAE Recommended Practice should be amended to establish a maximum allowable limit of 7 percent for plastics used for reflex refectors.

The SAE Recommended Practice also would be applied to plastic material for headlamp lenses (which the SAE added to J576 in 1986). NHTSA notes that in Standard No. 108, plastic lenses of replaceable bulb headlamps are subject to an abrasion resistance test, and that most, if not all, lenses must be coated to meet it. This coating also prevents excessive haze. Standard No. 108 does not require the abrasion test for plastic sealed beam headlamps, but NHTSA believes that it is industry practice to coat plastic sealed beam lamps.

NHTSA has been urged by the SAE Lighting Committee to harmonize its requirements for haze with the SAE specifications. In this notice, the agency is proposing the 7 percent haze limitation for reflex reflector material under consideration by the SAE. However, to pursue the subject of haze limitations for headlamp lens material, NHTSA requests that commenters address the following issues:

(1) Whether there are any replaceable bulb headlamps with plastic lenses that do not use a hard coating to achieve abrasion resistance.

(2) Whether all abrasion resistant coatings also prevent the formation of more than 7 percent haze on samples of plastics used in headlamp lenses which are subjected to the 3-year test.

(3) Whether there are any sealed beam headlamps with plastic lenses that do not use a hard coating for either haze or abrasion resistance.

(4) Whether the adoption of a 7 percent haze limit for plastic headlamp lenses would create a burden on industry, and if so, the nature and severity of the burden.

(5) Whether the industry favors harmonization of Standard No. 108 with SAE J576 for haze resistance of plastic headlamp lens materials.

2. Thermal Degradation of Acrylic Reflex Reflectors

Sierra also claimed that current weathering tests do not address the loss of reflector performance for causes other than haze. It criticized the agency for deleting the lens warpage test in 1973 which regulated distortion from heat. Before then, Standard No. 108 incorporated the heat test of SAE Standard J575d which consisted of operating a lamp for one hour in a chamber heated to 120 degrees F. The lamp would reach a temperature higher than that from the heat of the filament. At the conclusion of the test, no warpage could result that would "affect the proper functioning of the device." Since the requirement was ambiguous, NHTSA eliminated it. However, in light of Sierra's complaint, NHTSA has reviewed the matter. When the heat test was deleted, the principal concern of the test seemed to be gross distortions of through-optic lenses. It appears that the heat damage to a lens with an integral reflex reflector was not considered.

There are limited data indicating that acrylic reflex reflectors may suffer from heat degradation. The General Electric Company (GE) has reported (NHTSA Docket No. 108–PRM–000015–01) a weathering test in Florida in which amber and yellow acrylic reflex reflectors decreased in specific intensity by 18 to 32 percent after an exposure of one year, regardless of the angle of exposure. GE attributed the decrease in photometric performance to minute distortions of the reflex lens (which the industry calls "creep") which occurred when the plastics were exposed to direct sunlight (temperatures of 150 to 160 degrees F).

In view of this test, NHTSA seeks comments on the potential problem of heat degradation of acrylic plastic reflex reflectors. NHTSA requests commenters to address the following:

(1) Whether the commenter has test or other data relating to the performance of acrylic reflectors after exposure to heat.

(2) The threshold temperatures for creep and stress relaxation for acrylic plastics used for lamp lenses.

(3) Whether creep will stabilize or continue indefinitely.

(4) The maximum temperature acrylic lenses may endure without experiencing visible deformation.

(5) The length of exposure required for stability at slightly over the threshold temperature and at the maximum temperature stated in response to (4).

(6) The maximum loss of photometric performance to be expected if the creep and stress relaxation eventually stabilize.

(7) The maximum operating temperature of multiple function rear lamps on passenger cars, trucks, and trailers under realistic extreme conditions.

(8) Whether integral reflex reflectors would degrade under the conditions stated in response to (7).

(9) The test procedures that would be effective and practicable for testing reflectors and lamps with integral reflectors for the purpose of detecting which devices would degrade significantly in service.

3. Dye Loss of Acrylic Reflectors and Lenses

Sierra claims that the weathering test of Standard No. 108 is inadequate because complying red and amber acrylic lenses lose their color in use. NHTSA believes that the breakdown of the dye may not be a property of the plastic but of the dye itself. Dyes with higher temperature tolerance are frequently used in polycarbonate products because they may be designed for higher temperature applications than acrylic products, but there is no property of acrylic plastic which contributes to fading. NHTSA understands, however, that the SAE adopted the three-year test when plastic began to replace glass because of some concern that plastic would not be as fade resistant as glass.

NHTSA requests that commenters provide information on the following:

(1) Whether the commenter has test or other data relating to fading or loss of dye color in acrylic or polycarbonate lenses through exposure to heat or weathering.

(2) Whether any data exist indicating that acrylic or polycarbonate lenses fade or do not fade under realistic operating conditions.

(3) The conditions under which fading could be expected.

(4) Whether there is any reason to believe that acrylic lenses are more subject to this type of degradation than polycarbonate lenses.

(5) Whether the commenter has observed faded lenses in service and, if so, what views the commenter has about the cause of the fading.

(6) Whether the three-year test of SAE J576, conducted in Florida and Arizona, is sufficient to identify plastic materials prone to fade in color.

(7) The kind of test procedure that would be effective and practicable for testing lenses or plastic materials used in lenses to detect any propensity to fade significantly in service.

4. Other Issues

Sierra raised several other issues as well. The first of these was the opinion that "Accelerated Methods of Testing should be allowed in lieu or until Long Term 'Real Life' Testing Data on the Final Product (or components) can be gathered." However, Sierra provided no information on how such an accelerated method might be developed. The three year weathering test, representing more than three years of use, is the best accelerated test that the industry has been able to devise to date. When a reliable test of shorter duration becomes feasible, NHTSA will consider it.

Sierra also suggested that "Weather and 'Accumulated Heat' testing should be required on the final products themselves when at all possible and under as close to 'Real Life' conditions as possible." Lastly, it suggested that "the material should be tested in its final molded shape and checked for warpage and dye loss effects afterward." This does not appear to be practicable. Because the standard specifies a three year exposure test, the design of many lamps or reflectors with plastic lenses may not be completed three years in advance of their introduction. The current test procedure may, in fact, be more rigorous. Test samples of flat discs of material may be uniformly exposed to the sun while a lamp or a reflector mounted vertically to simulate its location on a vehicle would be only obliquely exposed to sun rays, and those of wrap-around designs, not uniformly exposed. There is no reason to believe that samples are not representative of the finished product in their ability to retain dye integrity or to conform to haze requirements.

Finally, Sierra asks for a system of in-use testing under which a manufacturer could sell uncertified products and determine their safety performance from the experience of motorists. This approach runs counter to the purpose of the Federal motor vehicle safety standards. They assure at the time of manufacture a minimum level of safety in advance of the use of a motor vehicle or motor vehicle equipment.

For the reasons explained above, the agency does not intend to take further action with respect to the additional issues raised by Sierra.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses

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

NHTSA has considered the impacts of this rulemaking action and has determined that it is neither major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and procedures. The stringency of the haze requirement would not be changed. Further, according to data indicating that haze of less than 7% is not detectable by the human eye, conformance of a reflector with the haze requirement could still be judged with the naked eye. Impacts of the proposal would, therefore, be so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Motor vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new motor vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

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

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to

file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of **Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority section would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.108, S5.1.2(c) would be revised to read:

§571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5.1.2 * * *

(c) After the outdoor exposure test, plastic materials used for reflex reflectors shall not show surface deterioration, crazing, dimensional changes, color bleeding, delamination, loss of surface luster, or haze that exceeds 7 percent as measured under ASTM–1003–61. When a plastic reflex reflector is installed behind a plastic outer lens and not exposed directly to sunlight, the outdoor exposure test shall be conducted with the outer lens material covering the reflex reflector material in close proximity, and the cumulative haze of both materials shall not exceed 7 percent.

* * * * *

Issued on: March 3, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–5275 Filed 3–8–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To List the Cactus Ferruginous Pygmy Owl as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petition presents substantial scientific or commercial information indicating that listing the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) as an endangered species may be warranted. A status review is initiated.

DATES: The finding announced in this notice was made on February 26, 1993. To be incorporated into the Service's one-year finding on this petition, comments and/or information must be submitted by June 7, 1993. The Service will accept information on the status of the cactus ferruginous pygmy-owl at any time.

ADDRESSES: Information, comments, or questions concerning the cactus ferruginous pygmy-owl petition may be submitted to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sam F. Spiller, Field Supervisor at the above address (telephone 602/379–4720 or FTS 261–4720).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 as amended (Act) (16 U.S.C. 531 *et seq.*), requires that the Service evaluate whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. To the maximum extent practicable, this finding should be made within 90 days of receipt of the petition, and the finding is to be promptly published in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

On May 25, 1992, Peter Galvin submitted a letter co-sponsored by the Greater Gila Biodiversity Project, Friends of the Owls, Robin Silver, and the Biodiversity Legal Foundation (petitioners) to the Service, requesting the Service to list the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) as an endangered species. The petitioners also requested that critical habitat be designated concurrent with listing. On June 2, 1992 the Service informed the petitioners their correspondence had been accepted as a petition.

This finding is based on various documents, including published and unpublished studies, agency documents, and field survey records. All documents on which this finding is based are on file in the Service Field Office in Phoenix, Arizona (See **ADDRESSES** above).

A species in danger of extinction throughout all or a significant portion of its range may be designated an endangered species under the Act. A species likely to become endangered in the foreseeable future throughout all or a significant portion of its range may be designated a threatened species under the Act. Section 3(15) of the Act includes under the term species "* * * any subspecies * * * and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature."

In November 1991, the Service elevated the cactus ferruginous pygmy-owl (hereafter "owl" unless otherwise noted) to Category 1 candidate species status (56 FR 58804). Category 1 status indicates that the Service has sufficient information to propose listing a species as threatened or endangered, but that a proposed rule has not been issued because of higher listing priorities at the time. The Service has information on population declines and loss of habitat for the owl, primarily in southern Texas and southern Arizona. Information from Mexico is unavailable at this time. However, the historic range of the owl in the United States constitutes a significant portion of its entire range.

The cactus ferruginous pygmy-owl is one of 3 subspecies of the ferruginous pygmy-owl recognized in North, Central, and South America. *G. b. cactorum* occurs from central Arizona south to the states of Colima and Michoacan in western Mexico, and from southern Texas south to Tamaulipas and Nuevo Leon in eastern Mexico (van Rossem 1945, Blake 1953, Peterson 1960, Peterson and Chalif 1973, Phillips

et al. 1964, Oberholser 1974). South of these regions and through Central America, *G. b. ridgewayi* replaces *G. b. cactorum* (Friedmann *et al.* 1950, Blake 1953, Hunter 1988). Throughout South America, *G. b. brasilianum* is the resident subspecies (de Schauensee 1966, Hunter 1988).

The cactus ferruginous pygmy-owl was first described by van Rossem (1937), and is recognized as a valid subspecies (Friedmann *et al.* 1950, Blake 1953, Phillips *et al.* 1964, Monson and Phillips 1981, Hunter 1988, and Millsap and Johnson 1988). The Service has previously recognized *G. b. cactorum* (56 FR 58804). The American Ornithologists' Union (AOU) did not list subspecies in the most recent Checklist of North American Birds (AOU 1983). The above information, presented by the petitioners or otherwise available to the Service, indicates that the cactus ferruginous pygmy-owl may be listed under the Act, as "* * * any subspecies * * * and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature" [Section 3(15)].

The cactus ferruginous pygmy-owl primarily occurs in tropical and subtropical woodland thickets and thornscrub communities. In the northern portion of its range, the owl occurs along watercourses in dense woodlands of cottonwood, mesquite, hackberry, oak, and Texas-ebony (Gilman 1909 *in* Bent 1938, Peterson 1960, 1973, Phillips *et al.* 1964, Oberholser 1974, Tewes 1992). This owl also occurs in dense desert associations of mesquite, paloverde, acacia, ironwood, and saguaro cactus (van Rossem 1945, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988, Hunter 1988). Farther south in Mexico, the owl appears to be less closely tied to watercourses. In Mexico, it occurs in lowland thickets, thornscrub communities, and second growth forest (van Rossem 1945, Peterson 1973, AOU 1983).

The petition contended that listing the cactus ferruginous pygmy-owl as endangered is warranted because populations have declined, essential habitat is subject to widespread present and threatened destruction, existing regulatory mechanisms for protection are inadequate, and overuse for commercial/recreational purposes is occurring. The petition presented information on these factors.

Section 4(a)1 of the Act lists five factors to be considered in determining whether a species may be threatened or endangered. These five factors are discussed below, with summaries of information presented in the petition, and otherwise available to the Service.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The petition contended that extensive loss of owl habitat has taken place, and that remaining habitat continues to face threats of destruction, modification, and fragmentation. The petition contended that this destruction and modification of habitat has resulted in corresponding reductions in owl numbers.

Widescale loss and modification of riparian habitats in the Southwest are well-described (Phillips *et al.* 1964, Bulmer and Thornburg 1988, General Accounting Office 1988, Szaro 1989, Dahl 1990, State of Arizona 1990). Dahl (1990) reviewed losses of wetlands between 1780 and the 1980s in the southwestern states: California 91%; Nevada 52%; Utah 30%; Arizona 36%; New Mexico 33%; and Texas 52%. Bulmer and Thornburg (1988) estimated that as much as 90% of lowland riparian habitat in Arizona has been lost. These losses have been attributed to urban encroachment, water diversion, channelization, livestock grazing, and hydrological changes resulting from land use practices. With these impacts, availability of riparian woodland habitat for the owl has greatly diminished. Habitat loss and population declines are summarized below, for Arizona, Texas, and Mexico.

Arizona

The cactus ferruginous pygmy owl was once a common resident of lowland central and southern Arizona, inhabiting mesquite-cottonwood woodlands along the lower Salt, Verde, and Gila Rivers, and their major tributaries (Swarth 1914, Breninger 1898 *in* Bent 1938, Bendire 1892 *in* Bent 1938, Friedmann *et al.* 1950, Phillips *et al.* 1964, Monson and Phillips 1981, Hunter 1988, Millsap and Johnson 1988). The owl has declined throughout this region, to the degree that it is considered nearly extirpated (Monson and Phillips 1981, Arizona Game and Fish Department 1988, Johnson-Duncan *et al.* 1988, and Millsap and Johnson 1988). Hunter (1988) found fewer than 20 verified records between 1971 and 1988. In 1992, surveys located three single owls in Arizona (U.S. Fish and Wildlife Service and National Park Service, unpublished data). In recent decades, the owl's riparian habitat has been extensively modified and destroyed by agricultural development, urban expansion and general watershed degradation (Phillips *et al.* 1964, Bulmer and Thornburg 1988, State or Arizona 1990). The State of Arizona lists the owl as endangered (Arizona Game and Fish Department 1988).

Texas

The cactus ferruginous pygmy-owl's historic range in Texas was the lower Rio Grande valley, where it was considered a common resident of mesquite-cottonwood-Texas-ebony woodlands and coastal oak mottes (Bent 1938, Friedmann *et al.* 1950, Peterson 1960, Oberholser 1974, Millsap and Johnson 1988, Tewes 1992).

There is evidence that while the overall range of the owl has not changed significantly in Texas, its numbers have declined. Habitat has, and continues to be, lost and modified along the lower Rio Grande valley, chiefly through agricultural development and urban expansion. Owls have been seen less frequently in recent years and in smaller numbers (Oberholser 1974, Hunter 1988). Tewes (1992) found no owls in a 1991 survey of the lower Rio Grande valley. One significant population does persist in coastal oak motte habitat, perhaps consisting of up to 1000 individuals (R. Waser, unpubl. data).

Mexico

The owl occurs in the northern half of Mexico, in lowland (below 4500 feet elevation) communities of thornscrub and large cacti. The owl is absent or rare in the highlands of Mexico's central plateau, which does not provide suitable habitat (Friedmann 1950, Blake 1953, Peterson 1973). The subspecies is distributed in two disjunct regions: the lower elevations of the Pacific slope in the west, and the gulf coastal region in the east.

In the middle 20th century, the owl was generally described as having been common in both regions (van Rossem 1945, Friedmann *et al.* 1950, Blake 1953). We lack current information on the status of the owl and its habitat in Mexico. It is possible that the factors causing declines in Texas and Arizona are also having effects in Mexico (Hunter 1988). In 1991, Tewes (1992) located owls at 13 of 27 survey sites in northeastern Mexico. Tewes (1992) believed expansion of the human population could reduce available habitat in the region surveyed. Population trends and habitat changes in Mexico will be evaluated during the Service's status review.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The petitioners contended that the owl may be subject to harassment by birdwatchers, who concentrate at the

few remaining known locations of owls in the United States. Oberholser (1974) and Tewes (1992) considered this a potential threat. The potential for these factors constituting a significant threat will be evaluated during the Service's status review.

C. Disease or Predation

The petition presented no information that disease or predation constituted significant threats to the owl. The potential for these factors constituting additional threats will be evaluated during the Service's status review.

D. The Inadequacy of Existing Regulatory Mechanisms

The petitioners contended that existing regulatory mechanisms are inadequate to protect the owl and its habitat. They contended that no conservation plans or management guidelines exist for the owl or its habitat, for lands managed by the Arizona State Land Department, U.S. Forest Service, U.S. Bureau of Land Management, National Park Service, Bureau of Reclamation, U.S. Fish and Wildlife Service, or Indian Nations, State of Texas, or private parties. However, taking of the owl, or destruction of its habitat on lands administered by many of the above agencies is often prohibited, by regulations that may not specifically cite the owl. The owl is currently protected under the Migratory Bird Treaty Act (16 U.S.C. 703–712). The adequacy of existing regulatory mechanisms for protecting the cactus ferruginous pygmy-owl and its habitat will be evaluated during the Service's status review.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

This owl nests in cavities excavated by woodpeckers, in trees or large cacti. Some authorities (Arizona Game and Fish Department 1988) believe that increasing competition for nest cavities with the exotic European starling may be a threat to cavity nesters. The potential for other natural or manmade factors constituting threats to the owl and its habitat will be evaluated during the Service's status review.

After a review of the petition, the references cited, and information otherwise available, the Service finds that the petition presented substantial information indicating that listing the cactus ferruginous pygmy-owl as an endangered species may be warranted. The available information indicates that loss and modification of habitat have resulted in reductions in the range and overall numbers of the owl over a significant portion of its historical range. Lack of existing regulatory mechanisms, and other factors yet to be defined, may have contributed to this decline.

This finding initiates a status review for the cactus ferruginous pygmy-owl as required under section (4)(b)(3)(A) of the Act. Within one year of receiving the petition, the Service is required under section 4(b)(3)(B) of the Act to make a finding as to whether the petitioned action is warranted. The Service would appreciate any additional data, information or comments from the public, government agencies, the scientific community, industry, or any other interested party, concerning the status of the cactus ferruginous pygmy-owl or its habitat throughout its range.

References Cited

American Ornithologists' Union. 1983. Checklist of North American birds, 6th edition. Allen Press, Lawrence, Kansas. 877 pp.

Arizona Game and Fish Department. 1988. List of threatened native wildlife in Arizona. Arizona Game and Fish Commission, Phoenix, Arizona. 32 pp.

Bent, A.C. 1938. Life histories of North American birds of prey, part 2. U.S. Natl. Mus. Bull. 170. 482 pp.

Breninger, G.F. 1898. The ferruginous pygmy-owl. Osprey 2(10):128.

Bulmer, S.K. and T. Thornburg. 1988. Arizona wetlands priority plan: an addendum to the 1983 SCORP. Arizona State Parks Board, Phoenix, Arizona. 143 pp.

Dahl, T.E. 1990. Wetlands losses in the United States, 1780s to 1980s. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. 13 pp.

de Schauensee, R.M. 1966. The species of birds of South America and their distribution. Academy of Natural Sciences. Livingston Publishing Company, Narberth, Pennsylvania.

Friedmann, H., L. Griscom, and R.T. Moore. 1950. Distributional checklist of the birds of Mexico. Pacific Coast Avifauna 29:145. Cooper Ornithol. Club, Berkeley, California.

General Accounting Office. 1988. Public rangelands: Some riparian areas restored but widespread improvement will be slow. General Accounting Office, U.S. Government. Washington, D.C.

Gilman, M.F. 1909. Some owls along the Gila River in Arizona. Condor 11:145–150.

Hunter, W.C. 1988. Status of the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in the United States and Northern Mexico. USDI Fish and Wildlife Service, Phoenix, Arizona. 13 pp.

Johnson-Duncan, E.E., D.K. Duncan, and R.R. Johnson. 1988. Small nesting raptors as indicators of change in the southwest desert. Pages 232–236 *in* R.L. Glinski *et al.*, eds. Proceedings of the Southwest Raptor Management Symposium and Workshop. Nat'l. Wildl. Fed., Washington, D.C. 395 pp.

Millsap, B.A. and R.R. Johnson. 1988. Ferruginous pygmy-owl. Pages 137–139 *in* R.L. Glinski *et al.*, eds. Proceedings of the Southwest Raptor Management Symposium and Workshop. Nat'l. Wildl. Fed., Washington, D.C. 395 pp.

Monson, G. and A.R. Phillips. 1981. Annotated checklist of the birds of Arizona. The University of Arizona Press, Tucson, Arizona. 240 pp.

Oberholser, H.C. 1974. The bird life of Texas. University of Texas Press. Austin, Texas. 1069 pp.

Peterson, R.T. and E. Chalif. 1973. A field guide to Mexican birds. Houghton Mifflin Company, Boston, Massachusetts. 432 pp.

_____, 1960. A field guide to the birds of Texas and adjacent states. Houghton Mifflin Company, Boston, Massachusetts. 304 pp.

Phillips, A.R., J. Marshall, and G. Monson. 1964. The Birds of Arizona. University of Arizona Press, Tucson, Arizona. 212 pp.

State of Arizona. 1990. Final report and recommendations of the Governor's riparian habitat task force. Executive Order 89–16. Streams and riparian resources. Phoenix, Arizona. October 1990. 28 pp.

Swarth, H.S. 1914. A distributional list of the birds of Arizona. Cooper Ornithological Club, Hollywood, California.

Szaro, R.C. 1989. Riparian forest and scrubland community types of Arizona and New Mexico. Desert Plants 9:70–138.

van Rossem, A.J. 1937. The ferruginous pigmy (sic) owl of northwestern Mexico and Arizona. Proc. Biol. Soc. Washington, 50.

_____1945. A distributional survey of the birds of Sonora, Mexico. Occasional Papers Mus. Zool., Louisiana State University. Baton Rouge, Louisiana. 379 pp.

Author

This primary author of this notice was Timothy Tibbitts of the Phoenix, Arizona Fish and Wildlife Service Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (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).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: February 26, 1993.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 93–5372 Filed 3–8–93; 8:45 am]

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Notices

Federal Register
Vol. 58, No. 44
Tuesday, March 9, 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.

COMMISSION ON CIVIL RIGHTS

South Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will be held from 1:00 p.m. until 3:30 p.m. on Friday, April 2, 1993, at the Holiday Inn, 100 W. 8th Street, in Sioux Falls. The purpose of this meeting is to review the Committee's current project in employment discrimination against women in South Dakota and plan future projects.

Persons desiring additional information should contact Committee Chairperson, Rae Burnette, or William F. Muldrow, Director of the Rocky Mountain Regional Division, (303) 866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 1, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–5299 Filed 3–8–93; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis, (BEA)

[Docket No. 930241–3041]

Intent to Revise the Boundaries of the BEA Economic Areas

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Advance notice and request for comments.

SUMMARY: BEA has begun the process of revising the boundaries of the BEA Economic Areas. The boundaries of the current areas were established in 1977, primarily on the basis of commuting and metropolitan area data from the 1970 Census of Population. In order to maintain the analytical usefulness of the Economic Areas, their boundaries must be revised when there are substantial changes in the county-level relationships on which they are founded. Reviews of the Economic Area boundaries following the 1980 Census indicated little need for revision at that time. However, current revisions to the boundaries for the metropolitan statistical areas—issued by OMB following the 1990 Census—cross the existing Economic Area boundaries in nine cases (creating need for changes in 18 or more Economic Areas), and preliminary reviews of commuting trends suggest that there may be numerous additional cases where the existing BEA Economic Areas are no longer consistent with current patterns of commuting. The objective of these revisions is to modify the existing boundaries as needed to define analytical areas that are more reflective of current regional relationships. Proposed changes to Economic Area boundaries will be published for comment in a later issue of the **Federal Register**, and an additional period for comments will be provided.

DATES: Persons who wish to provide comments regarding methodology for the Economic Area definitions should submit them in writing no later than April 30, 1993.

ADDRESSES: Written comments should be submitted to Kenneth Johnson, U.S. Department of Commerce, Bureau of Economic Analysis BE–61, Regional Economic Analysis Division, Washington, DC 20230, or Fax (202) 523–7508.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, (202) 523–0960; Fax (202) 523–7508.

SUPPLEMENTARY INFORMATION:

Background

Under authority granted in 15 U.S.C. 175 *et seq.*, the Bureau of Economic Analysis (BEA) first developed and presented a complete set of functional economic areas, along with projections to 1990, in "Area Economic Projections 1990," an October, 1974 supplement to the "Survey of Current Business." These 173 multi-county areas covered the entire United States and were known as the BEA Economic Areas. The development of the Economic Areas was part of BEA's obligation to provide a meaningful framework for small-area economic projections.

In 1977, BEA last revised the boundaries for its set of functional economic areas. In addition to their use in the BEA regional estimates and projections programs, the resulting 183 economic areas are used to provide a geographic grid for analytical studies by governmental agencies, academic researchers, and market analysts in the private sector.

The methods used in defining the economic areas and the list of counties that each economic area comprised were presented in "BEA ECONOMIC AREAS (Revised 1977)." Because the 1977 document is out of print, its brief text is presented below to provide background for this notice.

The Bureau of Economic Analysis (BEA) Economic areas are nodal functional areas delineated to facilitate regional economic analysis. Each area consists of an economic node—a standard metropolitan statistical area (SMSA), or similar area, that serves as a center of economic activity—and the surrounding counties that are economically related to the center. To the extent possible, each area includes the place-of-work and place-of-residence of its labor force. The areas cover the entire United States.

BEA economic areas were first delineated in 1969, based on data from the early 1960's. During the past decade, the regional distribution of economic activity changed. Some new centers developed and at the same time, some centers—particularly those in areas where agriculture was the basic industry—declined and were absorbed into other areas. Expanded transportation networks, by affecting patterns of travel, also led to changes in area boundaries. The Interstate Highway System was a major factor of this kind.

The 1977 delineation resulted in 183 areas—ten more than in 1969—and was based primarily on three sets of data: (1) Journey-to-work data from the 1970 Census of Population; (2) newspaper

circulation data for 1972; and (3) 1975 county commuting data developed from Social Security Administration and Internal Revenue Service Records.

Delineation of Boundaries

Delineation procedures were essentially the same as those used in 1969. As a first step, the SMSA containing the largest percentage of employment in an area identified as a potential economic area was usually chosen as the principal center. In some economic areas, smaller SMSA's were added as secondary centers. Where an SMSA was an integral part of a larger metropolitan complex, a multi-SMSA center was chosen. For example, the Jersey City, Newark, Paterson-Clinton-Passaic, Stamford, Norwalk, Bridgeport, and Nassau-Suffolk SMSA's are all part of the New York City Metropolitan area complex, which constitutes the center of the New York economic area. In sections of the country with no SMSA's, cities with populations of 25,000, and functioning as economic nodes, were identified as area centers.

After the centers were identified, each of the approximately 2,600 counties that did not fall within a center was examined to determine the center to which it was most closely related. For the bulk of these counties, the primary data source used was journey-to-work information from the 1970 Census of Population. These data showed the gross commuting of workers from each county of residence to as many as 13 counties of work.

Counties were assigned to centers in accordance with commuting patterns.

In many instances, the association between a county and a particular area was not based on direct commuting ties to the central city or county, but rather on commuting ties to a noncentral county, which, in turn, was tied to the center. The assignment of counties to centers was more difficult in urban areas of the United States because of the insufficiency of commuting data. This problem was overcome through the use of supplemental data, such as metropolitan newspaper circulation figures in rural areas, and the advice of people such as State planning agents, who were familiar with the geography and economies of the areas.

The 1970 journey-to-work data were compared with the 1975 county commuting data developed from the Social Security Administration's 10-Percent Continuous Work History Sample and from place-of-residence data from Internal Revenue Service records. This comparison, however, did not result in substantial changes in the delineations. Preliminary delineations of economic areas were circulated for review and comment to the above-mentioned people and to other authorities in State planning offices, university bureaus of business and economic research, and field offices of Federal agencies involved in water resources planning. Final delineations took these comments into account.

Area Listings

The publication presents a revised map and two county listings which identify the geographic composition of BEA economic areas. The first listing presents the economic areas in numerical order, identified by name. For each economic area, component SMSA's are identified by name and FIPS number, and each component county is designated according to whether it is or is not in an SMSA. The second listing is organized by State; component economic areas, or parts of economic areas, are shown, as well as those States containing remaining parts of economic areas.

If detailed county definitions of the current economic areas are needed, BEA has a small supply of "BEA ECONOMIC AREAS (Revised 1977)." Written requests for single copies of the document should be sent to Kenneth Johnson at the above address, and will be handled while supplies permit.

A series of three **Federal Register** notices is planned on this subject. Comments on the current notice should address issues related to the data and/or the procedures used to determine the areas. A summary of these comments and a set of proposed boundary changes will be published for comment in a second **Federal Register** notice. A summary of comments on the proposed boundary changes and final boundary changes will be published in the third notice.

Carol S. Carson,

Director.

[FR Doc. 93–5317 Filed 3–8–93; 8:45 am]

BILLING CODE 3510–06–M

International Trade Administration

[A–834–804, A–821–804, A–823–804]

Final Determinations of Sales at Less Than Fair Value: Ferrosilicon From Kazakhstan and Ukraine; and Postponement of Final Determination; Ferrosilicon From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: March 9, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0371.

Final Determinations and Postponement of Final Determination

The Department of Commerce ("the Department") determines that ferrosilicon from Kazakhstan and Ukraine is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673d). The Department also determines that critical circumstances exist with respect to imports of ferrosilicon from Kazakhstan and Ukraine. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

The Department is postponing the deadline for the final determination in the investigation of ferrosilicon from the Russian Federation until May 13, 1993.

Case History

Since the publication of our affirmative preliminary determinations on December 29, 1992 (57 FR 61876), the following events have occurred.

On December 24, 1992 (57 FR 79, January 4, 1993), we preliminarily found affirmative critical circumstances with respect to imports of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine. Accordingly, we instructed the Customs Service to suspend liquidation of all entries of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine from September 30, 1992, a date 90 days prior to the date of publication of the notice of preliminary determinations in the **Federal Register.**

On January 8, 1993, we received a letter stating that petitioners do not request a hearing in these investigations unless another interested party submits such a request. On January 8, 1993, we received a request on behalf of Minerais U.S. Inc., an interested party to the investigation involving Kazakhstan and Russia, for a public hearing in the Kazakh investigation.

We received case and rebuttal briefs from petitioners and Minerais on February 5, and February 12, 1993, respectively.

On February 12, 1993, we received a letter from Minerais withdrawing its request for a public hearing. As petitioner's request for a hearing was conditional upon another party

requesting a hearing, no public hearing was held.

On March 1, 1993, we received a request from the Government of the Russian Federation to extend the deadline for the final determination in the investigation involving the Russian Federation in order to allow the Department sufficient time to consider additional information on the record of the investigation. On March 3, 1993, we received a letter from petitioners opposing the extension request filed on behalf of the Government of the Russian Federation. See Postponement section of this notice.

Period of Investigation

The period of investigation (POI) is December 1, 1991, through May 31, 1992.

Scope of Investigations

The product covered by these investigations is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferroscilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these investigations. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of these investigations is dispositive.

Class or Kind Allegation

We received a request from Minerais that the Department identify two separate classes or kinds of merchandise: (1) Ferrosilicon with a silicon content of 55 percent silicon or less (FeSi 50) and (2) ferrosilicon containing more than 55 percent silicon (FeSi 75). Minerais alleged that if two classes or kinds of merchandise were identified, petitioners would not have standing with respect to low silicon content ferrosilicon. Petitioners submitted comments in opposition to Minerais' request. We determined that the merchandise subject to this investigation constitutes one class or kind of merchandise. See *Comment 2*.

Postponement

On March 1, 1993, we received a request from the Government of the Russian Federation to postpone the final determination of the investigation of ferrosilicon from the Russian Federation pursuant to 19 CFR 353.20(b), in order to allow the Department sufficient time to consider additional information on the record of this investigation. On March 3, 1993, we received a letter from petitioners opposing the extension request filed on behalf of the Government of the Russian Federation.

In accordance with 19 CFR 353.20(b), the Department will postpone the final determination upon receipt of such a request from a producer or reseller of a significant portion of the merchandise unless we find compelling reasons to deny the request. Although petitioners objected to the reason given for the postponement request, we find that petitioners' objections do not provide compelling reasons to deny the request. Accordingly, we are postponing the date of the final determination of the investigation of ferrosilicon from the Russian Federation until May 13, 1993, which is 135 days from the date of publication of the preliminary determination in the **Federal Register**.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise in the Kazakh and Ukraine investigations. In deciding to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. As detailed below, exporters of ferrosilicon from Kazakhstan and Ukraine did not adequately respond to the Department's requests for information.

We determine that Kazakhstan and Ukraine are non-market economy (NME) countries in accordance with section 773(c) of the Act for purposes of these investigations. Therefore, we require that the Governments of Kazakhstan and Ukraine provide information to the Department on behalf of all producers and exporters within each of these countries.

Kazakhstan

As detailed in the preliminary determination, the Department made numerous attempts to obtain questionnaire responses from the Government Kazakhstan. We have granted every possible extension of time to give the Government of Kazakhstan sufficient time to provide the information requested. The information we received is inadequate on its face in that it was not certified by Ermak (the producer), Promsyrioimport (the trading company) or the Government of Kazakhstan. The response was sent to the Department of Shearman and Sterling, counsel for Minerais, apparently at Minerais' request. Moreover, we never received a complete response to sections A, C and D, of the questionnaire.

Consequently, because the Government of Kazakhstan did not produce the information requested, we based our determination in this investigation on BIA. As BIA, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

Ukraine

As detailed in the preliminary determination, the Department made numerous attempts to obtain adequate questionnaire responses from the Government of Ukraine but was unable to obtain anything more than an inadequate response to the Antidumping Survey which requested summary data on sales to the United States during the POI. We have granted every possible extension of time to give the Government of Ukraine sufficient time to produce the information

requested in all sections of our questionnaire. We solicited factors of production information both as part of the original questionnaire (section D) and in a cost of production (COP) questionnaire. We did not receive factors of production information from any party in Ukraine. Nor did we receive a response to any section of the original questionnaire.

Consequently, because the Government of Ukraine did not produce the information requested, we based our determination in this investigation on BIA. As BIA, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

Minerais

As detailed in the preliminary determinations, Minerais submitted timely questionnaire responses in the Kazakh investigation and also entered those responses onto the record of the Russian investigation. Minerais purchased ferrosilicon from Promsyrioimport, the primary exporter of the subject merchandise from Kazakhstan to the United States during the period of investigation, then exported the merchandise to its U.S. affiliate. Minerais claimed that because it acted as an independent reseller in an intermediate country, foreign market value (FMV) should be based on Minerais' sales in third-country markets, not on a factors of production analysis. Minerais claims that it should be treated as the respondent in the Kazakh investigation and that the failure of the Government of Kazakhstan to respond to requests for information should not affect the analysis of Minerais' sales.

We determine that Minerais does not qualify as a reseller under section 773(f) of the Act, and hence, is not a respondent in this case. We have received insufficient information about the production, sales, and export of ferrosilicon in Kazakhstan. In particular, we received no information regarding whether producers had knowledge of destination. Therefore, Minerais cannot be considered either an intermediate country reseller or a "trading company" for purposes of calculating less than fair value (LTFV) margins for exports from Kazakhstan to the United States. See Comment 4.

Fair Value Comparisons

To determine whether sales of ferrosilicon from Kazakhstan and Ukraine were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on BIA, which was information supplied by petitioners. Petitioners based their estimate of USP on the average U.S. f.o.b. import value of ferrosilicon from the former Union of Soviet Socialist Republics (U.S.S.R.) for the period September 1991 to February 1992. The available import statistics did not differentiate imports from the former republics of the U.S.S.R.

Ferrosilicon is sold through the same centralized exporting company. All ferrosilicon exported from Kazakhstan and Ukraine is priced for export by Promsyrioimport. Thus, the Customs value shown for imports from these countries reflects the prices actually paid for ferrosilicon sold for exportation. Petitioners made no adjustments to the estimated USP because they stated that they were unable to obtain information regarding foreign transportation costs.

Foreign Market Value

We based FMV on BIA, which was information provided by the petitioner. Petitioners contend that the FMV of Kazakh- and Ukrainian-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns NME countries. In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. This presumption covers the geographic area of the former U.S.S.R., each part of which retains the previous NME status of the former U.S.S.R. Therefore, Kazakhstan and Ukraine will continue to be treated as NMEs until this presumption is overcome (see Preliminary Determinations of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan, 57 FR 23380 (June 3, 1992)) (final determinations have not been reached in these investigations because they have been suspended based upon suspension agreements).

Petitioners calculated FMV on the basis of the valuation of the factors of production for AIMCOR, a U.S. producer of ferrosilicon. In valuing the factors of production, petitioners used Mexico as a surrogate country. For purposes of the initiation, we accepted Mexico as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioners used AIMCOR's factors for raw material and processing material inputs, electricity, and labor. The raw material, energy and labor factors for producing ferrosilicon are based on AIMCOR's actual experience from October 1990 through September 1991. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by AIMCOR.

Petitioners based labor and electricity values on 1990 wage rates and 1991 energy rates in Mexico. Petitioners based the value of raw material costs for steel scrap, quartzite, coke, bituminous coal and charcoal on 1991 f.a.s. export values from the United States to Mexico. Petitioners added an amount for foreign inland freight expense to Mexico for these raw materials. Petitioners based the value of raw material costs of electrode paste on a delivered import price from Brazil to Mexico. Petitioners based raw material costs for diesel oil, woodchips, water and other processing materials on its own average costs from October 1990 through September 1991.

Pursuant to section 773(e) of the Act, petitioners added the statutory minima of 10 percent for general expenses and eight percent for profit, and an amount for shipment preparation.

Critical Circumstances

Petitioners alleged that critical circumstances exist with respect to imports of ferrosilicon from Kazakhstan and Ukraine. Section 735(a)(3) of the Act provides that critical circumstances exist when:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind or merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding criterion (A)(i), above, we normally consider whether there has been an antidumping order in the United States or elsewhere on the subject merchandise in determining whether there is a history of dumping. Regarding criterion (A)(ii) above, we normally consider margins of 25 percent or more in the case of purchase price, and 15 percent or more in the case of exporter sales price, comparisons sufficient to impute knowledge of dumping. Since the dumping margins for all exporters of ferrosilicon from Kazakhstan and Ukraine, are in excess of 25 percent, we can impute knowledge under section 735(a)(3)(A)(ii) of the Act.

Pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Regarding criterion (B) above, because we did not receive adequate questionnaire responses from any party in Kazakhstan or Ukraine, we determine that imports were massive over a relatively short period of time based on BIA. Accordingly, we determine that critical circumstances exist in these investigations.

Standing Allegation

We received a letter from Keokuk Ferro-Sil, Inc. (Keokuk), an Iowa-producer of 50 percent ferrosilicon, stating opposition to the antidumping investigations of ferrosilicon from Kazakhstan and Ukraine. We have considered all of the information provided, and the written comments filed by, Keokuk, petitioners and Minerais. We have determined that Keokuk has provided insufficient evidence to demonstrate that petitioners are not filing on behalf of the domestic industry. For further discussion, see Comment 1.

Interested Party Comments

Comment 1

Petitioners claim that because producer petitioners account for an absolute majority of both production and shipments and union petitioners represent workers at production facilities that account for a majority of ferrosilicon produced in the United States, they unquestionably have standing to file these petitions. Petitioners state that the opponent of the petition, Keokuk, should not be considered part of the domestic industry for the purposes of standing because it is related to Minerais. Petitioners state that Keokuk's close financial and marketing relationship with Minerais demonstrates that its interests run counter to the imposition of antidumping duties.

Minerais argues that since Keokuk, the largest U.S. producer of FeSi 50, opposed the petition, and that the two next largest producers of FeSi 50 (Elkem Metals and SKW) are not among the petitioners, the petition was not brought "on behalf of" the majority of U.S. industry producing FeSi 50. Minerais alleges that in order to satisfy the standing requirement of the antidumping statute, petitioners must demonstrate that the petition is supported by the majority of the domestic industry, which is defined as domestic producers who account for a majority of production. Minerais states that while union members may qualify as an "interested party" under the statute they are not domestic producers and therefore do not constitute part of the "domestic industry." Minerais concludes that whether or not labor unions support the petition has no bearing on the question of standing.

Minerais also argues that there is no evidence in the record of this case to support petitioners' assertion that it is related to Keokuk. Minerais states that one of its divisions acted as the world-wide marketing agent for Keokuk and that Minerais pre-financed Keokuk's sales in exchange for a security interest in Keokuk's inventories. However, Minerais states that there is no evidence to suggest that Minerais has any capital, corporate, or ownership interest in Keokuk, or any ability to exert control over that company.

DOC Position

We agree with petitioners. Based on the information on the record we determine that Keokuk only accounts for approximately 20 percent of the production of FeSi 50 and does not produce any FeSi 75. Thus, Keokuk has not demonstrated that petitioners do not represent the majority of domestic producers. Accordingly, we find Keokuk's standing challenge to be without merit. A petitioner is not required to establish affirmatively that it has the support of a majority of the domestic industry. *Suramerica de Aleaciones Laminada C.A.* v. *United States*, 966 F.2d 660, 666–67 (Fed. Cir. 1992); *Minebea Company, Ltd.* v. *United States*, Court of Appeals, Fed. Cir. Slip. Op. 92–1289 (January 26, 1993).

As petitioners have standing, we do not need to address the question of whether Keokuk is related to Minerais.

Comment 2

Minerais claims that the merchandise under investigation constitutes two separate classes or kinds of ferrosilicon: Low-silicon content and high-silicon content ferrosilicon. Minerais claims the division is justified because of the "substantial physical, commercial, and cost differences between the two basic ferrosilicon products, FeSi 50 and FeSi 75." Minerais cites to (1) criteria utilized by the Customs Service, (2) the testimony of a technical expert, and (3) the criteria set forth in *Diversified Products* v. *United States*, 6 CIT 155, 572 F. Supp. 883 (1983) ("*Diversified Products*"), to support this claim.

Minerais argues that the fact that there are different HTSUS numbers for FeSi 50 and FeSi 75 supports a finding of two separate classes or kinds of merchandise.

Minerais argues that the expert testimony of one of the world's leading experts on the metallurgy of steel alloys explains that the different metallurgical properties and physical characteristics of FeSi 50 and FeSi 75 render the product suitable for different uses and customers specifically desire one product or the other. Thus, his opinion supports a finding that regarding physical characteristics, end use, and customer expectations, FeSi 50 and FeSi 75 are two classes or kinds of merchandise. Moreover, petitioners' assertion that certain characteristics are commercially insignificant in most applications is without support in the record.

Further, regarding the end uses of the product, Minerais asserts that the physical differences between 50 and 75 percent ferrosilicon have significant commercial consequences that lead customers to use one or the other depending on their production needs. Minerais states that FeSi 50 and FeSi 75 have different uses in the production of steel and iron.

Regarding customer expectations, Minerais states that insofar as the different characteristics of FeSi 50 and FeSi 75 make them appropriate for different uses, customers have different expectations for the two products.

Regarding channels of trade, Minerais claims that FeSi 50 and FeSi 75 differ substantially. FeSi 50 is subject to hazardous product regulation and, accordingly, is restricted in the way it can be shipped. FeSi 75, on the other hand, is not subject to such regulations.

Finally, regarding cost, Minerais outlines numerous differences in production processes between FeSi 50 and FeSi 75 which it claims result in different costs.

Accordingly, Minerais concludes that these products cannot fairly be considered a single "class or kind" of merchandise.

Petitioners claim that ferrosilicon constitutes a single class or kind of merchandise. Petitioners also examine the *Diversified Products* criteria in support of their argument.

Regarding physical characteristics, (citing Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992 (May 3, 1989)) ("AFB's from the FRG"), petitioners note that the key question is not any physical difference

between the various products themselves, but whether the physical differences are so material as to alter the essential nature of the product, and therefore, rise to the level of class or kind distinctions. Petitioners claim that the differences are not so material and, accordingly, ferrosilicon constitutes a single class or kind of merchandise. Petitioners state that the physical characteristics of all grades of ferrosilicon are more similar than they are different, as is demonstrated by the fact that ferrosilicon of all grades is used for the same purposes.

Regarding uses of the product, petitioners state that Minerais relies heavily on the testimony of a ferronickel producer, whose testimony cannot support Minerais' assertions with respect to the uses of ferrosilicon in the steel industry. Because the vast majority of ferrosilicon is sold to the iron and steel industries for applications for which either grade can be used, the purported limitations on the use of 75 percent ferrosilicon in the manufacture of ferronickel are marginally relevant, at best, according to petitioners.

Regarding customer expectations, petitioners respond that the fact that some customers prefer one grade over another in some applications does not require a finding of two or more classes of merchandise. Petitioners argue that the characteristics which may make one grade more or less attractive to some buyers do not rise to the level of distinguishing characteristics. Petitioners state that customers' expectations of the various grade are largely the same, reflecting the fact that customers are purchasing silicon units.

Regarding channels of trade, petitioners claim that the various grades move through similar and common channels of trade. Petitioner argues that Minerais' comments regarding the fact that FeSi 50 is subject to hazardous product regulation when shipped by water, is irrelevant—the fact that one product is subject to different shipping regulations does not justify creating two classes or kinds of merchandise.

Regarding the manner of display or advertising, petitioners state that given that the manner of advertising is the same for both FeSi 50 and FeSi 75 percent ferrosilicon, this criterion supports a finding of one class or kind of merchandise.

Lastly, regarding cost, petitioners state that there is no appreciable difference in the unit cost of producing FeSi 50 and FeSi 75 percent and, accordingly, Minerais' argument again does not support the creation of two separate classes or kinds of merchandise.

DOC Position

In past cases where the Department has been called upon to determine the number of classes or kinds of merchandise under investigation, we have based our analysis on the criteria set forth by the Court of International Trade in *Diversified Products*. According to *Diversified Products*, the Department may rely upon the following factors in determining whether products belong to the same class or kind of merchandise: (1) The general physical characteristics of the merchandise; (2) the ultimate use of the merchandise; (3) the expectations of the ultimate purchaser; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. (See AFB's from the FRG).

Minerais has not demonstrated that the differences it outlined constitute a clear dividing line between FeSi 50 and FeSi 75. While we acknowledge that there are numerous differences between FeSi 50 and FeSi 75 in terms of the *Diversified Products* criteria, we nonetheless agree with petitioners that these differences are not so material as to merit a finding of two classes or kinds of merchandise.

Regarding general physical characteristics and ultimate use of the merchandise, we note that FeSi 50 and FeSi 75 are similar in that they are used in many of the same applications requiring FeSi. The fact that certain applications are purportedly better served by FeSi 50 or FeSi 75 does not demonstrate they are different classes or kinds. Rather, FeSi 50 and FeSi 75 are different grades of the same product. In other similar cases, we have found different grades of the same product to be of the same class or kind. See, e.g., Final Determination of Sales at Less than Fair Value: Sulfanilic Acid from the People's Republic of China, (57 FR 29705, July 6, 1992). Moreover, as petitioners have pointed out, the most important physical characteristic of ferrosilicon is that it contains silicon and at least four percent iron which both FeSi 50 and FeSi 75 have. Thus, general physical characteristics and ultimate use do not support a finding of two separate classes or kinds.

Regarding customer expectations, we agree with Minerais that these are based primarily on the physical differences. Some customers with specific applications may purchase FeSi 50 or FeSi 75 to meet their applications. However, as petitioners have pointed out, the majority of ferrosilicon is purchased by iron and steel producers for which either grade is useable. Moreover, the fact that ferrosilicon is often priced in terms of dollars per kilogram of contained silicon indicates that purchasers are buying units of silicon content. Thus, FeSi 50 and FeSi 75 are largely fungible. Accordingly, customer expectations do not support a finding of two separate classes or kinds.

Regarding channels of trade in which the product is sold, we disagree with Minerais. While Minerais has shown that there are differences in the method of distribution, which involves movement of goods, between FeSi 50 and FeSi 75, Minerais has not shown that these differences result in different channels of trade, which involves the sale of goods.

Regarding the manner of advertising and display, Minerais does not specifically address this topic while petitioners claim that FeSi 50 and FeSi 75 are advertised in the same manner. As no further information has been provided, we have no basis on which to find whether this criterion supports a claim of one or two classes or kinds.

Finally, regarding cost, although not a criterion of *Diversified Products* but addressed by both parties, Minerais has argued that there are differences in production processes between FeSi 50 and FeSi 75. They have not argued, however, or demonstrated that the actual costs are different. Thus, their argument is unsupported.

When taken as a whole, the *Diversified Products* criteria do not support a finding that FeSi 50 and FeSi 75 are two classes or kinds of merchandise. Accordingly, we find FeSi 50 and FeSi 75 to be of the same class or kind.

Finally, although not part of our analysis of the *Diversified Products* criterion, as Minerais has acknowledged, Customs classifications are not binding on the Department for purposes of class or kind distinctions under the antidumping law. Moreover, Commerce routinely finds merchandise with different HTSUS numbers to be within the same class or kind.

Comment 3

Petitioners claim that the Department properly based its preliminary dumping determinations for all exporters and manufacturers on BIA because the governments of those NME countries did not adequately respond to the Department's information requests. Petitioners maintain that the Department must rely on the petition as BIA regardless of Minerais' submission of questionnaire responses in the Kazakh investigation.

Minerais claims to have shown that questionnaire responses from the

Governments of Kazakhstan and Ukraine were unnecessary in these investigations as Minerais is an independent reseller of ferrosilicon from those countries, and thus, Minerais' sales should be used to determine whether, and by what margin, the material was sold at less than fair value in the United States. Accordingly, Minerais claims that USP and FMV should be based not on BIA, but on Minerais' U.S. and third-country sales.

DOC Position

We agree with petitioners. See "Foreign Market Value" and "United States Price" sections of this notice and Comment 4.

Comment 4

Petitioners argue that Minerais does not meet the criteria to qualify as an independent reseller in an intermediate country under section 773(f) of the Act.

Regarding the requirement that the reseller purchase from the manufacturer, petitioners claim that Minerais has stated that all of the Kazakh- and Ukrainian-produced ferrosilicon it resold in the United States during the POI was directly purchased from Promsyrioimport, not from the manufacturer or producer as required by section 773(f)(1) of the Act.

Regarding knowledge of destination, petitioners assert that the Department must use BIA on this issue because the governments of Kazakhstan and Ukraine did not adequately respond in these investigations. Since Minerais cannot certify that the producers did not know the ultimate destination of the merchandise, the Department may adversely assume that the producers knew that Minerais was re-exporting some of their ferrosilicon to the United States. Thus, section 773(f)(2) of the Act has also not been met.

Regarding entry into the commerce of the intermediate country, according to petitioners, the pattern of sale and distribution of ferrosilicon exported to the United States constitutes transshipment through Finland, rather than entry into the commerce of Finland, as required by section 773(f)(4) of the Act. Accordingly, petitioners state that Minerais has not satisfied the criteria of section 773(f).

Minerais argues that USP must be based on Minerais' price to the U.S. customer and FMV must be based on Minerais' home market or third country sales. Minerais argues that the Department's "trading house" rule dictates that if the reseller's supplier did not know the merchandise was destined for the United States, then the reseller's U.S. and home market, or, if appropriate, third country, sales must be used for LTFV comparisons. Minerais argues that the only difference section 773(f) of the Act makes is whether Finland or Kazakhstan is used as Minerais' home market. Thus, even if the Department determines that Minerais does not qualify under section 773(f), which it believes it has, the Department should use Kazakhstan as Minerais' home market. Minerais asserts that it is irrelevant whether Finland or Kazakhstan is used as neither are viable and hence third country sales must be used.

Minerais claims that it is an independent reseller of ferrosilicon from Kazakhstan and Ukraine. Minerais cites decisions of the Customs Service to show that even though ferrosilicon was shipped from a bonded warehouse in Finland, it nonetheless has achieved "entry into the commerce" of that country for purposes of section 773(f)(4).

Minerais states because Minerais itself did not know the ultimate destination at the time of purchase from Kazakhstan and Ukraine, there is no way the suppliers could have known the ultimate destination at the time of their sales to Minerais. The fact that this information was not certified is irrelevant, according to Minerais. What Minerais has certified is that the ultimate destination of each lot of ferrosilicon exported from the former Soviet Union to Finland was decided only after the material was stored in the warehouse in Finland. Minerais states that this fact obviates the necessity of any certification from the producers on this issue.

DOC Position

We agree with petitioner. We determine that Minerais does not qualify as a reseller under section 773(f), and hence, is not an independent respondent in this case. We have received insufficient information about the production, sale, and export of ferrosilicon in Kazakhstan. In particular, we received no information regarding whether producers had knowledge of destination. Therefore, Minerais cannot be considered either an intermediate country reseller or a "trading company" for purposes of calculating LTFV margins for exports from Kazakhstan to the United States.

Comment 5

Petitioners argue that even if Minerais qualified as an independent reseller in an intermediate country, FMV could not be based on its below COP sales to Japan.

Minerais argues that the Department did not have a reasonable basis for suspecting that Minerais' third-country sales were made at below COP because petitioner's allegation was untimely and should not have been considered; in the alternative, Minerais argues it was inadequate to justify a COP investigation, in that petitioners' allegation did not make an adjustment for known differences in production costs between petitioners' costs and those of the Kazakh producer.

DOC Position

As detailed in the preliminary determination, we determined that the COP investigations and comments thereon are irrelevant, and a COP investigation is therefore unnecessary.

Comment 6

Petitioners state that the Department properly found critical circumstances in these investigations as Minerais has imported massive amounts of ferrosilicon in an attempt to evade antidumping duties.

DOC Position

We agree with petitioners. See "Critical Circumstances" section of this notice.

Comment 7

Minerais states that if the Department accepts Minerais' argument that U.S. price and FMV should be based on Minerais' sales as an independent reseller, rather than BIA, then the Department should reexamine its determination on critical circumstances.

DOC Position

As we have not accepted Minerais' argument that it qualifies as an independent reseller, this point is moot.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of ferrosilicon from Kazakhstan, the Russian Federation, and Ukraine, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after September 30, 1992, which is 90 days prior to December 29, 1992, the date of publication of the preliminary determinations. The Customs Service shall require a cash deposit or posting of a bond equal to the amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below for Kazakhstan

and Ukraine. For the Russian Federation, the Customs Service shall continue to suspend liquidation of all entries of ferrosilicon at the rate published in the preliminary determination. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin	Critical circumstances
All manufacturers/producers/exporters.	104.18%	Yes.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in the Kazakh and Ukraine investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4) and 353.20(b)(2).

Dated: March 3, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–5386 Filed 3–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–423–803, A–423–804]

Amendment of Preliminary Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mike Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2613.

SUMMARY: We are amending our preliminarily determinations for the above-mentioned investigations to correct for significant ministerial errors. The amended estimated weighted-average margins for the above-mentioned investigations are shown in the "Suspension of Liquidation" section of this notice.

Amended Preliminary Determinations

In accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act), on January 26, 1993, the Department made its preliminary determinations that certain hot-rolled carbon steel flat products (hot-rolled steel) and certain cold-rolled carbon steel flat products (cold-rolled steel) from Belgium are being sold in the United States at less than fair value (58 FR 7075, February 4, 1993).

After publication of our preliminary determinations, petitioners and one respondent, Sidmar N.V., alleged that the Department committed certain ministerial errors in calculating the preliminary margins. We have reviewed these allegations and have found that errors having a significant effect on the margins were committed. In addition, as a result of the correction of a ministerial error, we have determined that critical circumstances do not exist with respect to Sidmar's and Cockerill Sambre's exports of hot-rolled steel. The specific analyses of the ministerial error allegations and the critical circumstances determination are included in the memorandum which is contained in the case file located in the Central Records Unit, room B–099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Suspension of Liquidation

The estimated margins and the All Others rate have changed as indicated below. In accordance with section 733(d)(2) of the Tariff Act of 1930, as amended, the Department will direct customs to continue to require a cash deposit or posting of a bond on all entries equal to the corrected estimated amounts by which the foreign market value of the subject merchandise exceeds the United States price as shown below. Since our corrections have led us to determine that critical circumstances do not exist for imports of hot-rolled steel, suspension of liquidation for those imports should begin on the date of publication of the preliminary determination, February 4, 1993, rather than 90 days prior to that date, as previously stated. The corrected margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage	Critical circumstances
Hot-Rolled Steel:		
Cockerill Sambre ..	4.87	No.
Sidmar	4.87	No.
All others	4.87	No.
Cold-rolled steel:		
Sidmar	27.10	Yes.
All others	27.10	Yes.

Dated: March 2, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–5387 Filed 3–8–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–100–003]

Notice of Public Hearing Schedule: Antidumping Duty Investigations of Certain Steel Products From Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Republic of Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 9, 1993.

FOR FURTHER INFORMATION CONTACT: Ed Yang (Australia, Canada, Japan, Mexico); Richard Weible (Argentina, Brazil); Bernard Carreau (Korea); or Gary Taverman (European countries), Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0406, (202) 482–1103, (202) 482–2104, or (202) 482–0161, respectively.

Hearing Schedule

In its preliminary determinations, the Department of Commerce (the Department) stated that a briefing and hearing schedule would be published in the **Federal Register** after receipt of all requests for hearings in these investigations. We have received requests for hearings from various parties in investigations involving 18 countries. Accordingly, we have scheduled public hearings for each country in addition to a hearing covering general scope issues. We request that parties in these cases provide an executive summary in conjunction with case briefs of no more than ten pages on the major issues to be addressed (5 pages for the scope hearing). Further, briefs should contain a table of authorities. Citations to

Commerce determinations and court decisions should include the page number where the cited information appears. In preparing the briefs, please begin each issue on a separate page. Finally, the Scope Hearing scheduled for May 27, 1993, will cover scope issues in both the antidumping and countervailing duty investigations of flat-rolled steel products.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than the dates specified for each particular country in the table below. Parties should confirm by telephone the time, date, and place of the hearings 48 hours before the scheduled time.

Following is the hearing schedule along with due dates for case and rebuttal briefs:

Country	Date	Time	Room	Brief Due Dates	
				Case	Rebuttal
Argentina	5/14	2:00 p.m.	4830	5/7	5/12
Australia	5/11	9:00 a.m.	1851	5/4	5/7
Austria	5/7	1:30 p.m.	1412	4/30	5/5
Belgium	5/13	9:00 a.m.	4830	5/6	5/11
Brazil	5/6	9:00 a.m.	1414	4/29	5/4
Canada	5/25	9:00 a.m.	1412	5/18	5/21
Finland	5/4	9:00 a.m.	1412	4/27	4/30
France	5/7	9:00 a.m.	1412	4/30	5/5
Germany	5/12	9:00 a.m.	1412	5/5	5/10
Japan	5/26	9:00 a.m.	1414	5/19	5/24
Korea	5/24	9:00 a.m.	1851	5/17	5/20
Mexico	5/24	2:00 p.m.	1851	5/17	5/20
Netherlands	5/11	1:30 p.m.	4830	5/4	5/7
Poland	5/10	9:00 a.m.	1412	5/3	5/6
Romania	4/30	1:30 p.m.	1412	4/23	4/28
Spain	4/30	9:00 a.m.	1412	4/23	4/28
Sweden	5/10	1:30 p.m.	1412	5/3	5/6
United Kingdom	5/4	1:30 p.m.	1412	4/27	4/30
Scope Hearing	5/27	9:00 a.m.	1414	5/20	5/25

This notice is published pursuant to section 703(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1671b(f)).

Dated: March 3, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–5388 Filed 3–8–93; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations with the Government of Argentina on Certain Cotton Textile Products

March 4, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for 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).

On February 26, 1993, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on December 9, 1992, the Government of the United States requested consultations with the Government of Argentina with respect to cotton poplin and broadcloth in Category 314, produced or manufactured in Argentina.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Argentina, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton poplin and broadcloth in Category 314, produced or manufactured in Argentina and exported during the twelve-month period which began on February 26, 1993 and extends through February 25, 1994, at a level of not less than 2,815,159 square meters.

A summary market statement concerning Category 314 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 314, or to comment on domestic production or availability of products included in Category 314, is invited to submit 10 copies of such comments or information to J. Hayden Boyd, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Argentina.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 314. Should such a solution be reached in consultations with the Government of Argentina, 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 57 FR 54976, published on November 23, 1992).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Argentina

Category 314—Cotton Poplin and Broadcloth

February 1993

Import Situation and Conclusion

U.S. imports of cotton poplin and broadcloth fabric, Category 314, from Argentina surged to 4,207,454 square meters in 1992, one thousand times the 4,407 square meters imported in 1991 and 150 times the 28,306 square meters imported in 1990. Argentina became the tenth largest supplier of cotton poplin and broadcloth fabric to the U.S., accounting for two percent of total Category 314 imports in 1992. In 1991, Argentina was ranked 40th among the major suppliers, accounting for less than one tenth of one percent of total imports.

The sharp and substantial increase of Category 314 imports from Argentina is disrupting the U.S. market for cotton poplin and broadcloth fabric.

U.S. Production, Import Penetration and Market Share

U.S. production of cotton poplin and broadcloth fabric declined every year since 1988, falling to 60,458,000 square meters in 1991, 38 percent below the 1990 level, and 60 percent below the 1988 level. Production continued downward in 1992, falling to 32,841,000 square meters during January-September 1992, 29 percent below the January-September 1991 level. In contrast, U.S. imports of Category 314 increased from 160,727,000 square meters in 1988 to 202,472,000 square meters in 1991, a 26 percent increase. Category 314 imports surged in 1992 reaching 265,174,000 square meters, 31 percent above the 1991 level.

The ratio of imports to domestic production tripled, increasing from 106 percent in 1988 to 335 percent in 1991. The ratio of imports to domestic production doubled in 1992, increasing to 630 percent for the first three quarters of 1992, from the 313 percent recorded in January-September 1991. The domestic producers' share of the U.S. cotton poplin and broadcloth fabric market fell from 49 percent in 1988 to 23 percent in 1991. The decline continued in 1992, with the domestic producers' share of the market falling to 14 percent during the first three quarters of 1992.

Duty-Paid Value and U.S. Producers' Price

Nearly all of Category 314 imports from Argentina during 1992 entered the U.S. under HTSUSA number 5208.32.4020—dyed poplin or broadcloth fabric containing more than 85 percent by weight cotton, of yarn numbers 43–68, and weighing more than 100 grams per square meter but less than 200 grams per square meter. These fabrics entered the U.S. at landed duty paid values below U.S. producers' prices for comparable fabrics.

[FR Doc. 93–5380 Filed 3–8–93; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with Colombia on Certain Wool Textile Products

March 4, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for 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).

On February 26, 1993, under the terms of section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Colombia with respect to wool textile products in Category 443, produced or manufactured in Colombia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Colombia, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of wool textile products in Category 443, produced or manufactured in Colombia and exported during the twelve-month period which began on February 26, 1993 and extends through February 25, 1994, at a level of not less than 89,255 numbers for Category 443.

A summary market statement concerning Category 443 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 443, or to comment on domestic production or availability of products included in Category 443, is invited to submit 10 copies of such comments or information to J. Hayden Boyd, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Colombia.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 443. Should such a solution be reached in consultations with the Government of Colombia, 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 57 FR 54976, published on November 23, 1992).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Colombia

Category 443—Men's and Boys' Wool Suits

February 1993

Import Situation and Conclusion

U.S. imports of men's and boys' wool suits, Category 443, from Colombia reached 92,080 units (7,673 dozen) during 1992, nine times the 9,932 units (828 dozen) imported during 1991 and two and a half times the 37,756 units (3,146 dozen) imported during 1990. Colombia became the tenth largest supplier of Category 443 imports to the U.S., accounting for 2.8 percent of U.S. imports of men's and boys' wool suits, Category 443, in 1992. In 1991, Colombia was the 25th largest supplier accounting for 0.4 percent of total Category 443 imports. In 1990, Colombia was the 17th largest supplier accounting for 1.6 percent of total Category imports.

The sharp and substantial increase of Category 443 imports from Colombia is disrupting the U.S. market for men's and boys' wool suits.

U.S. Production, Import Penetration and Market Share

U.S. production of men's and boys' wool suits, Category 443, declined in every year since 1988, falling from 482,000 dozen in 1988 to 315,000 dozen 1991, a 35 percent decline. U.S. production continued downward in 1992, falling to 231,000 dozen in the first three quarters of 1992 period, 2 percent below the 236,000 dozen produced in the January-September 1991 period. U.S. imports increased from 167,000 dozen in 1988 to 214,000 dozen in 1991, a 28 percent increase. U.S. imports surged in 1992, reaching a record level 277,580 dozen in 1992, 30 percent above the 1991 level.

The ratio of imports to domestic production in Category 443 increased from 35 percent in 1988 to 68 percent in 1991. The ratio of imports to domestic production jumped to 91 percent during the first three quarters of 1992. The domestic manufacturers' share of the market for men's and boys' wool suits declined from 74 percent in 1988 to 60 percent in 1991, a decline of 14 percentage points. This decline continued in 1992 with the domestic manufacturers' share of the market falling to 52 percent in the January-September 1992 period.

Duty-Paid Value and U.S. Producers' Price

Approximately 94 percent of Category 443 imports from Colombia during 1992 entered the U.S. under HTSUSA number 6203.11.2000—men's and boys' wool suits, other than those containing 30 percent or more by weight of silk. These suits entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable wool suits.

[FR Doc. 93-5381 Filed 3-8-93; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations with the Government of Costa Rica on Certain Wool Textile Products

March 4, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for 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).

On February 25, 1993, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Costa Rica with respect to wool trousers, breeches and shorts in Category 447, produced or manufactured in Costa Rica.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Costa Rica, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 447, produced or manufactured in Costa Rica and exported during the twelve-month period which began on February 25, 1993 and extends through February 24, 1994, at a level of not less than 7,971 dozen.

A summary market statement concerning Category 447 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 447, or to comment on domestic production or availability of products included in Category 447, is invited to submit 10 copies of such comments or information to J. Hayden Boyd, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Costa Rica.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 447. Should such a solution be reached in consultations with the Government of Costa Rica, 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 57 FR 54976, published on November 23, 1992).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Costa Rica

Category 447—Men's and Boys' Wool Trousers, Slacks and Shorts

February 1993

Import Situation and Conclusion

U.S. imports of men's and boys' wool trousers, slacks and shorts, Category 447, from Costa Rica reached 8,704 dozen in 1992, more than double the 4,064 dozen imported during 1991. Costa Rica became the tenth largest supplier of men's and boys' wool trousers, slacks and shorts to the U.S. market, accounting for 2.6 percent of total Category 447 imports in 1992. In 1991, Costa Rica ranked thirteenth among the major suppliers accounting for 1.5 percent of total category imports.

The sharp and substantial increase in Category 447 imports from Costa Rica is disrupting the U.S. market for men's and boys' wool trousers, slacks and shorts.

U.S. Production, Import Penetration, and Market Share

U.S. production and U.S. imports of men's and boys' wool trousers, slacks and shorts, Category 447, followed the same trend between 1987 and 1989, increasing in 1988 and decreasing in 1989. The percent changes during this period were approximately the same for production and imports. During 1987–1989, the import to production ratio remained relatively constant averaging 52 percent. The U.S. producers' share of the market remained constant at 66 percent during 1987–1989.

Since 1990, U.S. production of men's and boys' wool trousers slacks and shorts, Category 447, continued the decline begun in 1988, falling 35 percent in 1991 from the 1990 level and four percent in the first three quarters of 1992 from the January-September 1991 level. U.S. imports on the other hand have increased since 1990, increasing 12 percent in 1991 over the 1990 level and surging in 1992, up 20 percent over the 1991 level.

The ratio of imports to domestic production doubled between 1990 and 1992 increasing from 47 percent in 1990 to 80 percent in 1991 to 97 percent during January-September 1992. The domestic manufacturers' share of the U.S. market for men's and boys' wool trousers, slacks and shorts fell from 68 percent in 1990 to 56 percent in 1991 to 51 percent during January-September 1992, a decline of 17 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 85 percent of Category 447 imports from Costa Rica during 1992 entered the U.S. under HTSUSA number 6203.41.1010—men's wool trousers and breeches. These men's wool trousers and breeches entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable men's wool trousers and breeches.

[FR Doc. 93–5382 Filed 3–8–93; 8:45 am]

BILLING CODE 3510–DR–F

Extension of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the United Arab Emirates

March 4, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: March 11, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 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).

The United States Government has decided to continue the restraint on Category 313 for an additional twelve-month period, beginning on March 1, 1993 and extending through February 28, 1994.

The United States remains committed to finding a solution concerning Category 313. 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 57 FR 54976, published on November 23, 1992). Also see 57 FR 22463, published on May 28, 1992.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 4, 1993.

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 March 11, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 313, produced or manufactured in the United Arab Emirates and exported during the period beginning on March 1, 1993 and extending through February 28, 1994, in excess of 2,539,652 square meters [1].

Imports charged to this category limit for the period February 29, 1992 through February 28, 1993 shall be charged against the level of restraint to the extent of any unfilled balance. Goods in excess of that limit shall be subject to the limit established in this directive.

For the import period February 29, 1992 through May 30, 1992, you are directed to charge 426,841 square meters to Category 313 for the restraint period which began on February 29, 1992 and extended through February 28, 1993. These charges are in addition to those previously submitted for this import period.

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 this action falls 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. 93–5379 Filed 3–8–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Advisory Council on Dependents' Education; Meeting

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: April 2, 1993, 9 a.m. to 4:30 p.m. and April 3, 1993, 9 a.m. to 2 p.m.

ADDRESSES: April 2, The Pentagon, room 3E869, Washington, DC; April 3, Embassy Suites Hotel, Adams Morgan Room, 1402 Eads Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Witcher, Public Affairs Officer, DoD Dependents Schools, 1225 Jefferson Davis Highway, Crystal

[1] The limit has not been adjusted to account for any imports exported after February 28, 1993.

Gateway #2, suite 1500, Arlington, Virginia 22202; Telephone number: 703–746–7846.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about the national goals for education, academic achievement encouragement, education of handicapped dependents, communications throughout the system, increased parental involvement, drawdown planning, educational technologies, and responses to the recommendations made by the Council during its October 1992 meeting.

Dated: March 2, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–5291 Filed 3–8–93; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on March 24, 1993, and from 8:30 a.m. to 4:30 p.m. on March 25, 1993. The meeting will be held at the Hawthorn Suites Hotel, 181 Church Street, Charleston, S.C. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests.

Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 695–5525, no later than March 15, 1993.

Dated: March 3, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–5290 Filed 3–8–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Mid Course Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet 30–31 March 1993, at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–5294 Filed 3–8–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

March 2, 1993.

The USAF Scientific Advisory Board (SAB) will hold its Spring General Board Meeting on 13–14 April 1993 from 8 a.m. to 5 p.m. at Human Systems Center (HSC), Brooks AFB, San Antonio, Texas.

The purpose of this meeting is to receive briefings on Information Technologies in Support of Operational Intelligence and Human Systems Development, and to discuss the status of the 1993 SAB Summary Studies on Information Architectures and Options for Theater Air Defense.

This meeting will involve discussions of classified defense and contractor proprietary matters listed in section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the USAF Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–5292 Filed 3–8–93; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Fe Docket No. 93–05–NG]

The Lenape Resources Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Lenape Resources Corporation authorization to import up to 50 billion cubic feet of natural gas from Canada over a two-year period beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4.30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 3, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–5376 Filed 3–8–93; 8:45 am]

BILLING CODE 6450–01–M

[Fe Docket No. 93–14–NG]

Mock Resources, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Mock Resources, Inc. (MRI) authorization to import and export up to

a combined total of 50 billion cubic feet of natural gas from and to Canada over a two-year period beginning on the date of the first delivery after March 31, 1993, the date MRI's current authorization expires.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 3, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–5375 Filed 3–8–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–392–000, et al.]

Sho-Me Power Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 26, 1993.

Take notice that the following filings have been made with the Commission:

1. Sho-Me Power Corp.

[Docket No. ER93–392–000]

Take notice that on February 24, 1993, Sho-Me Power Corporation tendered for filing a notice of cancellation of service.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Co.

[Docket No. ER93–370–000]

Take notice that on February 12, 1992, Idaho Power Company (Idaho) tendered for filing Exhibit Revisions to Idaho's FERC Rate Schedule No. 77.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Co.

[Docket No. ER93–383–000]

Take notice that on February 19, 1993, Portland General Electric Company (PGE) tendered for filing a Notice of Cancellation of Rate Schedule No. 81.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Co. (Minnesota)

[Docket No. ER93–259–000]

Take notice that on February 23, 1993, Northern States Power Company (Minnesota) (NSP) tendered for filing an Amendment to its initial filing in Docket No. ER93–259–000. The Amendment provides certain additional information requested by Commission Staff supporting NSP's request for market based pricing for certain sales services to be provided under the Municipal Interconnection and Interchange Agreements (Agreements) submitted in the initial filing. NSP states that the Amendment does not propose to revise the rates or terms and conditions of the Agreements.

NSP again requests that the nine Agreements be accepted for filing effective January 1, 1993, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date proposed.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Co. (Minnesota)

[Docket No. ER93–385–000]

Take notice that Northern States Power Company (Minnesota) (NSP) on February 19, 1993, tendered for filing proposed changes in its Federal Energy Regulatory Commission wholesale sales rates. The proposed changes are submitted pursuant to the part 35 of the Commission's Rules and Regulations.

The affected wholesale customers and the current FERC rate schedule designations of their contract are as follows:

Customer	FERC rate schedule No.
City of Arlington, Minnesota	421
City of Brownton, Minnesota	422
City of North St. Paul, Minnesota	429
City of Shakopee, Minnesota	431
City of Winthrop, Minnesota	433
City of Anoka, Minnesota	420
City of Chaska, Minnesota	424
City of Le Sueur, Minnesota	392
City of Olivia, Minnesota	388

NSP seeks a total increase of $2.32 million, or 8.7%, above the rates currently in effect based on a calendar year 1993 test year. NSP states that the proposed rate increases are needed because of increased costs, including costs associated with (i) three new long-term base-load and peaking power supply contracts; (ii) emergency backup generation installed at NSP's Prairie Island nuclear power plant in 1992 to meet Nuclear Regulatory Commission requirements; (iii) accounting changes for post-retirement benefits other than pensions (SFAS 106 costs); (iv) property taxes; and (v) other labor costs.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. The United Illuminating Co.

[Docket No. ER93–387–000]

Take notice that on February 22, 1993, The United Illuminating Company (UI) tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Green Mountain Power Corporation (GMP). The rate schedule corresponds to a letter agreement, dated February 3, 1993, between UI and GMP. The commencement date for service under the agreement is May 1, 1993. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station.

Copies of the filing were mailed to GMP.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corp.

[Docket No. ER93–386–000]

Take notice that on February 22, 1993, Central Vermont Public Service Corporation tendered for filing a Service Agreement which provides for service pursuant to Central Vermont's FERC Electric Tariff No. 5.

To the extent necessary to allow for the sale of power pursuant to the Service Agreement commencing April 9, 1993, Central Vermont requests that the Commission waive its notice requirements. In support of its requests Central Vermont states that allowing the Service Agreements to become effective as provided will enable the Company and its customers to achieve mutual benefits.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Co.

[Docket No. ER93–368–000]

Take notice that on February 10, 1993, Louisville Gas and Electric Company (LG&E), tendered for filing modifications to its Interconnection Agreements with Big Rivers Electric Corporation, Illinois Municipal Electric Agency, PSI Energy, and Wabash Valley

Power Associations, Inc. Said modifications were requested by the Commission Staff in a review of the above-referenced docket concerning the Interchange Agreement between LG&E and Oglethorpe Power Corporation.

In the filing, the rate schedules associated with LG&E's interconnection agreements or interchange agreements named above were modified to contain the same language proposed in the Oglethorpe Agreement which limits the revenue collected during any week pursuant to the application of an hourly or daily demand charge to the product of the weekly demand charge times the highest amount in kilowatts reserved during any hour during the week.

A copy of the filing was served upon the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: March 12, 1993, in accordance with Standard Paragraph E end of this notice.

9. Idaho Power Co.

[Docket No. ER93–371–000]

Take notice that on February 12, 1993, Idaho Power Company (Idaho) tendered for filing revisions to Idaho's FERC Rate Schedule No. 83.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Montaup Electric Co.

[Docket No. ER93–380–000]

Take notice that on February 16, 1993, Montaup Electric Company (Montaup) tendered for filing a report of refunds and revised rate schedules implementing a pass-through of a reduction in Connecticut Sales and Use Taxes levied on charges by Northeast Utilities (NU) to Montaup for services performed by NU in connection with the Millstone No. 3 generating unit, in which Montaup has a 4.009% joint ownership interest. The filing is made in accordance with the terms of an adjustment clause contained in Montaup's rate schedules as a result of a Settlement Agreement in the M–13 rate proceeding in Docket No. ER91–300–000. The filing reports refunds of $173,870 and provides for a reduction in charges from $13,333 to $3,459 per month, effective July 1, 1992. Montaup requests waiver of the notice requirement to place the reduction in effect as of that date.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Safe Harbor Water Power Corp.

[Docket No. ER93–377–000]

Take notice that on February 12, 1993, Safe Harbor Water Power Corporation (Safe Harbor) tendered for filing a Notice of Cancellation of Supplement No. 3 to Rate Schedule No. 7, which was replaced by Supplement No. 6 and Supplement No. 4 to FERC Rate Schedule No. 7.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Safe Harbor Water Power Corp.

[Docket No. ER93–369–000]

Take notice that on February 12, 1993, Safe Harbor Water Power Corporation (Safe Harbor) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 3 and 4.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power Corp.

[Docket No. ER93–252–000]

Take notice that on February 12, 1993, Florida Power Corporation filed a supplement to its original filing correcting an error in the language of the service agreement as tendered for filing. As originally filed the service agreement incorporated Second Revised Volume No. 1 by reference. The filing made today incorporates First Revised Volume No. 1 by reference in order to correspond to the requested effective date for the filing of June 1, 1987. The service agreement automatically incorporates by reference any later changes to the tariff.

Comment date: March 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–5362 Filed 3–8–93; 8:45 am]

BILLING CODE 6717–01–M

Potlatch Corp.; Availability of Environmental Assessment

[Project No. 2533–006 Minnesota]

March 3, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Brainerd Hydroelectric Project, located on the Mississippi River in Crow Wing County, Minnesota, in the city of Brainerd, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–5355 Filed 3–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–88–000]

Arkla Energy Resources, a Division of Arkla, Inc.; Filing

March 3, 1993.

Take notice that on March 1, 1993, Arkla Energy Resources, a division of Arkla, Inc. ("AER") tendered for filing six copies of the following revised tariff sheets to become effective April 1, 1993:

Second Revised Volume No. 1

Eighteenth Revised Sheet No. 11
Eighteenth Revised Sheet No. 16

First Revised Volume No. 1–A

Sixth Revised Sheet No. 5

These revised tariff sheets are filed in compliance with the Stipulation and Agreement ("Stipulation") approved by Commission order in Docket No. RP91–49–000 on March 31, 1992. 58 FERC ¶ 61,359 (1992).

Pursuant to the Stipulation, the proposed tariff sheets reflect a revised CSC Charge and CSC Rate Credit of an equal amount. AER has also performed an Annual Recovery Reconciliation pursuant to the Stipulation.

Any person desiring to be heard or protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 10, 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. 93–5361 Filed 3–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–4–24–000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

March 3, 1993.

Take notice that Equitrans, Inc. (Equitrans) on February 26, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective March 1, 1993:

Third Revised Sub Forty-Second Revised Sheet No. 10
Fourth Revised Thirtieth Revised Sheet No. 34

Equitrans states that the filing implements an Out-of-Cycle Purchased Gas Cost Adjustment to reflect (1) an increase in Equitrans' pipeline supplier rates under Kentucky West Virginia's Rate Schedule PLS–1 filed in Docket No. TQ93–5–46–000 on February 26, 1993; and (2) increases in the purchased gas costs of spot market purchases and Southwest supply purchases. Equitrans states that the filing is necessary in order to have the rates charged to Equitrans' jurisdictional customers more closely reflect the experienced cost of gas being incurred by the Applicant.

Equitrans also states that the changes proposed in the filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the demand cost of $0.3832 per dekatherm (Dth) and an increase in the commodity cost of $0.5305 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.1054 per Dth.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on March 1, 1993.

Equitrans states that a copy of its filing has been served upon each of 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 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 March 10, 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. 93–5358 Filed 3–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–187–008]

Florida Gas Transmission Co.; Compliance Filing

March 3, 1993.

Take notice that on February 26, 1993, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume I, the tariff sheets listed in Appendices A and B attached to the filing, pursuant to the November 2, 1992 Stipulation and Agreement (Settlement) in the above-referenced docket and the Commission's January 15, 1993 order approving the settlement.

On January 15, 1993 the Commission issued an order approving the settlement in Docket No. RP91–187 *et al.* Pursuant to Article VIII, the settlement is to be effective upon the first date of the first month following issuance of a final Commission order. FGT states that because no party has requested rehearing as of February 15, 1993, the settlement will become effective March 1, 1993.

FGT states that a copy of its filing has been mailed to all customers affected by this filing and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 10, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–5360 Filed 3–8–93; 8:45 am]

BILLING CODE 6717–01–M

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

[Docket No. TQ93–5–46–000]

March 3, 1993.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on February 26, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Out-of-Cycle PGA filing, which includes Forty-Seventh Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective March 1, 1993. Kentucky West states that the revised tariff sheets reflects a current increase of $0.1930 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $2.1714 per Dth.

Kentucky West states that effective March 1, 1993, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.1850 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Pursuant to § 154.51 of the Commission's regulations, Kentucky West requests waiver of the thirty day notice requirement to permit the tariff sheet attached to the filing to become effective on March 1, 1993. In addition, Kentucky West requests waiver of § 154.304 of the Commission's regulations and any other provisions of the Commission's regulations necessary to permit the tariff sheets to become effective March 1, 1993.

Kentucky West states that, by its filing, or any request or statement made

therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC.*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commission.

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 March 10, 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. 93–5359 Filed 3–8–93; 8:45 am]

BILLING CODE 6717–01–M

Public Service Company of Colorado; Filing

[Docket No. ER92–317–001]

March 3, 1993.

Take notice that on February 1, 1993, Public Service Company of Colorado tendered for filing its compliance filing in response to the Commission's order issued in this docket on January 13, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 17, 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. 93–5356 Filed 3–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES93–22–000]

Rayburn Country Electric Cooperative, Inc.; Application

March 3, 1993.

Take notice that on March 1, 1993, Rayburn Country Electric Cooperative, Inc. filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authorization to issue promissory notes under two loan agreements, one loan agreement in the amount of not more than $4,048,065 million of promissory notes and one loan agreement in the amount of not more than $22,939,032 million of promissory notes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. 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. 93–5357 Filed 3–8–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4602–7]

Science Advisory Board, Clean Air Act Compliance Analysis Council; Meeting

Under Public Law 92–463, notice is hereby given that the Clean Air Act Compliance Analysis Council (CAACAC) of the Science Advisory Board will meet on March 25, 1993 at the Marriott Suites Hotel, 1999 Jefferson Davis Highway, Arlington VA 22202. The hotel telephone number is (703) 413–5500.

The meeting, which is open to the public, will start at 9 a.m. and adjourn no later than 5:30 p.m. Its main purpose is to continue the discussion and review of issues related to retrospective and prospective studies of the impacts of the Clean Air Act (and its subsequent amendments) in progress by the Environmental Protection Agency. The Council will address macro-modeling issues, including the development of economic surplus estimates, the sensitivity of macroeconomic model results to endogenous technological change specifications, and the sensitivity to alternative foreign sector specifications. Agency staff will also brief the Council on approaches for estimating the benefits of controlling air toxics, and on the analytical framework for the forthcoming prospective analysis of the impacts of the Clean Air Act.

Requests for copies of the documents to be reviewed by the Council and questions concerning their content should be addressed to Ms. Anne Grambsch, Office of Policy, Planning, and Evaluation (PM223X), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. Ms. Grambsch may be called at 202–260–2782; these documents are not available from the Science Advisory Board. An agenda for the meeting is available from the Science Advisory Board (A101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 (202–260–6552). Members of the public desiring additional information about the conduct of the meeting should contact Mr. Samuel Rondberg, Designated Federal Official, Clean Air Act Compliance Analysis Council, by telephone at the number noted above or by mail to the address noted above. Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by March 19, 1993. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: February 23, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–5366 Filed 3–8–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted To OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection

Title: Deregistration Form for Registered Transfer Agents

Form Number: Unnumbered

OMB Number: 3064–0027

Expiration Date of OMB Clearance: May 31, 1993

Respondents: Insured state nonmember banks

Frequency of Response: On occasion

Number of Respondents: 22

Number of Responses Per Respondent: 1

Total Annual Responses: 22

Average Number of Hours Per Response: 0.42

Total Annual Burden Hours: 9

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0027, Washington, D.C. 20503

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429

Comments: Comments on this collection of information are welcome and should be submitted before [insert 60 days after date of publication in the **Federal Register**]

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: An insured state nonmember bank that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC as provided for by 12 CFR 341.5.

Dated: March 3, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–5309 Filed 3–8–93; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability: BEECAVE2, Austin, Travis County, TX

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the "BEECAVE2" located in Travis County, Texas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation in care of AMRESCO Management, Inc. until June 7, 1993.

ADDRESSES: Copies of detailed descriptions of the property can be obtained by contacting the following person: John Lynass, AMRESCO Management, Inc., P.O. Box 830106, 32nd Floor, Dallas, Texas 75283–0106, Telephone: (214) 508–7724, Facsimile (214) 508–4439.

SUPPLEMENTARY INFORMATION: BEECAVE2 is located in southwest Austin, Travis County, Texas. The property is legally described as 546.344 acres out of the H.T. & B Railroad Co. Survey No. 1, Abstract No. 413, W.P. Moore Survey No. 525, Abstract No. 557, J. Swisher Survey No. 152, Abstract No. 691, the H.C. Bohls Survey No. 1, Abstract No. 2770, Travis County, Texas. It comprises two non-contiguous tracts of land, one with 464.190 acres and the other with 82.154 acres.

Both tracts are irregularly shaped and typical hill county terrain characterized by steep canyons and an abundance of native vegetation. The property adjoins Lake Austin, managed by the Lower Colorado River Authority.

Written notice of serious interest to purchase the property must be received on or before June 7, 1993 by John Lynass, at the address above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government.

2. Agencies or entities of state or local government, and

3. "Qualified organizations" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(s)).

Form of Notice

Notices of serious interest should be in the following form:

Notice of Serious Interest re: BEECAVE2, Travis County, Texas.

1. Name of eligible entity.

2. Declaration of eligibility to submit notice under criteria set forth in Public Law 101–591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g. price and method of financing).

4. Declaration of entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

Dated: March 3, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–5308 Filed 3–8–93; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability: Lakline, Williamson County, TX

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the "Lakline Property" located in Austin, Texas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation in care of AMRESCO Management, Inc. until June 7, 1993.

ADDRESSES: Copies of detailed descriptions of the property can be obtained by contacting the following person: Don Bordelon, AMRESCO Management, Inc., P.O. Box 830106, 32nd Floor, Dallas, Texas 75283–0106, Telephone: (214) 508–4218, Facsimile (214) 508–6649.

SUPPLEMENTARY INFORMATION: This 69.68 acre tract in Austin, Williamson County, Texas is located near the northwest corner of RR 620 and U.S. Highway Southwest. The property is undeveloped in a primarily retail/residential area and adjoins a 10.45 acre City of Austin tract dedicated for park, recreational, drainage and utility purposes. Bordered on the south by RR 620, it is located adjacent to the proposed Lake Line Mall site.

Written notice of serious interest to purchase the property must be received

on or before June 7, 1993 by Don Bordelon, at the address above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government,

2. Agencies or entities of state or local government, and

3. "Qualified organizations" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(s)).

Form of Notice

Notices of serious interest should be in the following form:

Notice of Serious Interest re: LAKLINE, WILLIAMSON COUNTY, TEXAS.

1. Name of eligible entity.

2. Declaration of eligibility to submit notice under criteria set forth in Public Law 101–591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g. price and method of financing).

4. Declaration of entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

Dated: March 3, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–5307 Filed 3–8–93; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Port of Oakland/Maersk Pacific, Ltd. Marine Terminal Agreement; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 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.: 224–200087–006

Title: Port of Oakland/Maersk Pacific, Ltd Marine Terminal Agreement

Parties: The Port of Oakland, Maersk Pacific, Ltd.

Synopsis: The Agreement deletes approximately two acres from the Truck Parking Area at the Container Freight Station ("CFS"), and sets forth a restated monthly rental for the CFS due to the deletion.

By Order of the Federal Maritime Commission.

Dated: March 3, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–5323 Filed 3–8–93; 8:45 am]

BILLING CODE 6730–01–M

North Atlantic Conference of Port Authorities; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 protests or 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 and protests are found in § 560.602 and/or 572.602 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200611–002

Title: North Atlantic Conference of Port Authorities

Parties: Massachusetts Port Authority Port Authority of New York and New Jersey South Jersey Port Corporation Delaware River Port Authority Maryland Port Administration New Hampshire State Port Authority

Filing Party: Hugh H. Welsh Deputy General Counsel Port Authority of New York and New Jersey One World Trade Center New York, New York 10048

Synopsis: The amendment adds the City of New York as a party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: March 3, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–5324 Filed 3–8–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting on Impact Noise Effects on Hearing

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Impact Noise Effects on Hearing.

Time and Date: 9 a.m.–4 p.m., March 24, 1993.

Place: Robert A. Taft Laboratories, Main Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to discuss the scientific and technical dimensions of and identify and address any deficiencies in the experimental study design of the NIOSH project protocol entitled, "Impact Noise Effects on Hearing." Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Rickie R. Davis, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–27, Cincinnati, Ohio 45226, telephone 513/533–8142.

Dated: March 3, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–5326 Filed 3–8–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committees; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Antiviral Drugs Advisory Committee by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. App.2)).

DATES: Authority for this committee will expire on February 15, 1995, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Donna Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: March 2, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–5332 Filed 3–8–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the agenda of a meeting of the Blood Products Advisory Committee which is scheduled for March 25 and 26, 1993. This meeting was announced in the **Federal Register** of February 16, 1993 (58 FR 8598). The change is being made to expand an item for discussion. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–227–6700.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 16, 1993, FDA announced that a meeting of the Blood Products Advisory Committee would be held March 25 and 26, 1993. On page 8599, column 2, the open committee discussion portion of the agenda is amended to read as follows:

Agenda—Open committee discussion: On March 25, 1993, the committee will review and discuss labeling for the product license application submitted by Cambridge Bioscience Corp., relative to donor screening criteria for Human T–Lymphocyte Virus Type II (HTLV–II), and in the afternoon review the product license application for a peptide based assay for antibody to Hepatitis C Virus (Anti-HCV), United Biomedical, Inc. (UBI). On March 26, 1993, the committee will discuss and provide comments on draft memoranda entitled: (1) "Revised Recommendations for Testing for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)" and (2) "License Amendments and Procedures for Irradiation of Blood Products." The Committee will also review and discuss a request by Miles, Inc., to extend the indication for intravenous immune globulin (IVIG) to include prophylaxis for bone marrow transplant patients.

Dated: March 2, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–5333 Filed 3–8–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No.'s N–93–3243, FR–3145–N–03; N–93–3439, FR–3289–N–04; N–93–3480, FR–3296–N–02]

Announcement of Funding Awards for Fair Housing Initiatives Program—Fiscal Year 1992

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of FY 1992 funding awards made under the Fair Housing Initiatives Program (FHIP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, room 5234, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–3216. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The FHIP has three funding categories: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative.

Fiscal Year 1992 funding for FHIP activities was made available in three separate Notices of Funding Availability (NOFAs). In a NOFA published in the **Federal Register** on May 29, 1992 (57 FR 22872), the Department announced the availability of approximately $6.9 million in funds for FHIP. On May 18, 1992 (57 FR 21127), HUD published a NOFA that made up to $1 million in funding available to conduct a major testing project on mortgage lending practices under the Private Enforcement Initiative of the FHIP. The third NOFA, published on August 19, 1992 (57 FR 37646), announced the availability of $300,00 to fund activities related to the case of *Young* v. *Kemp* (Civil Action No. P–80–8–CA, U.S.D.C., E.D. Tex.) in the 36 East Texas counties involved in this class action suit. Of this amount, $200,000 was made available from FHIP funds. The additional $100,000 was reserved from the Housing Counseling Program.

The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFAs. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

FY 92 FAIR HOUSING INITIATIVES PROGRAM, ADMINISTRATIVE ENFORCEMENT INITIATIVE GRANT RECIPIENTS

Agency	Contact person/telephone No.	Address	Region	Maximum amount of award
Connecticut Commission on Human Rights and Opportunities.	Louis Martin (203) 566–4895	90 Washington Street, Hartford, CT 06106.	1	$579,002
Massachusetts Commission Against Discrimination.	Michael T. Duffy (617) 727–5990	One Ashburton Place, Room 601, Boston, MA 02108.	1	76,376
North Carolina Human Relations Commission.	Jim Stowe (919) 733–7996	121 W. Jones Street, Raleigh, NC 27603.	4	170,010
Indiana Civil Rights Commission	Karen M. Freeman-Wilson (317) 232–2614.	100 North Senate Avenue, Room N103, Indianapolis, IN 46204.	5	82,387
Ohio Civil Rights Commission	Joseph T. Carmichael (614) 466–2785.	220 Parsons Avenue, Columbus, OH 43266–0543.	5	308,646
Texas Commission on Human Rights	William Hale (512) 837–8534	8100 Cameron Road, Bldg. B, Suite 525—P.O. Box 13493, Austin, TX 78711.	6	241,244
Nebraska Equal Opportunity Commission.	Lawrence R. Myers (402) 471–2024	P.O. Box 94934, Lincoln, NE 68509–4934.	7	182,849
Montana Human Rights Commission	Anne L. McIntyre (406) 444–2884	P.O. Box 1728, Helena, MT 59624	8	149,216
Arizona Attorney General's Office	Richard Martinez (602) 628–6500	Human Services Division, 1275 W. Washington, Phoenix, AZ 85007.	9	256,506
King County Office of Civil Rights and Compliance.	Manfert M. Lee (206) 296–7592	King County Courthouse, 516 Third Avenue, Room E–224, Seattle, WA 98104–2312.	10	55,340

FY 92 FAIR HOUSING INITIATIVES PROGRAM, EDUCATION AND OUTREACH INITIATIVE (REGIONAL/STATE/LOCAL) GRANT RECIPIENTS

Agency name	Contact person/telephone No.	City and state	Region	Project area (R, S, or L)	Maximum amount for award
Portland West Neighborhood Planning Council.	James Oliver (207) 775–0105	155 Bracket Street, Portland, ME 04103.	1	L	$73,098
The Commonwealth of Massachusetts Housing Finance Agency.	Roger C. McLeod (617) 451–3480 ext. 432.	50 Milk Street, Boston, MA 02109.	1	S	53,043
Lawyer's Committee for Civil Rights Under Law of the Boston Bar Association.	Ozell Hudson, Jr. (617) 482–1145.	294 Washington Street, Boston, MA 02108.	1	S	121,431
Housing Discrimination Project, Inc.	Margaret Maisel (413) 539–9796	380 High Street, Ste 302, Holyoke, MA 01040.	1	R	88,706
Massachusetts Association for Retarded Citizens.	Leo Sarkissian (617) 891–6270	217 South Street, Waltham, MA 02154.	1	R	180,169
Gloucester County Community Housing Resource Board.	Floyd McLean (609) 881–5932	181 Delsea Manor Drive, Glassboro, NJ 08028.	2	L/R	62,845
Long Island Housing Services, Inc	David Beranbaum (516) 582–2727.	1747 Veteran's Memorial Highway—Suite 42A, Islandia, NY 11722.	2	L	166,300
New Jersey Department of Public Advocates.	Dorienne Silva (609) 984–3131	Hughes Justice Complex, CN 850, Trenton, NJ 08525.	2	S	148,151
The Legal Aid Society of New York City.	Susan B. Lindenaver (212) 577–3349.	15 Park Row—22nd Floor, New York, NY 10038.	2	L	92,491
The Greater Baltimore Board of Realtors, Inc.	Fletcher Hall (410) 462–2500	1501 West Mt. Royal Ave., Baltimore, MD 21217.	3	R	50,000
Fair Housing Council of Greater Washington, DC.	Susan Weiss (301) 530–0600	1400 I Street, NW., Suite 530, Washington, DC 20005.	3	R	109,585
City of Lynchburg	Richard Jacques (804) 847–1435	P.O. Box 60, Lynchburg, VA 24505.	3	L	44,000
City of Petersburg	Doris L. Edward (804) 861–2132	400 Farmer Street—Rm. 119, Petersburg, VA 23803.	3	L	103,887
Housing Opportunities Made Equal.	Constance K. Chamberlain (804) 354–0641.	1218 West Cary Street, Richmond, VA 23220.	3	R	107,747
Greater Birmingham Fair Housing Center.	Bobby M. Wilson (205) 934–9679	115 Yorkshire Drive, Birmingham, AL 35209.	4	R	79,376
Latinos United	Carlos R. DeJesus (312) 663–3603.	228 South Wabash, Suite 600, Chicago, IL 60604.	5	R/L	91,881
Housing Coalition of the Southern Suburbs.	Michael D. Roche (708) 201–7769.	14200 Chicago Road, Suite 201, Dolton, IL 60419.	5	L	63,000
Leadership Council for Metropolitan Open Communities.	John Lucheart (312) 341–5678	401 South State Street, Suite 860, Chicago, IL 60605.	5	R	50,000
Interfaith Housing Center of the Northern Suburbs.	Barbara Boyts (708) 501–5760	620 Lincoln Avenue, Winnetka, IL 60093.	5	R	80,842

FY 92 FAIR HOUSING INITIATIVES PROGRAM, EDUCATION AND OUTREACH INITIATIVE (REGIONAL/STATE/LOCAL) GRANT RECIPIENTS—Continued

Agency name	Contact person/telephone No.	City and state	Region	Project area (R, S, or L)	Maximum amount for award
The Cuyahoga Plan of Ohio, Inc. (Metropolitan Strategy Group).	Eleanore Ramsay Dees (216) 621–4525.	1101 Euclid Avenue, Suite 402, Cleveland, OH 44115.	5	S	118,115
Madison Equal Opportunities Commission.	Cynthia Wick (608) 267–4900	210 Martin Luther King, Jr. Blvd., Madison, WI 53710.	5	L	57,310
The Austin Tenants' Council, Inc .	Katherine Stark (512) 474–0197 .	1619 East First Street, Austin, TX 78702.	6	L	50,000
Access Resources of Missouri	Chris Krehneyer (314) 428–7948	P.O. Box 9114, St. Louis, MO 63117.	7	R	37,300
Kansas Human Relations Association.	Kaye Crawford (913) 826–7330 ..	300 West Ash, Salina, KS 67401	7	S	86,230
The Iowa Civil Rights Commission	Don Grove (515) 281–7121	211 East Maple Street, Des Moines, IA 50319.	7	S	75,745
Concerned Citizens Coalition	Toni M. Austad (406) 727–9136 .	825 Third Avenue South, Great Falls, MT 59405–2102.	8	R	74,327
Project Sentinel	Ann Marquart (415) 321–6291	430 Sherman Avenue, Suite 308, Palo Alto, CA 94306.	9	R	78,417
Independent Housing Services	Walter Park (415) 928–HOME	25 Taylor Street, San Francisco, CA 94102.	9	R	55,442

FY 92 FAIR HOUSING INITIATIVES PROGRAM, EDUCATION AND OUTREACH INITIATIVE (NATIONAL) GRANT RECIPIENTS

Agency	Contact person/telephone No.	City and state	Region	Maximum amount of award
North Carolina State University, Office of Sponsored Programs.	Linda Jackson (919) 515–2444	Box 7003, Raleigh, NC 27695–7003 ..	4	$189,218
The John Marshall School of Law Fair Housing Center.	Michael P. Seng (312) 987–1446	315 South Plymouth Court, Chicago, IL 60604.	5	200,418
Howard University, School of Social Work.	Jean A. McRae (202) 806–8770	2400 Sixth Street, NW, P.O. Box 1071, Washington, DC 20059.	3	116,788

FY 92 HOUSING INITIATIVES PROGRAM, PRIVATE ENFORCEMENT INITIATIVE GRANT RECIPIENTS

Agency	Contact person/telephone No.	City and state	Region	Maximum amount of award
Housing Discrimination Project, Inc	Margaret Maisel (413) 539–9796	380 High Street, Suite 302, Holyoke, MA 01040.	1	$136,631
Housing Opportunities Made Equal	Scott W. Gehl (716) 854–1400	700 Main Street, Buffalo, NY 14202 ...	2	50,420
Fair Housing Council of Northern New Jersey.	Lee Porter (201) 489–3552	131 Main Street, Hackensack, NJ 07601.	2	195,606
Westchester Residential Opportunities, Inc.	Blossom Blum (914) 428–4507	470 Mamaroneck Avenue, White Plains, NY 10805.	2	88,494
Open Housing Center, Inc	Phyllis Spiro (212) 941–6101	594 Broadway, Suite 608, New York, NY 10012.	2	282,401
Fair Housing Council of Greater Washington, Inc.	Susan Weiss (202) 289–5360	1400 I Street, NW., Suite 520, Washington, DC 20005.	3	187,812
Housing Opportunities Project for Excellence, Inc.	William Thompson, Jr. (305) 374–3660.	19 West Flagler Street, Suite 803, Miami, FL 33130.	4	90,812
Kentucky Fair Housing Center	Galen Martin (502) 583–3247	835 W. Jefferson—Room 108, Louisville, KY 40202.	4	49,923
Leadership Council for Metro Open Communities.	Mary Davis (312) 341–5678	401 South State Street, Room 860, Chicago, IL 60605.	5	110,777
South Suburban Housing Center	George Cole (708) 957–4674	2057 Ridge Road, Homewood, IL 60430.	5	55,000
HOPE Fair Housing Center	Bernard J. Kleina (708) 495–4846	154 South Main Street, Lombard, IL 60148.	5	67,000
Fair Housing Center of Metropolitan Detroit.	Clifford C. Shrupp (313) 963–1274	1249 Washington Boulevard, Room 1340, Detroit, MI 48226.	5	157,000
Toledo Community Housing Resource Board, Inc.	Lisa C. Rice (419) 243–6163	1900 Monroe Street, Suite A, Toledo, OH 43624.	5	128,531
Metropolitan Milwaukee Fair Housing Council.	William Tisdale (414) 278–1240	600 East Mason Street, Suite 200, Milwaukee, WI 53202.	5	147,029
Housing for All-Metro Denver Fair Housing Center.	Kathie Cheaver (303) 296–6949	3800 York Street, Unit D, Denver, CO 80205.	8	95,000

FY 92 HOUSING INITIATIVES PROGRAM, PRIVATE ENFORCEMENT INITIATIVE GRANT RECIPIENTS—Continued

Agency	Contact person/telephone No.	City and state	Region	Maximum amount of award
Concerned Citizens Coalition	Toni M. Austad (406) 727–9136	825 Third Avenue South, Great Falls, MT 59405–2102.	8	99,627
Housing Rights, Inc	Marianne Lawless (510) 658–8766	354 Adeline Street, Berkeley, CA 94703.	9	14,000
Fair Housing Council of Oregon	Donna T. Butler (503) 230–0239	4421 SE 17th Ave., Suite 204, Portland, OR 97202.	10	104,098

FY 92 FAIR HOUSING INITIATIVES PROGRAM, PRIVATE ENFORCEMENT INITIATIVE (TESTING PROJECT ON MORTGAGE LENDING PRACTICES) GRANT RECIPIENT

Agency	Contact person/telephone No.	Address	Region	Maximum amount of award
National Fair Housing Alliance	Shanna Smith (202) 898–1661	1400 I St., NW–Suite 530, Washington, DC 20005.	3	$692,172

FY 92 FAIR HOUSING INITIATIVES PROGRAM, EDUCATION AND OUTREACH INITIATIVE (YOUNG V. KEMP PROJECT) GRANT RECIPIENT

Agency	Contact person telephone No.	Address	Region	Maximum amount of award
Texas Commission for Human Rights	William Hale (512) 837–8534	8100 Cameron Road, Austin, Texas 78753.	6	$306,237

Dated: February 23, 1993.

Leonora L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–5347 Filed 3–8–93; 8:45 am]

BILLING CODE 4210–28–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3586; FR–3643–N–01]

Updated Listing of HUD-Approved Housing Counseling Agencies

AGENCY: Office of the Assistant Secretary of Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice provides a listing of all HUD-Approved Housing Counseling Agencies.

FOR FURTHER INFORMATION CONTACT: David Dwyer, Office of Insured Single Family Servicing, room 9180, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone: voice, (202) 708–3664, TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In past years, the Department has issued periodic communications to all approved HUD mortgagees, advising them of the names and addresses of HUD-approved counseling agencies available to assist mortgagors who are confronting the need for homeownership counseling.

In addition, this listing represents the housing counseling agencies which can be identified using the Department's toll-free housing counseling telephone number. A caller, through the use of his/her zip code, can identify the nearest HUD-approved housing counseling agency. The Department's toll-free housing counseling number is 800–733–3238.

The Department has determined that **Federal Register** publication of the update list of approved counseling agencies would afford more comprehensive notice to the public of these agencies.

Accordingly, appended to this notice is a listing, alphabetically by state, of the currently approved Housing Counseling Agencies.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing.

HUD-Approved Housing Counseling Agencies

Alaska

Anchorage Neighborhood Housing Services, 3700 Woodland Drive, Suite 500, Anchorage, AK 99517

Consumer Credit Counseling Service of Alaska, 208 East Fourth Avenue, Anchorage, AK 99501

Alabama

Birmingham Urban League, 1717 4th Avenue North, Post Office Box 11269, Birmingham, AL 35202

C.A.A. of Calhoun, Cleburne, & Cherokee Cntys, PO Box 2223, 1702 Noble St., Suite 110, Anniston, AL 36202

Community Action Agency of Northwest Alabama, Inc., 502 East College Street, Florence, AL 35630–5797

C.A.A. of Huntsville, Madison and Limestone Counties, 4015 Stringfield Rd., NW, Huntsville, AL 35810–0975

Community Service Programs of West Alabama, Inc., 601 17th Street, Tuscaloosa, AL 35401

Human Resource Development Corporation (HRDC), Route 5 Box 139, Suite A, Enterprise, AL 36331

Housing Authority of the City of Auburn, 931 Booker Street, Auburn, AL 36830

Housing Authority of City of Montgomery, 1020 Bell Street, Montgomery, AL 36104

Housing Authority of Birmingham District, 1826 3rd Avenue South, Birmingham, AL 35233

Mobile Housing Board Comprehensive Housing Counseling Services, 151 S. Clairborne Street, Mobile, AL 36633
Community Action Agency of North Central Alabama, 107 Second Avenue, NE, PO Box 1788, Decatur, AL 35602
City of Tuscaloosa, Alabama Community Planning and Development Dept., PO Box 2089, Tuscaloosa, AL 35403
Tuscaloosa Housing Counseling Program, 4302 21st Street—West, Westgage Office, Tuscaloosa, AL 35401

Arizona

City of Phoenix Neighborhood Improvement & Housing Department, 830 East Jefferson Street, Phoenix, AZ 85034
Chicanos Por La Causa, 1112 East Buckeye Road, Phoenix, AZ 85034
Consumer Credit Counseling Service of Arizona, 6135 E. Grant Road, Tucson, AZ 85712
Consumer Credit Counseling Service of Arizona, 2535 Camelback Road, Phoenix, AZ 85017
Chicanos Por La Causa, Inc., 1525 N. Oracle, Suite 105, Tucson, AZ 85705
Catholic Social Services, 150 West Helen Street, Tuscon, AZ 85705
City of Phoenix, Human Resources Center, Phoenix, AZ 85007
City of Phoenix, Neighborhood Improvement & Housing Dept., 920 East Madison, Suite B, Phoenix, AZ 85034

Arkansas

Crawford-Sebastian Community Development Council, Inc., 4831 Armour Ave., PO Box 4069, Fort Smith, AR 72914
White River Regional Housing, Authority Post Office Box 650, Melbourne, AR 72556
Family Service Agency of Central Arkansas, P.O. Box 500, 2700 North Willow, North Little Rock, AR 72115
Urban League of Arkansas, Inc., 2200 Main Street, P.O. Box 164039, Little Rock, AR 72206
Family Support Services, Inc., 111 West Central, Bentonville, AR 72712
Universal Housing Development, P.O. Box 846, 301 East Third Street, Russellville, AR 72801

California

Better Valley Services, 8000 Laurel Canyon, North Hollywood, CA 91605
Consumer Credit Counselors, 1308 West 8th Street, Los Angeles, CA 90015
Westminister Neighborhood Association, Inc., 1776 East Century Boulevard, Los Angeles, CA 90002
Housing Authority of the County of Santa Barbara, 815 W. Ocean Avenue, Post Office Box 397, Lompoc, CA 93436
City of Richmond, 2600 Barrett Avenue, Richmond, CA 94804
Housing Authority of the County of Santa Cruz, 298 Harvey West Blvd., Santa Cruz, CA 95060
City of Oakland, Office of Community Development, 300 Lakeside Drive, 15th Floor, Oakland, CA 94612–3537
Eden Council for Hope & Opportunity, Echo Housing Assistant Cntr, 770 A Street, Room 402, Hayward, CA 94541
Project Sentinel, 10 Dempsey Road, Milpitas, CA 95035
Pacific Community Services, 184 East Leland Road, Pittsburgh, CA 94565
Inland Mediation Board, 420 North Lemon Avenue, Ontario, CA 91764
Fair Housing Council of Orange County, 1222 North Broadway, Santa Ana, CA 92701
Neighborhood House Association, 841 South 41st Street, San Diego, CA 92113
Housing Authority of the County of Stanislaus, 1701 Robertson Road, Modesto, CA 95356
Catholic Charities, 150 East Olive Street, Colton, CA 92324, 221 Turner Street, Guasti, CA 91743, 4137 Almond Street, Riverside, CA 92501, 850 S. Palm Canyon Drive, Palm Springs, CA 92264, 45149 Smurr Street, Indio, CA 92201, 209 N. First Ave., Barstow, CA 92311, 13510 Perris Blvd., Moreno Valley, CA 92388
Human Investment Project, Inc., 364 South Railroad Avenue, San Mateo, CA 94401
Project Match, Inc., 1671 Park Avenue, Room 21, San Jose, CA 95126
Independent Living Resource Center, 70–10th Street, San Francisco, CA 94103
Council on Aging of Sonoma County, 730 Bennett Valley Road, Santa Rosa, CA 95404
Home Loan Counseling Service, 1115 West Adams Blvd., Los Angeles, CA 90007
Inland Mediation Board, 420 North Lemon Ave., Ontario, CA 91764

Colorado

Adams County Housing Authority, 7190 Colorado Boulevard, 6th Floor, Commerce City, CO 80022
Boulder County Housing Authority, Post Office Box 471, 14th and Spruce Street, Boulder, CO 80306
Brothers Redevelopment, Inc., 1111 Osage Street, Suite 210, Denver, CO 80204
Catholic Social Services, 302 Jefferson Street, Pueblo, CO 81004
Neighbor-to-Neighbor, 424 Pine Street, Suite 203, Fort Collins, CO 80524
Northeast Denver Housing Center, 1735 Gaylord Street, Denver, CO 80206
Consumer Credit Counseling Service of Southern Colorado, Inc., 1233 Lake Plaza Dr., Colorado Springs, CO 80906
City of Aurora Home Ownership Assistance Program, 9801 East Colfax, Aurora, CO 80010
Consumer Credit Counseling Service of Northern Colorado, 1136 East Stuart, Suite 4201, Ft. Collins, CO 80525

Connecticut

Northeastern Connecticut Community Development, Post Office Box 156, Route 6, Danielson, CT 06329
Urban League of Greater New Haven, 1184 Chapel Street, New Haven, CT 06510
Urban League of Greater Hartford, 1229 Albany Avenue, Hartford, CT 06112
Consumer Credit Counseling Service of Connecticut, Inc., 151 New Park Avenue, Hartford, CT 06106, Locations in Hamden, Norwalk, and Waterbury.

Delaware

Neighborhood House, Inc., Henrietta Johnson Community Center, 601 New Castle Avenue, Wilmington, DE 19801
Middletown, Odessa and Townsend Community Action Agency, Inc., 23 West Main Street, Middletown, DE 19709
Sussex County Community Action Agency, P.O. Box 431, Georgetown, DE 19947
Community Housing, Inc., 613 Washington Street, Wilmington, DE 19801

District of Columbia

Far SE Community Organization (FSECO), 2041 Martin Luther King Ave., SE., Suite M3, Washington, DC 20020
Housing Counseling Services, Inc., 2430 Ontario Road, NW., Washington, DC 20009
Near Northeast Community Improvement Corp. (CIC), 1326 Florida Avenue, NE., Washington, DC 20002
Peoples Involvement Corp. (PIC), 2146 Georgia Avenue, NW., Washington, DC 20001
University Legal Services, 300 I Street, NE., Suite 202, Washington, DC 20002
District of Columbia Housing Finance Agency, 1275 K Street, NW., Suite 600, Washington, DC 20005
Marshall Heights Community Development Organization, Inc., 3917 Minnesota Ave., NE., Washington, DC 20019

Florida

Consumer Credit Counseling Service of Tampa Bay Area, Inc., 1 East Jefferson Street, Brooksville, FL 34601

City of Tampa Community Redevelopment Agency, 1310 9th Avenue, Tampa, FL 33605
Hillsborough County Housing Assistance Department, 9620 Bay Plaza Boulevard, Suite 510, Tampa, FL 33619
Consumer Credit Counseling Service of Tampa Bay Area, Inc., 4265 Henderson Blvd., Tampa, FL 33629
Consumer Credit Counseling Service of the Tampa Bay Area, Inc., 1410 W. 14th Street, Bradenton, FL 34601
Manatee Opportunity Council, Inc., 2639 9th Avenue West, Bradenton, FL 34205
The Agriculture & Labor Program, Inc., Administrative Headquarters, P.O. Box 3126, Winter Haven, FL 33881–3126
CCCS of Central Florida, Central Office, Coral Gables Fed. Bldg., 455 S. Orange Ave., 4th Flr., Orlando, FL 32801, Orlando East, 3075 Alafaya Trail, Suite 130, Orlando, FL 32826
Naval Training Center, Family Servicing Center, Orlando, FL 32813
Consumer Credit Counseling Service of Central Florida, Inc., 4823 Silver Star Road, Suite 110, Orlando, FL 32808
Urban League, Inc., 2512 West Colonial Drive, P.O. Box 547816, Orlando, FL 32854
Dept. of Community Affairs, 2314 N. Orange Blossom Tr., Fair Villas Plaza, P.O. Box 561457, Orlando, FL 32856
Consumer Credit Counseling Service of Central Florida, 1110 Pelican Bay Drive, Daytona Beach, FL 32119
Consumer Credit Counseling Service, First Federal Savings Bank Bldg., 1404 South Ridgewood, Edgewater, FL 32132
Consumer Credit Counseling Service, 815 South Volusia Avenue, Suite No. 1, Orange City, FL 32763
Consumer Credit Counseling Service, 377 Maitland Avenue, Suite 203, Altamonte Springs, FL 32701
Consumer Credit Counseling Service, 1400 West Oak Street, Suite A, Kissimmee, FL 34741
Consumer Credit Counseling Service, Sun Bank Building, 1205 Indiana Avenue, St. Cloud, FL 34769
Lake Community Development, Inc., 927 9th Alfred Street, Post Office Box 884, Tavares, FL 32778
Consumer Credit Counseling Service, 1330 Citizens Blvd., Suite 401, Leesburg, FL 34748
Consumer Credit Counseling Serv. of Palm Beach County, 2330 S. Congress Ave., Suite A, W. Palm Beach, FL 33406
Consumer Credit Counseling Services of South Florida, Inc., 13014 N.E. 8th Avenue, North Miami, FL 33161
Consumer Credit Counseling Services of South Florida, Inc., 10720 Caribbean Blvd., Suite 345, Miami, FL 33161
West Perrine Community Development Corporation, 17356 South Dixie Highway, Miami, FL 33157
Consumer Credit Counseling Services of S. Florida, Inc., 500 S.E. 17th Street, Suite 222, Ft. Lauderdale, FL 33316
Broward County Housing Authority, 1773 North State Road #7, Lauderhill, FL 33313
Broward County Housing Authority, 3100 N. 24th Ave., Hollywood, FL 333020
Broward County Housing Authority, 3801 N.E. 8 Avenue., Pompano, FL 33064, Ehrlinger Site, 7481 NW 33rd Street, Davie, FL 33024
Consumer Credit Counseling of Southwest Florida, 2654 Tamiami Trail East, Gulf Gate Plaza, Naples, FL 33940
Urban League of Palm Beach County Inc., 1700 North Australian Avenue, West Palm Beach, FL 33407
Jacksonville Urban League, 223 West Duval Street, 14th Floor, Jacksonville, FL 32202
Consumer Credit Counseling Services, 551 SE 8th Street, Delray Beach, FL 33444
Urban League of Palm Beach County, Inc., 1700 North Australian Avenue, West Palm Beach, FL 33407
Council of Palm Beach, 600 SW 15th Ave., Catherine Strong Center, Boynton Beach, FL 33444
Urban League South County Office, 85 NW 5th Avenue, Delray Beach, FL 33432
Consumer Credit Counseling Service, 2330 S. Congress Avenue, Suite 1A, West Palm Beach, FL 33408–7665
Consumer Credit Counseling Services of Tampa Bay Area, Inc., 7181 College Parkway, Unit 4, Ft. Myers, FL 33907
Consumer Credit Counseling Services, 507 N. Harbor City Blvd., Melbourne, FL 32935
United Way of Martin County, 851 Johnston Avenue, Stuart, FL 34995
Housing Development Corp. of Tallahassee & Leon County, Inc., 515–B John Knox Road, Tallahassee, FL 32312

Georgia

The Atlanta Urban League, Inc., 100 Edgewood Ave., Suite 600, Atlanta, GA 30303
Dekalb/Fulton Housing Couns. Cntr., Kensington Office Park, 4151 Memorial Dr., Suite 107E, Decatur, GA 30303
Metro Fair Housing Services, Inc., 1083 Austin Avenue, N.E., Atlanta, GA 30307
Consumer Credit Counseling of Atlanta, 100 Edgewood Ave., Suite 520, Atlanta, GA 30303
Dekalb/Fulton Housing Counseling Center, 233 Mitchell Street, Atlanta, GA 30303
Metro Columbus Urban League, Inc., 802 First Avenue, Columbus, GA 33901
Coastal Georgia Area Community Action Authority, 2801 Fourth Street, Brunswick, GA 31520
Savannah-Chatham County EOA, Inc., 618 West Anderson Street, P.O. Box 1353, Savannah, GA 31402
Heart of Georgia Community Action Council, Post Office Box 398, Eastman, GA 31203
Athens-Clarke County, Human & Econ. Development 155 E Washington St., PO Box 1868, Athens, GA 30613–4199
Middle Georgia Community Action Agency, Inc., P.O. Box 2286, 708 Elberta Road, Warner Robins, GA 31099
Greater Macon Housing Corporation, 1212 Gray Highway, Macon, GA 31211
Overview Inc., 120 South Jefferson Street, P.O. Box 693, Milledgeville, GA 31061
Community Development Division, 230 South Jackson Street, Suite 315, Albany, GA 31701–2816
Coastal Plain Area Economic Opportunity, Inc. 1126 Gordon Street, P.O. Box 1645, Valdosta, GA 31603

Hawaii

Hale Mahaolu, Inc., 200 Hina Avenue, Kahului, HI 96732
Hawaii Credit Counseling Service, 2153 North King Street #306, Honolulu, HI 96819

Idaho

No HUD-Approved Housing Counseling Agencies Located within the State of Idaho

Illinois

Chicago Urban League, 4510 Michigan Avenue, Chicago, IL 60653
City of Chicago, Department of Housing, 318 South Michigan Avenue, Chicago, IL 60604
Community and Economic Devel. Assoc. (CEDA) of Cook County, 224 N. Des Plaines Ave., Chicago, IL 60606
Evanston Neighbors at Work, 1229 Emerson, Evanston, IL 60201
CEDA Northwest Self-Help Center Inc., 120 W. Eastman St., Suite 105, Arlington Heights, IL 60004
Proviso-Leyden Council for Community Action, 1108 West Madison Street, Maywood, IL 60153
Southwest Development Association, 5818 South Archer Road, Summit, IL 60501

Harvey Area Community Development Center, 53 East 154th Street
CEDA Bloom-Rich Community Development Association
Ford Heights Community Service Center, 1647 Cottage Grove Avenue, Ford Heights, IL 60411
Southwest CEDA, 3518 West 139th Street, Robbins, IL 60472
Chicago Heights Community Service Center, 1203 West End Avenue, Chicago Heights, IL 60411
Housing Authority of the County Lake, Illinois, 3928 North Route 45, Grayslake, IL 60030–1700
New Cities Community Development Corporation, 1912 West 170th Street, Hazel Crest, IL 60429
Lake County Community Action Project, 106 South Sheridan Road, Waukegan, IL 60085
Consumer Credit Counseling Service of East Central, IL Inc., 363 S. Main Street, Suite 505, Decator, IL 62523
Consumer Credit Counseling Service, #8 Harrison, Danville, IL 61832
Consumer Credit Counseling Service, 44 Main Street, Champaign, IL 61820
Spanish Coalition For Housing, 3439 West North Avenue, Chicago, IL 60647
Springfield Human Relations Commission, 227 S. 7th Street, Suite 204, Springfield, IL 62701
Community Service Council of Northern Will County, 719 Parkwood Avenue, Romeoville, IL 60441
Chicago Roseland Coalition for Community Control, 11015 South Michigan Avenue, Chicago, IL 60628
Urban League of Metropolitan St. Louis/St. Clair County Operations, 3500 State Street, East St. Louis, IL 62205
Economic Opportunity Corporation (CEFS), 101 N. Fourth, 4th Floor, Box 928, Effingham, IL 62401
Economic Community Corporation (CEFS), Clay County Outreach, 832 West North Street, Flora, IL 62839, Effingham Cnty. Outreach, 204 W. Washington, Effingham, IL 62401, Fayette County Outreach, City Hall, Box 44, Vandalia, IL 62471, Shelby County Outreach, County Courthouse, Shelbyville, IL 62565, Moultrie County Outreach, County Courthouse, Sullivan, IL 61951, Christian Cnty. Outreach, 1104 W. Spresser St., Taylorville, IL 62568, West Pana Township Bldg., Raymond & Route 16, Pana, IL 62557, Montgomery Cnty. Outreach, S. Route 27, Taylor Springs, IL 62089.

Indiana

City of Bloomington, Department of Redevelopment, P.O. Box 100, Municipal Building, Bloomington, IN 47402, 1396 Benham Avenue, Elkhart, IN 46516–2505
HOPE of Evansville, Inc., 100 Washington Avenue, Evansville, IN 47713
Fort Wayne Housing Authority, 2013 S. Anthony Blvd., P.O. Box 13489, Ft. Wayne, IN 46869–3489
Community Action of Indianapolis, Inc., 2445 N. Meridian Street, Indianapolis, IN 46208
Lake County Community Economic Department, 2293 N. Main Street, Crown Point, IN 46307
Urban League of Northwest Indiana, Inc., 3101 Broadway, Gary, IN 46409
Hammond Housing Authority, 7329 Columbia Circle W., 4923 Hohman Avenue (Branch), Hammond, IN 46320
Granger and Roseland, Housing Assistance Office, Inc., 1047 Lincolnway West, PO Box 1558, South Bend, IN 46634
Knox County Housing Authority, Rural Route 1, Box 512–C–5, Bicknell, IN 47512
Hoosier Uplands Economic Development Corporation, 521 West Main Street, Mitchell, IN 47446
Dept. of Metropolitan Devel. Division Economic & Housing Devel., 148 East Market Street, Indianapolis, IN 46204
Real Services of St. Joseph County, Inc., 622 N. Michigan Street, South Bend, IN 46634
Housing Authority of the City of South Bend, P.O. Box 11057, 501 South Scott, South Bend, IN 46634

Iowa

Craig Stanley Agency, 1667 Summit Avenue, New Albany, IA 47150
Hawkeye Area Community Action Program, Inc., 5560 6th Street, SW., Cedar Rapids, IA 52406
Hawkeye Area Community Action Program, Inc., 1300 South Gilbert Street, Iowa City, IA 52240
Assisted, Information and Direction (A.I.D. Center), 206 6th Street, Sioux City, IA 51101
Department of Community Development, Housing Services Division, 226 4th Street, Davenport, IA 52801
Neighborhood Place, Inc., 809 W. 6th Street, Davenport, IA 52805–0367
SHARP Division, Armory Building, E. 1st and Des Moines Streets, Des Moines, IA 50307

Kansas

Economic Opportunity Foundation, 1542 Minnesota Avenue, Kansas City, KS 66102
Urban League of Wichita, Inc., 1405 N. Minneapolis Street, Wichita, KS 67214
Housing and Credit Counseling, Inc., 1195 S.W. Buchanan, Suite 203, Topeka, KS 66604–1183
Consumer Credit Counseling Service, Inc., 742 Duvall, Salina, KS 67402
United Methodist Urban Ministry of Wichita, 1611 North Mosley, Wichita, KS 67214–1399

Kentucky

ACCEPT, Inc. (Red Cross), 510 East Chestnut Street, Louisville, KY 40202
Audubon Area Community Services, Inc., 900 Walnut Street, Owensboro, KY 42302
Brighton Center, Inc., P.O. Box 325, Newport, KY 41072
Campbellsville Housing and Redevelopment Authority, 400 Ingram Avenue, P.O. Box 459, Campbellsville, KY 42718
Tenant Services and Housing Counseling, Inc., 200 East Main Street, Lexington, KY 40507
Appalachian Foothills Housing Agency, Inc., 1448 Diedrich Boulevard, Russell, KY 41169
Craig Stanley Agency, 1667 Summit Avenue, New Albany, IN 47150
Louisville Urban League, 1535 W. Broadway, Louisville, KY 40203–3515
Northern Kentucky Community Center, 824 Greenup Street, P.O. Box 2030, Covington, KY 41011
Pennyrile Allied Community Services, Inc., 708 South Liberty Street, Post Office Box 582, Hopkinsville, KY 42240
Housing Authority of Jefferson County Urban County Government Center, 810 Barrett Ave., Louisville, KY 40204
City of Bowling Green Dept. of Housing and Community Development, P.O. Box 430, Bowling Green, KY 42101

Louisiana

Central City Housing Development Corporation, 2020 Jackson Avenue, New Orleans, LA 70113
St. Bernard Parishes, Desire Community Housing Corp., 3251 St. Ferdinand Street, New Orleans, LA 70126
St. Charles Parishes, Jefferson Community Action, 1221 Elmwood Park Blvd., 4th Flr., Harahan, LA 70123
Marrero-Multi Service Center, 2001 Lincolnshire Drive, Marrero, LA 70072
*Dorothy B. Watson Memorial Center, 1300 Myrtle Street, Metarie, LA 70003
*Webco Neighborhood Service Center, 3rd Street, Bridge City, LA 70094
*Jefferson Community Action, Shrewco Neighborhood Service, 1121 S. Causeway Blvd., Jefferson, LA 70121
St. Landry Community Action Agency, P.O. Drawer 1510, Opelousas, LA 70570
S.M.I.L.E. Community Action Agency, 501 St. John Street, Lafayette, LA 70501

Housing Authority of the City of Slidell, Post Office Box 1392, (Claude St. Apts. I & J), Slidell, LA 70459
St. Mary Community Action Agency Inc., 1407 Barrow Street, P.O. Box 271, Franklin, LA 70538
Consumer Credit Counseling, 615 Chevelle Court, Baton Rouge, LA 70806
City of Lafayette, 705 West University, Lafayette, LA 70506
St. James Parish Council, Department of Human Resources, P.O. Box 87, Convent, LA 70723
Ouachita Multi-Purpose Community Action Agency, 315 Plum, P.O. Box 3086, Monroe, LA 71210–3086
CADDO Community Action Agency, Inc., 1530 Arlington Street, Shreveport, LA 71103
Cenla Community Action Committee, Inc. 230 Bolton Avenue, Alexandria, LA 71301
Housing Authority of the City of Marshall, P.O. Box 609, 406 Poplar, Marshall, TX 75671
Neighborhood Housing Service of Shreveport, Inc., 3034 Lakeshore Drive, Shreveport, LA 71133
Consumer Credit Counseling Agency, Main Office, 600 Bres Avenue, Monroe, LA 71202, 2800 Youree Drive, Suite 369–A, Shreveport, LA 71104, 3917 Independence Drive, Alexandria, LA 71303

Maine

Credit Counseling Centers, Inc., 160 Fox Street, P.O. Box 1021, Portland, ME 04104
Senior Spectrum, P.O. Box 248, Gardiner, ME 04345
Bureau of Elder and Adult Service, State House Station, Augusta, ME 04333

Maryland

Anne Arundel County Economic Opportunity Committee, Inc., 251 West Street, Annapolis, MD 21401
Anne Arundel Department of Aging, 101 Old Solomons Island Road, Annapolis, MD 21401
Baltimore Urban League, 1150 Mondawmin Concourse, Baltimore, MD 21215
Home Ownership Institute, 417 E. Fayette Street, Suite 1125, Baltimore, MD 21202
St. Ambrose Housing Aid Center, 321 East 25th Street, Baltimore, MD 21218
Community Organized to Improve Life, 11 South Carrollton Ave., Baltimore, MD 21223
Neighborhood Service Center, Inc., 126 Port Street, Easton, MD 21601
Community Assistance Network, 7701 Dunmanway, Baltimore, MD 21222, 1504 Riverside Drive, Salisbury, MD 21801
Dorchester Community Development Corporation, 435 High Street, P.O. Box 549, Cambridge, MD 21613
Garrett County Community Action Committee, Inc., 360 West Liberty Street, P.O. Box 449, Oakland, MD 21550
Harford County Public Housing Agency, 15 South main Street, Suite 106, Bel Air, MD 21014
Housing Opportunities Comm. Of Montgomery County, 10400 Detrick Avenue, Kensington, MD 20895
Howard County, Housing and Community Development, 10650 Hickory Ridge Rd., Suite 200, Columbia, MD 21044
Maryland Rural Development Corp., 322 Market Street, P.O. Box 587, Denton, MD 21629
United Communities Against Poverty (UCAP), 1400 Doewood Lane Capitol Heights, MD 20743
Housing Oppor. Commission, Housing Inform. Center, 10400 Detrick Ave., Kensington, MD 20895
Shore Up, Inc., 520 Snowhill Road, P.O. Box 430, Salisbury, MD 21801
MAC Incorporated Area Agency on Aging, 1504 Riverside Drive, Salisbury, MD 21801

Massachusetts

Consumer Credit Counseling Services of Eastern Massachusetts, 8 Winter Street, Room 1210, Boston, MA 02108
Housing Allowance Project, Inc., 322 Main Street, Springfield, MA 01103
Lynn Department of Community Development, City Hall, Lynn, MA 01901
Rural Housing Improvement, Inc., Post Office Box 429, 218 Central Street, Winchendon, MA 01475
Construct, Inc., P.O. Box 582, 144 Main Street, Great Barrington, MA 01220
Roxbury Multi-Service Center, Inc., 317 Blue Hill Avenue, Roxbury, MA 02121

Michigan

Michigan Housing Counselors, G–1173 Balenger Road, Flint, MI 48504
Burton Neighborhood Housing Services, Inc., 1335 Kenneth Street, Burton, MI 48529
Detroit Non-Profit Housing, Inc., 1200 Sixth Street, Room 404, Detroit, MI 48226
Michigan Housing Counselors, 237 South Gratiot, Mt. Clemens, MI 48043
Oakland County Real Estate Section Corporation Counsel, 1200 North Telegraph Road, Suite 3, Pontiac, MI 48053
TULC Non-Profit Housing Corporation 3901 Grand River Avenue, Detroit, MI 48208
Credit Counseling Centers, Main Office 27780 Novi Road, Suite 250, Novi, MI 48050, Southfield, 503 Northland Towers W., 15565 Northland Dr., Southfield, MI 48075, Taylor, 8750 Telegraph Road, Suite 306, Taylor, MI 48180, Novi, 27780 Novi Road, Suite 105, Novi, MI 48377, Battle Creek, 131 E. Columbia Ave., Suite 207, Battle Creek, MI 49015, Saginaw, 5090 State Street, Suite 121A, Saginaw, MI 480603, Portage, 576 Romence Road, Suite 227, Portage, MI 49002, Flint, G–3310 Miller Road, Suite I, Flint, MI 48507, Lansing, 111 S. Waverly Rd., Lansing, MI 48917, Ypsilanti, Suite 606, 124 Pearl Street, Ypsilanti, MI 48917, Grand Rapids, 2922 Fuller NE, Suite 203B, Grand Rapids, MI 49505, Grand Rapids, 2417 Eastern, S.E., Suite 206, Grand Rapids, MI 49505, Detroit, 65 Cadillace Square, Suite 2701, Detroit, MI 48226, Mount Clemons, 37060 Garfield, Suite T–4, Mt. Clemens, MI 48043, Jackson, 211 West Ganson, Jackson, MI 49202, Troy, 675E W. Big Beaver Road, Suite 101, Troy, MI 48083, Farmington Hills, 28275 Orchard Lake Rd., Suite 115, Farmington Hills, MI 48334, Muskegon, 880 First Street, Suite 403, Muskegon, MI 49440, East Lansing, 411 Lake Lansing Road, Suite C105, East Lansing, MI 48823, Monroe, 25 S. Monroe Street, Suite 307, Monroe, MI 48161, Port Huron, Professional Cntr., 1530 Pine Grove Ave, #7, Port Huron, MI 48160
Credit Counseling Centers, Administrative Office, 27780 Novi Road, Suite 250, Novi, MI 48377–3427, 131 E. Columbia Ave, Suite 120, Battle Creek, MI 49015–3761, 2417 Eastern SE, Suite 206, Grand Rapids, MI 49507–3640, 2922 Fuller Avenue NE, Room 203B, Grand Rapids, MI 49505–3459, 211 W. Ganson, Jackson, MI 49201–1241, 576 Romence Road, Suite 220, Portage, MI 49002–3445, 612 S. Creyts Road, Suite C, Lansing, MI 48917–9201, 411 Lake Lansing Road, Suite C105, East Lansing, MI 48823–1439, The Bayview Building, 620 S. Lake Street, Suite 7, Marquette, MI 49855–5505, Plaza Central, 415 Stephenson Avenue, Iron Mountain, MI 49801–3400, 880 First Street, Suite 403, Muskegon, MI 49440
Housing Resource Center, 300 N. Washington Square, Suite 302 Lansing, MI 48933
Grand Rapids Urban League, 745 Eastern, S.E., Grand Rapids, MI 49503
Northwest Michigan Human Services Agency, Inc., 1640 Marty Paul, Cadillac, MI 49601, 441 Bay Street, Petoskey, MI 49684, 3963 Three Mile Road, Travers City, MI 49684
Nelson Neighborhood Improvement Association, Inc., 290 Monroe, Muskegon, MI 49441

Minnesota

Consumer Credit Counseling Service of Minnesota, 1111 Third Avenue South, Suite 336, Minneapolis, MN 55404
Pilot City Regional Center, 1315 Penn Ave. North, Minneapolis, MN 55411
Family Service of Winona, 157 Lafayette Street, 2nd Floor, Winona, MN 55987
Southern Minnesota Regional Legal Services, Inc., 300 Minnesota Building, 46 East 4th Street, St. Paul, MN 55101, 16174 Main Avenue, Prior Lake, MN 55372
Senior Housing Inc., 1885 University Ave. West, St. Paul, MN 55104
St. Paul Housing Information Office, 21 West Fourth Street, St. Paul, MN 55102
St. Paul Urban League, 401 Selby Avenue, St. Paul, MN 55107

Mississippi

Housing Education and Economic Development (HEED), 3405 Medgar Evers Boulevard, Jackson, MS 39213
Gulf Coast Community Action Agency, 500 24th Street, Gulfport, MS 39501
Division of Aging and Adult Services, 421 West Pascagoula, Jackson, MS 39203
Jackson County Civic Action Committee, 5343 Jefferson Street, Moss Point, MS 39562–8723

Missouri

St. Louis Urban League, City Office, 3701 Grandel Square, St. Louis, MO 63108
St. Louis Urban League, County Office, #72 Northland, Jennings, MO 63136
North East Community Action Corp., 16 N. Count, P.O. Box 470, Bowling Green, MO 63334
North Area Community Forum, 1005 Dunn Road, Florissant, MO 63031
Housing Options Provided for the Elderly (Elderly Only), 4265 Shaw, St. Louis, MO 63110
CMC Human Development Corp., P.O. Box 1038, Providence & 4th Avenue, Columbia, MO 65201
Housing Information Center, 3810 Paseo, Kansas City, MO 64109
Metropolitan Lutheran Ministry, 3031 Holmes, Kansas City, MO 64109
West Central Missouri Rural Development Corp., 1010 East Fourth Street, P.O. Box 125, Appleton City, MO 64724
Missouri Valley Human Resource Devel. Corp., 1415 South O'dell Avenue, P.O. Box 550, Marshall, MO 65340–0550
Northside Residential Housing, 5647 Delmar Boulevard, St. Louis, MO 63112
Consumer Credit Counseling Services, 1425 Hampton Avenue, St. Louis, MO 63139

Montana

North West Montana Human Resources, P.O. Box 1058, #8—1st and Main Building, Kalispell, MT 59903
Human Resources Development Counsel, 17 North 31st Street, P.O. Box 2016, Billings, MT 59103

Nebraska

Family Housing Advisory Services, Inc., 2416 Lake Street, Omaha, NE 68111
Lincoln Action Program, Inc., 2202 South 11th Street, Lincoln, NE 68502
Holy Name Housing Corporation, 3014 North 45th Street, Omaha, NE 68104
Nebraska Department of Aging, 101 Centennial Mall South, Lincoln, NE 68509
Goodwill Center for Independent Living, 1804 South Eddy Street, Grand Island, NE 68802

Nevada

Operation Life Community Development Corporation, P.O. Box 4397, Las Vegas, NV 89127
Poor People Pulling Together, 1801 North J Street, Las Vegas, NV 89106
Consumer Credit Counseling Service of Las Vegas, 3560 South Decatur, Suite 18, Las Vegas, NV 89103

New Hampshire

Consumer Credit Counseling Service of New Hampshire & Vermont, P.O. Box 676, Concord, NH 03302–0676

New Jersey

Bayonne Economic Opportunity Foundation, 555 Kennedy Boulevard, Bayonne, NJ 07002
Middlesex County Economic Opportunities Corporation, 841 Georges Road, 2nd Floor, North Brunswick, NJ 08902
A.I.M.S., 334 Stockton Street, #113, Perth Amboy, NJ 08861
County of Essex, Division on Aging, 15 S. Munn Avenue, E. Orange, NJ 07018
Housing Coalition of Middlesex County, 9 Elm Row, New Brunswick, NJ 08901
County of Bergen, Dept. of Human Services, Division of Aging, 21 Main Street, Hackensack, NJ 07601
Enterprise Community Development Corporation, 89 Orient Avenue, Jersey City, NJ 07305
Somerset County Office of Aging, N. Bridge and High Streets, Fair Housing Council of Northern New Jersey, 131 Main Street, Hackensack, NJ 07604
Check Mate Incorporated, 550 Cookman Avenue, Asbury Park, NJ 07712
Monmouth County Board of Social Services, Burlington & Kozlosik Road, P.O. Box 3000, Freehold, NJ 07728
Morris County Fair Housing Council, 19 Market Street, Post Office Box 773–M, Morristown, NJ 07960
Urban League of Union County, 272 North Broad Street, Elizabeth, NJ 07208
City of East Orange, Housing Consumer Counseling, 122 Brighton Avenue, East Orange, NJ 07107
Paterson Task Force, Community Action Inc., 155 Ellison Street, Paterson, NJ 07505
Urban League of Bergen County, 106 West Palisade Avenue, Englewood, NJ 07631
Urban League of Essex County, 3 Williams Street, Suite 300, Newark, NJ 07102
Atlantic Human Resources, Inc., 10 S. Tennessee Avenue, Atlantic City, NJ 08401
Ocean Community Economic Action Now, Inc., 40 Washington Street, Toms River, NJ 08753
Jersey Counseling & Housing Development Inc., 1840 S. Broadway, Camden, NJ 08104
Camden County Office, Gloucester Township Office, 29 S. Blackhorse Pike, Blackwood, NJ 08012
Senior Citizens United, 146 Blackhorse Pike, Mt. Ephriam, NJ 08059
Tri-Country Community Action Agency, Inc., 143 West Broad, Bridgeton, NJ 08302, 10 Washington Street, Bridgeton, NJ 08302, 319 Landis Avenue, Vineland, NJ 08360, 189 East Broadway, Salem, NJ 08079
Atlantic County Department of Social Services, 1333 Atlantic Avenue, Atlantic City, NJ 08401
Fair Housing Council of Northern New Jersey, 131 Main Street, Hackensack, NJ 07604
Monmouth County Office of Aging, Hall of Records, Freehold, NJ 07728
The New City of New Brunswick, 390 George Street, New Brunswick, NJ 08901
Somerset County Office of Aging, P.O. Box 3000, Somervilee, NJ 08876–1262
The Home Partnership Inc., 450–7th Street, Hoboken, NJ 07030
Catholic Charities Diocese of Metuchen, 540–550 Route 22 East, Bridgewater, NJ 08807

New Mexico

Consumer Credit Counseling Service of New Mexico, 2727 San Pedro, NE, Albuquerque, NM 87110
Guadalupe Economic Service Corporation, 200 "A" Barcelona, El Paso, TX 79905
Consumer Credit Counseling of Albuquerque, Sequoia Sq., 3320 Coors, NW, Suite 2, Albuquerque, NM 87120–1230
Consumer Credit Counseling of New Mexico, Inc., 4 Corners Branch Off., 300 W. Arrington, Farmington, NM 87401

New York

L.E.S. Coalition Housing Development, 187–89 Avenue B, New York, NY 10009
New York Hispanic Housing Coalition, 209 East 3rd Street, P.O. Box 880, Stuyvesant Station, New York, NY 10009
Brooklyn Neighborhood Improvement Association, 648 Washington Avenue, Brooklyn, NY 11238
Commission on Human Rights, Neighborhood Stabilization Program, 1368 Fulton St., 3rd Flr., Brooklyn, NY 11216
Renaissance Development Corp., P.S. 332, Christopher Avenue, Room 129, Brooklyn, NY 11212
Commission on Human Rights, 3442 Fulton Street, Brooklyn, NY 11208
Westchester Residential Opportunities, Inc., 470 Mamaroneck Avenue, White Plains, NY 10605
South Bronx Action Group, Inc., 384 East 149th Street, Suite 220, Bronx, NY 10455
Neighborhood Stabilization Program, Commission on Human Rights, 4101 White Plains Road, Bronx, NY 10460
Bellport, Hagerman, East Patchogue, Alliance, 1731 Montauk Highway, Bellport NY 11713
Family Service League of Suffolk County, Inc., 642 New York Avenue, Huntington, NY 11953
Wyandanch Community Development Corporation, 1527 B. Straight Path, Wyandanch, NY 11798
New Rochelle CAP, 95 Lincoln Avenue, New Rochelle, NY 10801
Suffolk County Services, 550 Smithtown-by Pass, Room 220, Hauppauge, NY 11787
Suffolk County Department for the Aging, 395 Oser Avenue, Hauppauge, NY 11788–3631
Family Service Association, of Nassau County, Inc., 129 Jackson Street, Hempstead, NY 11550
Elmcor Youth and Adult Activities, 107–20 Northern Boulevard, Corona, NY 11368
Commission of Human Rights, Neighborhood Stabiliz. Program, 89–31 161st Street, Room 210, Jamaica, NY 11432
Baisley Park Neighbors, 114–02 Guy Brewer Boulevard, Jamaica, NY 11433
Margaret Community Corporation, 1920 New Haven Avenue, Far Rockaway, NY 11691
Orange County Rural Development, Advisory Corporation, 223 Greenich Avenue, Goshen, NY 10924
Consumer Credit Counseling Services of Central New York, Inc., 321 Genesee Street, Utica, NY 13501
Cornell Cooperative Extention, 50 West High Street, Ballston Spa, NY 12020
Capitol Hill Improvement Corp., 260 Lark Street, Albany, NY 12210
SHARP Committee, Inc., P.O. Box 362, Phoenicia, NY 12464
Metro-Interfaith Services, Inc., 21 New Street, Binghamton, NY 13903
Cayuga County Homesite Development Corporation, 60 Clark Street, Auburn, NY 13021
Chenango Home Improvement Program, Inc., 2 Merrill Street, Norwich, NY 13815
CCCS of Central New York, Inc., 120 East Washington Street, 1006 University Building, Syracuse, NY 13202–4093
Consumer Credit Counseling Services of Central New York, Inc., 321 Genesee Street, Utica, NY 13502
Chautauqua Opportunities, Inc, 188 South Erie Street, Mayville, NY 14701, 5th Floor, Municipal Bldg., 200 East 3rd Street, Jamestown, NY 14701, 341 Central Avenue, Dunkirk, NY 14048
Buffalo Urban League, 25 Genessee Street, Buffalo, NY 14203
Fillmore Leroy Area Residents, Inc., (FLARE), 307 Leroy Avenue, Buffalo, NY 14214
Housing Council in Monroe County Area, Inc., 111 East Avenue, Suite 200, Rochester, NY 14604
Rural Sullivan County Housing Opportunities, Inc., 375 Broadway, Monticello, NY 12701
United Tenants of Albany, Inc., 33 Clinton Street, Albany, NY 12207
Housing Assistance Program of Essex County, Inc., Church Street, P.O. Box 157, Elizabethtown, NY 12932
Stoneleigh Housing, Inc., 120 E. Center Street, Canastota, NY 13032
Lewis County Opportunities, Inc., P.O. Box 111, New Bremen, NY 13367
Albany County Rural Housing Alliance, Inc., P.O. Box 407, 34 South Main Street, Voorheesville, NY 12186
Albany Housing Coalition, Inc., 151 Clinton Ave., Albany, NY 12210
Cortland Housing Assistance Council, Inc., 10.5 Main Street, Cortland, NY 13045
Urban League of Onondage County, Inc., 505 E. Fayette Street, Syracuse, NY 13202
Rensselaer County Community Housing Resource Board, Inc., 85 S. Main Street, Castle on the Hudson, NY 12033
Troy Neighborhood Council, Inc., 415 River Street, 3rd Floor, Troy, NY 12180
Better Neighborhoods, Inc., 986 Albany Street, Schenectady, NY 12307–1513
Housing Assistance Center, 1233 Main Street, Buffalo, NY 14209, (Tues & Thu), Maryvale Comm. Cntr., 3409 Genesee St., Cheektowaga, NY 14225, (Monday) Lower Level—City Hall, 200 Niagara St., Tonawanda, NY 14150, (Tuesday), Lackawanna City Hall, Room 309, Lackawanna, NY 14218
Housing Development Council of Orleans County, 53 North Main Street, Albion, NY 14411
Community Action in Self Help, Inc., 9 Broad Street, Lyons, NY 14489
Troy Rehabilitation and Improvement Program, Incorporated, 415 River Street, 3rd Floor, Troy, NY 12181

North Carolina

Family Housing Services, Alexander Street Center, 910 N. Alexander Street, Charlotte, NC 28205
Cumberland County Community Action Program, Inc., 328 Gillespie Street, Fayetteville, NC 28302
Johnston Lee Community Action, Inc., 1102 Massey Street, Smithfield, NC 27577
Joint Orange-Chatham Community Action, Inc., P.O. Box 27, Pittsboro, NC 27312
Consumer Credit Counseling of Western North Carolina, 50 S. French Broad Ave., Suite 236, Asheville, NC 28802
Consumer Credit Counseling Services of Forsyth County, 926 Brookstown Ave., Winston Salem, NC 27101–3644
Northwestern Regional Housing Authority, P.O. Box 2510, Boone, NC 28607
North Carolina Client Councils, 216 Church Street, Smithfield, NC 27577
Raleigh Housing Authority, 618 Tucker Street, Raleigh, NC 27603
Isothermal Planning & Development Commission, P.O. Box 841, Rutherfordton, NC 28139
Mid-East Commission, One Harding Square, Washington, NC 27889
Northwest Piedmont Council of Government, 280 South Liberty Street, Winston-Salem, NC 27101
Sandhills Community Action Program, Inc, 103 Saunders Street, Carthage, NC 28327
Council on Aging of Wake County, 1001 Navaho Drive, Suite 213, Raleigh NC 27609

North Dakota

Community Action Opportunity, Inc., 420 3rd Street, S.W., Post Office Box 1057, Minot, ND 58702–1057
Community Action and Development Program, 652 West Villard, Dickinson, ND 58601
Community Action Program, Region VII, Inc., 2105 Lee Avenue, Bismarck, ND 58504
Community Action, Region VI, Inc., Highway 281 North, Post Office Box 507, Jamestown, ND 58402

Quad County Community Action Agency, 27½ South 3rd Street, Grand Forks, ND 58201
Southeastern North Dakota, Community Action Agency, 3233 South University Drive, Fargo, ND 58104

Ohio

Better Housing League/Greater Cincinnati, 2400 Reading Rd., Community Chest Bldg., RM 404, Cincinnati, OH 45202
Montgomery County Community Action Agency (MCCAA), 318 S. Main Street, P.O. Box 4008, Dayton, OH 45401
Luthern Housing Corporation Buckeye-Woodland Office, 12205 Forest Avenue, Cleveland, OH 44120
Luthern Housing Corporation, West Side Office, 1967 West 45th Street, Cleveland, OH 44102
Luthern Housing Corporation, 4208 Prospect Avenue, Cleveland, OH 44103
Urban League of Greater Cleveland, 1255 Shaker Boulevard, Cleveland, OH 44115
West Side Multi-Service Corporation, 4115 Bridge Avenue, Cleveland, OH 44113
Youngstown Area Urban League, 123 East Rayen Avenue, Youngstown, OH 44503
Children's and Family Service Consumer Credit Counseling, 535 Marmion Avenue, Youngstown, OH 44502
Catholic Service League, Inc., 5385 Market Street, Boardman, OH 44512
Family & Community Serv., Catholic Charities/Columbiana Cnty., Box 413, 996½ N. Market St., Lisbon, OH 44432
Fair Housing Contact Service, 333 South Main Street, Akron, OH 44308
Family & Community Services of Catholic Charities, Inc., 302 North Depeyster Street, Kent, OH 44240
Housing Directions of Greater Toledo, 442 Floyd at Collingwood, Toledo, OH 43620
CONSOC Consultants, 1889 East Livingston Avenue, Columbus, OH 43209
Consumer Credit Counseling of Columbus, 697 East Broad Street, Columbus, OH 43215
Ironton-Lawrence County Area Community Action Organization, 305 N. Fifth Street, Ironton, OH 45638
Marion-Crawford Community Action Commission, 531 N. State St., P.O. Box 779, Marion, OH 43302
Portsmouth-Inner City Corporation, Post Office Box 847, 1206 Waller Street, Portsmouth, OH 45662
Regional Housing Center, 595 East Broad Street, Post Office Box 7050, Columbus, OH 43205
Consumer Protection Association, 3101 Euclid Avenue—Room 603, Cleveland, OH 44115
Family Service Associations, 1704 North Road S.E., Heaton Square, Suite 2, Warren, OH 44484
Catholic Service League, Inc., 4436 Main Avenue, P.O. Drawer 1338, Ashtabula, OH 44004–1863
The Catholic Community League of Canton, Inc., 625 Cleveland Avenue, N.W., Canton, OH 44702
The Catholic Service League of Western Stark County, Inc., 1807 Lincoln Way East, Massillon, OH 44646
Catholic Community Services, Inc. of Trumbull County, 2932 Youngstown Road, S.E., Warren, OH 44484

Oklahoma

Deep Fork Community Action Foundation, Inc., 320 Northwood Drive, P.O. Box 670, Omulgee, OK 74447
Housing Authority of the City of Hugo, 300 13th Place, P.O. Box 727, Hugo, OK 74743
Tulsa Urban League, 240 East Apache, Tulsa, OK 74105
Washington-Nowata County, Community Action Foundation, 414 Sequoia, Dewey, OK 74029
Credit Counseling Centers of Oklahoma, Inc., 2140 South Harvard, P.O. Box 4450, Tulsa, OK 74159
Wa-Ro-Ma Tri-County Community Action Foundation, 209 S. Broadway, Coweta, OK 74429, 316 S. Cherokee, Claremore, OK 74017, 405 NE 1st, Pryor, OK 74361
Housing Auth. of the Seneca-Cayuga Tribe of Oklahoma, 3606 Sencay Avenue, P.O. Box 1304, Miami, OK 74354
Housing Authority of Oklahoma, Cherokee Nation, 1500 Hansley Dr., P.O. Box 1007, Tahlequah, OK 74465
United Community Action Program, P.O. Box 384, 5th & Granite, Pawnee, OK 74058
Housing Auth. of Osage Tribe of Indians, 3 Miles North of Homing, Highway 99D, PO Box 517, Hominy, OK 74035
Choctaw Housing Authority, 1005 South 5th, P.O. Box G, Hugo, OK 74743
Association of South Central Oklahoma Governments, 802 Main Street, P.O. Box 1647, Duncan, OK 73534
Consumer Credit Counseling Service, 3230 North Rockwell Street, P.O. Box 1789, Bethany, OK 73008–1789
Consumer Credit Counseling Service, Building 461, Room 109, P.O. Box 75405, Tinker Air Force Base, OK 73147
Consumer Credit Counseling Service, 501 C Ave., Suite 3081, Lawton, OK 73502
Consumer Credit Counseling Service, 601 N. Porter, Norman, OK 73071
Consumer Credit Counseling Service, 614 NE 4th Street, Suite 203, Oklahoma, OK 73104
Consumer Credit Counseling Service, 317A W. Cherokee, Enid, OK 73701
Consumer Credit Counseling Service, 123 West 7th Street, Stillwater, OK 74074
Elk City Housing Authority, 1510 West 9th Street, Elk City, OK 73648
Sac and Fox Tribe of Oklahoma Housing Authority, 5 North Kimberly, Shawnee, OK 74802
Housing Authority of the Chickasaw Nation, 401 Country Club, Ada, OK 74821
Housing Authority Absentee-Shawnee Tribe of Indians, 107 North Kimberly, Shawnee, OK 74802

Oregon

Human Solutions, Inc., 2900 S.E. 122nd Avenue, Portland, OR 97236
Oregon Housing and Associated Services, Inc., 525 Glen Creek Road, NW, Suite 210, Salem, OR 97304
Housing Services of Oregon, 34420 SW Tualatin Valley Highway, Hillsboro, OR 97123
Umpqua Community Action Network, 2448 West Harvard Blvd., Roseburg, OR 97470
Access, 510 E. Main Street, Patty Claeys, Executive Director, Medord, OR 97504

Pennsylvania

Delaware County H.O.P.E., Philadelphia Council for Community Advancement, 511 Welsh St., Chester, PA 19013
Urban League of Metropolitan Harrisburg, Inc., 28 North Second Street, Harrisburg, PA 17101
Tabor Community Services, Inc., 439 East King Street, Lancaster, PA 17602
Consumer Credit Counseling Service of Lehigh Valley, Inc., 3671 Crescent Court East, Whitehall, PA 18052
Consumer Credit Counseling Service of Western Pennsylvania, Inc., 309 Smithfield Street, Pittsburgh, PA 15222
Elder-ado, 320 Brownsville Road, Pittsburgh, PA 15210
Northwest Counseling Service, Inc., 5601 N. Broad Street, Suite 209, Philadelphia, PA 19141
Housing Association of Delaware Valley, Information Program, 1314 Chestnut St., Suite 900, Philadelphia, PA 19107
Housing Council of York, 116 North George Street, York, PA 17401
Housing and Neighborhood Development Services, Inc., (H.A.N.D.S.), 139 East 12th Street, Erie, PA 16501

Warren Forest Counties Economic Opportunities Council, P.O. Box 547, Warren, PA 16365
Commission of Economic Opportunity of Luzerne County, 211–213 South Main Street, Wilkes-Barre, PA 18701
Berks Community Action Program, 227–229 North Fourth Street, Reading, PA 19601
Philadelphia Council For Community Advancement, 100 N. 17th Street, Suite 600, Philadelphia, PA 19103
Philadelphia Housing Development Corporation, 1234 Market Street—10th Floor, Philadelphia, PA 19107
Urban League of Philadelphia Education Foundation, 4601 Market Street, Suite 2, South Philadelphia, PA 19139
Tenants' Action Group of Philadelphia, 311 S. Juniper Street, Room 1000, Philadelphia, PA 19107
Greater Erie Community Action Committee, 18 West 9th Street, Erie, PA 16501
Washington/Greene Community Action Corporation, 22 West High Street, Waynesburg, PA 15370
Bayfront NATO, Inc., Martin Luther King Center, 312 Chestnut Street, Erie, PA 16507
Booker T. Washington, Inc., 1720 Holland Street, Erie, PA 16503
Urban League Housing Counseling Service, Inc., 304 Ross Street, Pittsburgh, PA 15219
Council of Three Rivers American Indian Center, Inc., 200 Charles Street, Pittsburgh, PA 15238
Fayette County Community Action Agency, 92 N. Beeson Blvd., Uniontown, PA 15401
Tri-County Partnership for Independent Living, 120 E. Hallan Avenue, Washington, PA 15301
Community Resources for Independents, Inc., 2222 Filmore Avenue, Erie, PA 16506–2954
H.A.N.D.S., Inc., 139 East 12th Street, Erie, PA 16501
Allied Human Services Association, 44 S. Beaver Street, New Castle, PA 16101
Mercer County Community Action Agency, 309 Ohio Street, Sharon, PA 16146
Shenago Valley Urban League, 39 Chestnut Street, Sharon, PA 16146
Center for Independent Living of SW PA, 7110 Penn Avenue, Pittsburgh, PA 15208
Housing Opportunities, Inc., 133 7th Street, Post Office Box 9, McKeesport, PA 15134
Center of Independent Living of South Central PA, 1501–11th Avenue—Mezzanine, Altoona, PA 16601
Garfield Jubilee Association, 5138 Penn Avenue, Pittsburgh, PA 15224

Puerto Rico

Instituto Ponceno del Hogar, Calle Sol Esq. Capitan Correa, Ponce, Puerto Rico 00733
Ceiba Housing & Economic Development Corporation, Ave. Lauro Pinero 252 (altos), Ceiba, Puerto Rico 00636
Congresso de Trabajadores y Consumidores de Puerto Rico, Calle Los Angeles 707, Santurce, Puerto Rico 00910

Rhode Island

Blackstone Valley Community Action Program, Inc., 129 School Street, Pawtucket, RI 02860
Urban League of Rhode Island, 246 Prarie Avenue, Providence, RI 02905
Blackstone Valley Community Action Program, Inc., 129 School Street, Pawtucket, RI 02860
Urban League of Rhode Island, 246 Prairie Avenue, Providence, RI 02905

South Carolina

Aiken County Community Action—Aiken Office, PO Box 2066, 291 Beaufort Street, Aiken, SC 29801
Cayce Office, 650 Knox Abbott Drive, Cayce, SC 29003
Barnwell Office, 2229A Allen Street, Barnwell, SC 29003
Carolina Regional Legal Services Corporation, Post Office Box 479, 279 West Evans Street, Florence, SC 29501
Chesterfield-Marlboro Economic Opportunity Council, Inc., PO Box 866, 71 Second Street, Cheraw, SC 29520
Consumer Credit Counseling Service, 2700 Middleburg Drive, Suite 201, Columbia, SC 29204
Greenville Urban League, Post Office Box 10161, 15 Rigency Hill Drive, Greenville, SC 29603
Palmetto Legal Services, Columbia Office, Post Office Box 2267, 2109 Bull Street, Columbia, SC 29202
Orangeburg Office, PO Box 1646, 304 St. John Street, Orangeburg, SC 29116
Sumter Office, PO Box 1136, 35 East Calhoun Street, Sumter, SC 29151
Lexington Office, 401 W. Main Street, Lexington, SC 29072
Pee Dee Community Actions, Inc., Post Office Drawer 12670, 411 South Jarrott, Florence, SC 29501
Administrative Services Office, 2685 S. Irby Street, Florence, SC 29504
Piedmont Legal Services, Inc., 148 East Main Street, Spartanburg, SC 29504
Spectrum Institute, 1108 Woodrow, Post Office Box 12615, Columbia, SC 29211–2615
Trident United Way, Post Office Box 20696, 32 Ann Street, Charleston, SC 29413–0696
Wateree Community Action Agency, Post Office Box 1838, 13 South Main Street, Sumter, SC 29150

South Dakota

Consumer Credit Counseling Service of the Black Hills, Post Office Box 14, 621 6th St., #201, Rapid City, SD 57709
Luthern Social Services Consumer Credit Counseling, 617 West 11th Street, Sioux Falls, SD 57104

Tennessee

Memphis Urban League, Inc., 2279 Lamar Avenue, Memphis, TN 38114
Housing Opportunities Corporation, 147 Jefferson Avenue, Suite 800, Memphis, TN 38103
Memphis Area Legal Services, 109 N. Mid America Mall, Memphis, TN 38103
West Tennessee Legal Service, Inc., 210 West Main Street, Jackson, TN 38302–2066
Knoxville Area Urban League, P.O. Box 1911, 2416 Magnolia Avenue, Knoxville, TN 37901
Metropolitan Action Commission, 1624 Fifth Avenue North, Nashville, TN 37208
Metropolitan Social Services, 25 Middleton Street, Nashville, TN 37210
Nashville Urban League, 1219 9th Avenue North, Nashville, TN 37208
Target Community Association, P.O. Box 52, Pucaski, TN 38478
Hope, Incorporated, 1501 Herman Street, Suite "S", Nashville, TN 37208
Metropolitan Development and Housing Agency (MDHA), 172 2nd Avenue North, Suite 102, Nashville, TN 37201
Citizens for Affordable Housing, 1719 West End Ave., Suite 607, Nashville, TN
Department of Human Services, City of Chattanooga, 501 11th Street, West Chattanooga, TN 37402
Douglas-Cherokee Economic Authority, Inc., P.O. Box 1218, 525 East North First Street, Morristown, TN 37814
Consumer Credit Counseling Service of Greater Knoxville, Inc., 1012 Heiskell Avenue, Knoxville, TN 37921
East Tenn. Human Resource Agency, 408 North Cedar Bluff Road, Suite 150, Knoxville, TN 37923
Upper East Tennessee Human Development Agency, 301 Louis Street, Kingsport, TN 37662

Texas

Consumer Credit Counseling Service of Greater Dallas, 1949 Stemmons Freeway, Suite 200, Dallas, TX 75207–3104
Consumer Credit Counseling of Fort Worth, 807 Texas Street, Suite 100, Forth Worth, TX 76102

Consumer Credit Counseling Service of North Texas, 1006 West University, McKinney, TX 75069
Housing Authority of the City Of Marshall, Box 609, 406 Poplar Street, Marshall, TX 75670
Housing Opportunities of Ft. Worth, 1305 West Magnolia Street, Ft. Worth, TX 76104
Dallas Urban League, Inc., 3625 North Hall Street, Suite 700, Dallas, TX 75219–5106
Consumer Credit Counsel Of Arlington, 201 E. Abram, Suite 730, Arlington, TX 76011
Consumer Credit Counseling Of Carrollton, 1525 N. I–35 #206, Carrollton, TX 75006
Consumer Credit Counseling of Irving, Parks Oak Plaza, 2621 W. Airport Frwy., Suite 108, Irving, TX 75062
Consumer Credit Counseling Of Longview, Bank of Longview Office Center, 1800 N.W. Loop 281, Suite 204
Consumer Credit Counseling Of Mesquite, 18601 LBJ Frwy, Town E. Tower #500, Mesquite, TX 75150
Consumer Credit Counseling Of Redbird, 7125 Marvin D. Love Frwy. #102, Dallas, TX 709–3000
Consumer Credit Counsel. Of Richardson, First City Bank Ctr., 100 N. Central Expwy., #400, Richardson, TX 75081
Consumer Credit Counseling Of Tyler, 11 American Center, 821 Loop 323 E.S.E., Suite 375, Tyler, TX 75701
Consumer Credit Counseling Of Wichita Falls, 2301 Midwestern Pkwy., Suite 201, Wichita Falls, TX 76308
Consumer Credit Counseling Of Athens, 228 North Prairie Ville, Athend, TX 75751
Consumer Credit Counseling Of Corsicana, 200 North 13th Street, Suite 208, Corsicana, TX 75110
Consumer Credit Counseling Of DeSoto, 1229 Pleasant Run, Suite 122, DeSoto, TX 75115
Consumer Credit Counseling Of Garland, 705 West Avenue B, Suite 601, Garland, TX 75040
Consumer Credit Counseling Of Grand Prairie, 801 West Freeway, Nations Bank Bldg., Grand Prairie, TX 75051
Consumer Credit Counseling Of Marshall, Travis Terrace Bldg., 505 E. Travis Street, Suite 111, Marshall, TX 75670
Consumer Credit Counseling Of Mesquite, 18601 LBJ Freeway, Town E. Tower #500, Mesquite, TX 75150
Consumer Credit Counseling Of Rockwall, Ridge Point Center, 113 Kensway, Suite 201–4, Rockwall, TX 75087
Consumer Credit Counseling Of Waxahachie, 800 Ferris Avenue, Suite 225, Waxahachie, TX 75165
Consumer Credit Counseling Of White Rock, 10440 East N W Hwy., Suite 302, White Rock, TX 75238
Central Texas Council of Governments, P.O. Box 729, 302 East Central, Belton, TX 76513
Dallas County Community Action Committee, Inc., 2121 Main Street, Suite 100, Dallas, TX 75201
Greater El Paso S.E.R., 4838 Montana Avenue, El Paso, TX 79903
Guadalupe Economic Services Corporation, 200 (A) Barcelona, El Paso, TX 79905
Guadalupe Economic Services Corporation (GESC), 1416 First Street, Lubbock, TX 79401
Wesley Community Center, 1605 S. Roberts, Amarillo, TX 79101
West Texas Opportunities, Inc., 908 S. Colorado Street, Midland, TX 79701
West Texas Opportunities, Inc., 500 W. 10th Street, Odessa, TX 70760
Austin Housing Authority Social Services Division, 1640 E. 2nd Street, P.O. Box 6159, Austin, TX 78702
Child and Family Service, Consumer Credit Counsel. Div., 1221 W. Ben White Blvd., #112–B, Austin, TX 78704
Community Action Division, Housing Counseling Program, 115 Plaza de Armas, Suite 200, San Antonio, TX 78207
Consumer Credit Counseling Service Of San Antonio, 4203 Woodcock Drive, Suite 251, San Antonio, TX 78228
Colonias De Valle, 1203 East Ferguson, P.O. Box 764, Pharr, TX 78577
Community Development Corporation of Brownsville, 1150 E. Adams Street, 2nd Floor, Brownsville, TX 78520
Consumer Credit Counseling Service of South Texas, 5842 South Staples, Corpus Christi, TX 78413
L'Anmar Communications, Inc., 301 South Frio, San Antonio, TX 78207
Community Care Housing Development Corp. of Houston, 4625 North Freeway, Suite 260, Houston, TX 77091
Consumer Credit Counseling Services, 4203 Fannin, Houston, TX 77004
Organization of Christians Assisting People, 600 Faley, Port Arthur, TX 77640
Houston Area Urban League, 3215 Fannin, Houston, TX 77004
Housing Opportunities Incorporated, 2900 Woodbridge, Suite 302, Houston, TX 77087
Gulf Coast Community Service Association, 6300 Bowling Green, P.O. Box 14107, Houston, TX 77021

Utah

Community Action Program, 764 South 200 West, Salt Lake City, UT 84101
Mountainland Community Action, 257 East Center, Suite #201A, Provo, UT 84601
Weber State College, 3750 Harrison Boulevard, Ogden, UT 84408–4025

Vermont

No HUD-Approved Housing Counseling Agencies Located within the State of Vermont

Virginia

Monticello Area Community Action Agency, 215 East High Street, Suite No. 7, Charlottesville, VA 22901
Hampton Redevelopment and Housing Authority, 22 Lincoln Street, P.O. Box 280, Hampton, VA 23669
Newport News Office of Human Affairs, 2410 Wickham Avenue, P.O. Box 37, Newport News, VA 23607
Housing and Rehabilitation City of Hampton, City Hall, 22 Lincoln Street, Hampton, VA 23669
Prince William Cooperative Extension Service, 8805 Sudley Road, Suite 200, Manassas, VA 22110–4796
Southeastern Tidewater Opportunities Project (STOP), 415 St. Paul's Boulevard, P.O. Box 1078, Norfolk, VA 23501
Portsmouth Redevelopment and Housing Authority, 339 High Street, Portsmouth, VA 23705–1098
People Incorporated, 918 West Main Street, Abingdon, VA 24210
Housing Opportunity Made Equal (HOME), 1218 W. Cary Street, Richmond, VA 23219
Richmond Urban League, 101 East Clay Street, Richmond, VA 23219
Total Action Against Poverty (TAP), 702 Shenandoah Avenue, N.W., P.O. Box 2868, Roanoke, VA 24001–2868
City of Roanoke Redevelopment and Housing Authority, 2624 Salem Turnpike, N.W., Roanoke, VA 24017
Fairfax County Finance Education Center, 12000 Gov't Center Parkway, Suite 318, Fairfax, VA 22035–0071
Senior Citizens Employment & Services Inc., 121 North St. Asaph Street, Alexandria, VA 22314
Arlington Agency on Agency, 1801 N. George Mason Drive, Arlington, VA 22207–1999

Washington

Aberdeen Neighborhood Housing Services, 703 East First, Aberdeen, WA 98520
Fremont Public Association, Post Office Box 31151, 3601 Fremont Avenue North, Seattle, WA 98103
The Urban League of Metropolitan Seattle, 105–14th Avenue, Seattle, WA 98122
Pierce County Community Action Agency, 8811 South Tacoma Way,

Bldg. 2, Room 108, Tacoma, WA 98409
Spokane Neighborhood Action Programs, Spokane Housing Resources, South 500 Stone, Spokane, WA 99202

West Virginia

Consumer Credit Counseling Service, 51 11th Street, Wheeling, WV 26003
Consumer Credit Counseling Service, Inc., Family Services, Inc., 1304 Fifth Avenue, Huntington, WV 25701
Criss Cross, Inc., 166 Washington Avenue, P.O. Box 1831, Clarksburg, WV 26301
Consumers Credit Counseling Service of Mid-Ohio Valley, 2715 Murdoch Avenue, R–4, Parkersburg, WV 26101
Consumer Credit Counseling Service of the Kanawha Valley, P.O. Box 3720, Charleston, WV 25301
Consumer Credit Counseling Service of Bluefield, Inc., P.O. Box 6282, Bluefield, WV 24701
Coordinating Council for Independent Living, 1000 Elmer W. Prince Drive, Morgantown, WV 26505
Consumer Credit Counseling of S. WV, Inc., P.O. Box 2129, Beckley, WV 25802
Consumer Credit Counseling, 219 Walnut Street, Morgantown, WV 26505

Wisconsin

Lake Superior Self-Help Homes, Inc., 514½ West Second Street, Ashland, WI 58409
Community Advocates, 4906 West Fond du Lac Avenue, Milwaukee, WI 53216
Milwaukee United for Better Housing, Inc., 4011 West Capitol Drive, Milwaukee, WI 53216
Westside Home Buyer's Clinic, 3209 W. Highland Boulevard, Milwaukee, WI 53208
The Racine/Kenosha Community Action Agency, Inc., 72 Seventh Street, Racine, WI 53403
Neighborhood Housing Services of Kenosha, Inc., 5605 16th Avenue, Kenosha, WI 53140
Community Action, Inc., 1013 Burbank Avenue, Janesville, WI 53546
Community Action, Inc., 503 East Walworth Ave., Delavan, WI 53115
Dane County Housing Authority, 2825 University Avenue, Madison, WI 53705
Coalition of Wisconsin Aging Groups, Inc., 1245 East Washington Avenue, Madison, WI 53703–3040
Tenant Resource Center, 14 West Mifflin Street, Madison, WI 53703

Wyoming

No HUD-Approved Housing Counseling Agencies Located within the State of Wyoming.

[FR Doc. 93–5341 Filed 3–8–93; 8:45 am]
BILLING CODE 4210–27–M

Office of Administration

[Docket No. N–93–3581]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 22, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Part 890—Supportive Housing for Persons with Disabilities Section 890.310—Duration of Section 811 Fund Reservations (FR–2974)
Office: Housing
Description of the Need for the Information and Its Proposed Use: When a HUD Field Office Manager determines that an owner under the Section 811 Capital Advance Program is not making satisfactory progress toward initial closing, a Notice of Intent to Cancel the Section 811 Fund Reservation is issued. The owner will have 30 days in which to appeal the decision.
Form Number: None
Respondents: Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	32		1		.5		16

Total Estimated Burden Hours: 16

Status: New

Contact: Evelyn R. Berry, HUD, (202) 708–2866; Angela Antonelli, OMB, (202) 395–6880

Dated: February 22, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Part 889—Supportive Housing for Elderly Section 889.310—Duration of Section 202 Fund Reservation (FR-2956)
Office: Housing
Description of the Need for the Information and its Proposed Use: When a HUD Field Office Manager determines that a borrower under the Section 202 Capital Advance Program is not making satisfactory progress toward initial closing, a Notice of Intent to Cancel the fund reservation is issued to the owner. The owner will have 30 days in which to appeal the decision.
Form Number: None
Respondents: Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	30		1		.5		15

Total Estimated Burden Hours: 15
Status: Extension
Contact: Evelyn R. Berry, HUD, (202) 708–2866; Angela Antonelli, OMB, (202) 395–6880

Dated: February 22, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Local Appeals to Single-Family Mortgage Limits
Office: Housing
Description of the Need for the Information and its Proposed Use: The FHA single-family maximum mortgage limit is $67,500, but may be increased up to $124,875 in high-cost areas. HUD will raise the limits above $67,500 if housing sales data is received from interested parties (primarily homebuilders, mortgage lenders and realtors) which justifies increase.
Form Number: None
Respondents: Businesses or Other For-Profit
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	800		1		40		3,200

Total Estimated Burden Hours: 3,200
Status: Extension
Contact: Maynard Curry, HUD, (202) 708–2676; Angela Antonelli, OMB, (202) 395–6880

Dated: February 22, 1993.

[FR Doc. 93–5342 Filed 3–8–93; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–93–3582]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of responses, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone

numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 18, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 202 Supportive Housing for the Elderly—Application Submission Requirements (FR–3407)
Office: Housing
Description of the Need for the Information and Its Proposed Use: This collection is necessary to assist HUD in determining applicant eligibility and capacity to develop housing for the elderly within statutory and problem criteria. A thorough evaluation of the applicants' qualifications and capabilities is critical to protect the government's financial interest and to mitigate any possibility of fraud, waste or mismanagement of public funds.
Form Number: HUD–92015–CA
Respondents: Non-Profit Institutions
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92015–CA	750		1		38.3		28,725
Applicants	38		1		4.0		152

Total Estimated Burden Hours: 28,877
Status: Reinstatement
Contact: Evelyn Berry, HUD, (202) 708–2866; Angela Antonelli, OMB, (202) 395–6880

Dated: February 18, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: (1). Schedule of Subscribers and GNMA II Contractual Agreement. (2). Schedule of Subscribers Addendum for Construction Loan Certification.
Office: Government National Mortgage Association
Description of the Need for the Information and Its Proposed Use: The forms are used to provide GNMA with a listing of subscribers and other information needed to prepare mortgage-backed securities; and to provide the contractual agreement between the issuer and GNMA under the GNMA II program.
Form Number: HUD–11705 and 1735
Respondents: Businesses or Other For-Profit
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11705	1,250		18.6		.17		3,954
HUD–1735	100		5.84		.17		100

Total Estimated Burden Hours: 4,054
Status: Reinstatement
Contact: Brenda Countee, HUD, (202) 708–2234; Charles Clark, HUD, (202) 708–2234; Angela Antonelli, OMB, (202) 395–6880

Dated: February 18, 1993.

[FR Doc. 93–5343 Filed 3–8–93; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–93–3583]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its

proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 2, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Construction Complaint/ Request for Financial Assistance
Office: Housing
Description of the Need for the Information and Its Proposed Use: Form HUD–92556 will provide orderly processing of homeowner complaint items that the builder is responsible to correct and will determine eligibility for financial assistance. It will also identify builders who are not conforming to applicable standards.
Form Number: HUD–92556
Respondents: Individuals or Households
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92556	4,600		1		.5		2,300

Total Estimated Burden Hours: 2,300
Status: Extension
Contact: Kenneth L. Crandall, HUD, (202) 708–2720; Angela Antonelli, OMB, (202) 395–6880

Dated: March 2, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Title I Property Improvement and Manufactured Home Loans (24 CFR part 201)
Office: Housing
Description of the Need for the Information and Its Proposed Use: Title I loans are made by private lenders and HUD insures the lender against loss from borrower defaults. The information collections are needed by HUD to evaluate program and individual lender performance and to determine whether claims are eligible for payment.
Form Number: HUD–637, 27029, 27030, 55013, 55014, 56001, 56001–MH, 56004, 92802
Respondents: Individuals or Households, Businesses or Other For-Profit and Small Businesses or Organizations
Frequency of Submission: On Occasion and Recordkeeping
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	404,995		varies		varies		262,202
Recordkeeping	30		1		54		1,620

Total Estimated Burden Hours: 263,822
Status: Reinstatement
Contact: Robert Coyle, HUD, (202) 708–2880; Lana McKee, HUD, (202) 708–2880; Angela Antonelli, OMB, (202) 395–6880

Dated: March 2, 1993.

[FR Doc. 93–5344 Filed 3–8–93; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–93–3584]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its

proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 12, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Affirmative Compliance Actions Program (PHACA) Title VI Self-Assessment Instrument for PHAs

Office: Fair Housing and Equal Opportunity

Description of the Need for the Information and Its Proposed Use: The Title VI Self-Assessment Instrument is used by Public Housing Agencies to document their performance related to Title VI of the 1964 Civil Rights Act. The results are used by HUD to provide a formal compliance determination for PHAs participating in this voluntary program.

Form Number: HUD–956

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of Submission: One-time

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	80		1		120		9,600

Total Estimated Burden Hours: 9,600

Status: Extension

Contact: Carolyn Ray, HUD, (202) 708–1992; Nannette Locke, HUD, (202) 708–1992; Angela Antonelli, OMB, (202) 395–6880

Dated: February 12, 1993.

[FR Doc. 93–5345 Filed 3–8–93; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–93–3585]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 19, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Summary of Guaranty Agreements

Office: Government National Mortgage Association

Description of the Need for the Information and Its Proposed Use: The information furnished on the forms incorporates the terms and conditions of the Guaranty Agreements for each type of mortgage pool. Execution by the issuers indicates compliance with the terms and conditions of the Guaranty Agreement.

Form Number: HUD–11716, 1723, 11727, 1730 and 11733

Respondents: Businesses or Other For-Profit

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	1,250		18.7		.25		5,845

Total Estimated Burden Hours: 5,845

Status: Reinstatement

Contact: Brenda Countee, HUD, (202) 708–2234; Charles Clark, HUD, (202) 708–2234; Angela Antonelli, OMB, (202) 395–6880

Dated: February 19, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 811 Supportive Housing for Persons with Disabilities—Application Submission Requirements (FR-3406)
Office: Housing
Description of the Need for the Information and its Proposed Use: This information collection is necessary to assist HUD in determining applicant eligibility and capacity to develop housing for disabled within statutory and program criteria. A thorough evaluation of an applicant's financial interest is conducted to mitigate any possibility of fraud, waste or mismanagement of public funds.
Form Number: HUD–92016–CA
Respondents: Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of Respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	350		1		39.2		13,720
Proposals	10		1		2.0		20
Applicants	15		1		4.0		60

Total Estimated Burden Hours: 13,800
Status: Reinstatement
Contact: Evelyn Berry, HUD, (202) 708–2866; Angela Antonelli, OMB, (202) 395–6880

Dated: February 19, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Quality Control Plan for Approved Mortgagees
Office: Housing
Description of the Need for the Information and its Proposed Use: The Mortgagee Letter establishes minimum requirements for an acceptable Quality Control Plan for HUD–FHA approved mortgagees with respect to loan origination and servicing. The requirements are intended to improve the quality of loan origination and servicing by approved mortgagees and to reduce losses to HUD's insurance fund.
Form Number: None
Respondents: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions and Small Businesses or Organizations
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	1,800		1		40		72,000
Recordkeeping	1,800		1		12		21,600

Total Estimated Burden Hours: 93,600
Status: Extension
Contact: D. Jackson Kinkaid, HUD, (202) 708–1824; Angela Antonelli, OMB, (202) 395–6880

Dated: February 19, 1993.

[FR Doc. 93–5346 Filed 3–8–93; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–93–4210–04, U–68277]

Salt Lake District; Exchange of Public Lands in Tooele County, UT; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public lands in Tooele County, Utah.

SUMMARY: The Bureau of Land Management proposes to exchange 478.16 acres of land in Tooele County to Douglas Larson for 480.00 acres. This notice provides a public comment period and segregates the lands described from entry and mining under the public land laws and the United States mining laws.

DATES: Comments must be received by May 10, 1993.

ADDRESSES: Comments should be sent to the District Manager, Salt Lake District BLM, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Sharon Knowlton, BLM Salt Lake District Office, (801) 977–4300.

SUPPLEMENTARY INFORMATION: The following described lands have been found suitable for disposal by exchange

pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1716):

Salt Lake Meridian, Utah

T. 8 S., R. 5 W.,
Section 18, lots 3, 4, E½SW¼;
Section 19, lots 1–4 except the E½NE¼ of lot 3, E½W½.

In exchange for the above described lands, the BLM will acquire the following described lands:

Salt Lake Meridian, Utah

T. 8 S., R. 6 W.,
Section 9, E½E½;
Section 12, E½W½;
Section 15, E½W½.

The lands described above are hereby segregated from entry and mining under the public land laws and the United States mining laws. The segregative effect will terminate upon notice in the Federal Register or two years from the date of this publication, whichever occurs first.

Notice is hereby given that an opportunity for the public to comment is given within the comment period identified above. Any adverse comments will be evaluated by the District Manager who may modify or vacate this realty action and issue a final determination.

In the absence of any action by the State Director, this notice of realty action will become the final determination of the Department of the Interior.

Dated: March 1, 1993.

Deane H. Zeller,

District Manager.

[FR Doc. 93–5363 Filed 3–8–93; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–040–03–4212–14]

Cedar/Beaver/Garfield/Antimony (CBGA) Resource Management Plan, Iron County, Utah; Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM) is proposing to do a Plan Amendment for the Cedar/Beaver/Garfield/Antimony (CBGA) Resource Management Plan (RMP) located in Iron County, Utah.

DATES: The comment period for this proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before April 8, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait, Area Manager, Beaver River Resource Area Office, 365 South Main, Cedar City, Utah 84720. Existing planning documents and information are available at the above address or telephone (801) 586–2458. Comments on this proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the CBGA RMP approved October 1, 1986, which includes public land in Iron County, Utah. The purpose of the amendment would be to make certain public lands available for exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The public land being considered for exchange, comprising 422.96 acres, is described as follows:

T. 33 S., R. 8 W.,
Sec. 1, lot 4, SW¼NW¼, NW¼SW¼, W½SW¼SW¼;
Sec. 3, lots 1, 5 and 11, SE¼NE¼;
Sec. 11, E½NE¼, SW¼NE¼, NW¼SE¼, Salt Lake Meridian, Utah.

The existing plan does not identify these lands as suitable for exchange. However, because of resource values, public values, and objectives involved, the public interest may be well served by offering these lands for exchange. An environmental assessment will be prepared to analyze the impacts of this proposal and alternatives.

James M. Parker,

State Director.

[FR Doc. 93–5373 Filed 3–8–93; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–050–03–4210–05]

Mountain Valley Management Framework Plan, Sevier County, Utah; Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend the Mountain Valley Management Framework Plan, which includes public lands in Sevier County, Utah. The purpose of the amendment would be to identify certain lands as suitable for sale to Sevier County for the purpose of a regional sanitary landfill.

DATES: The comment period for this proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before April 8, 1993.

FOR FURTHER INFORMATION CONTACT: J. Roderick Lister, Sevier River Resource Area Manager, 150 East 900 North, Richfield, Utah 84701. Existing planning documents and information are available at the above address or telephone (801) 896–8221. Comments on this proposed plan amendment should be sent to Alan Partridge, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

SUPPLEMENTARY INFORMATION: The lands identified for sale comprise 481.94 acres described as follows:

T. 28 S., R. 1 W.,
Sec. 3, Lots 3 through 6, Lot 12, and W½SW¼;
Sec. 4, Lots 1, 9, 10, and E½SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, NW¼NW¼, Salt Lake Meridian, Utah.

The existing plan does not identify these lands for disposal. However, Sevier County has made a proposal to purchase the described public lands and this proposal appears to have merit and may be in the public interest, so it will be considered through the plan amendment process.

James M. Parker,

State Director.

[FR Doc. 93–5374 Filed 3–8–93; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Gauley River National Recreation Area Advisory Committee

AGENCY: National Park Service; Gauley River National Recreation Area Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Gauley River National Recreation Area Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: April 1, 1993, 7 p.m.

ADDRESSES: Summersville Municipal Building, 400 North Broad St., Summersville, WV (downtown Summersville).

FOR FURTHER INFORMATION CONTACT: Joe L. Kennedy, Superintendent, New River Gorge National River, P.O. Box 246, Glen Jean, WV 25846; (304) 465–0508.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under section 206(a) of the "WV National Interest Act of 1987, "Public Law 100–534, to consult with the Secretary of the Interior, or his designee," * * * on matters relating to development of a management plan for the recreation area and on implementation of such plan."

The agenda for this meeting will focus on the presentation of a written report

from the Advisory Committee to the NPS on recommendations for the Draft General Management Plan (GMP) for the NRA. The final report will be included in the draft and final versions of the GMP, which is scheduled to go on public review in June, 1993. Copies of the committee's report will be available to the public at this meeting. Copies of the draft GMP will not be available to the public until the formal public review process begins in June, 1993.

The meeting will be open to the public. Any member of the public may file with the Committee a written statement concerning agenda items. The statement should be addressed to the Gauley River National Recreation Area Advisory Committee, P.O. Box 57, Glen Jean, WV 25846–0057. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the New River Gorge National River, 104 Main Street, P.O. Box 246, Glen Jean, WV 25846–0246.

Charles P. Clapper, Jr.,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 93–5327 Filed 3–8–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 27, 1993. 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 April 8, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

CALIFORNIA

Orange County

Young Men's Christian Association—Santa Ana-Tustin Chapter, 205 W. Civic Center Dr., Santa Ana, 93000237

COLORADO

Alamosa County

Zapata Ranch Headquarters, 5303 TX 150, Mosca vicinity, 93000199

Clear Creek County

Peck House, 83 Sunny Ave., Empire, 93000201

Mesa County

IOOF Hall, Jct. of 4th St. and Curtis Ave., De Beque, 93000200

CONNECTICUT

Hartford County

Belden, Horace, School and Central Grammar School, 933 Hopmeadow St. and 29 Massaco St., Simsbury 93000211

Eno Memorial Hall, 754 Hopmeadow St., Simsbury, 93000210

Simsbury Townhouse, 695 Hopmeadow St., Simsbury, 93000209

GEORGIA

Baldwin County

Devereux—Coleman House, 167 Kenan Dr., Milledgeville, 93000214

Hancock County

Pearson—Boyer Plantation, Pearson Chapel Rd., Sparta vicinity, 93000236

MAINE

Androscoggin County

Robinson, William A., House, 11 Forest Ave., Auburn, 93000204

Aroostook County

Smith Bridge, Lowery Rd. at jct. with Foxcroft Rd., across the Meduxnekeag R., Houlton vicinity, 93000202

Knox County

Murch Family House, Calderwood Neck SE side, 2 mi. NE of North Haven Rd., Vinalhaven vicinity, 93000205

Waldo County

Belfast Historic District (Boundary Increase), 59–63 Anderson St., Belfast, 93000195

Union School, Mt. Ephraim Rd. E side, 0.2 mi. N of jct. with US 1, Searsport, 93000203

MASSACHUSETTS

Plymouth County

Thomas—Webster Estate, 238 Webster St., Marshfield, 93000206

MINNESOTA

Pipestone County

Pipestone Indian School Superintendent's House, Off N. Hiawatha Ave., Pipestone, 93000232

MISSISSIPPI

Copiah County

Hargrave House, MS 28 W of Hazlehurst, Hazlehurst vicinity, 93000208

Yazoo County

Oakes, Augustus J., House, 308 Monroe St., Yazoo City, 93000207

MISSOURI

Boone County

Columbia National Guard Armory, 701 E. Ash St., Columbia, 93000197

NEW JERSEY

Union County

The Clearing, 165 Hobart Ave., Summit, 93000233

NEW YORK

Suffolk County

Southampton Village Historic District (Boundary Increase) (Southampton Village MRA), Roughly, along Rogers St., Lewis St. and Meeting House Ln. on E side of existing district, Southampton, 93000239

Westchester County

Grainger, Percy, Home and Studio, 7 Cromwell Pl., White Plains, 93000234

NORTH CAROLINA

Rockingham County

Chinqua—Penn Plantation, NC 1998 N side, 0.2 mi. W of jct. with NC 1987, Reidsville vicinity, 93000235

TENNESSEE

Dyer County

Newbern Illinois Central Depot, Jct. of Main and Jefferson Sts., Newbern, 93000213

White County

Sparta Electric Building (Pre-TVA Hydroelectric Power Development in Tennessee MPS), S. Main St., Sparta, 93000238

Wilson County

Rest Hill Cemetery, TN 141 E of jct. with TN 24 Bypass, Lebanon, 93000212

TEXAS

Starr County

Fort Ringgold Historic District, Rio Grande City School grounds, ¼ mi. SE of jct. of US 83 and TX 755, Rio Grande City, 93000196

WEST VIRGINIA

Doddridge County

Charter, Lathrop Russell, House, 109 High St., West Union, 93000219

Stuart, W. Scott, House, 104 Chancery St., West Union, 93000220

Kanawha County

Kanawha State Forest Historic District, Co. Rd. 42/43 2.6 mi. S. of Charleston, Loundendale vicinity, 93000228

Lewis County

Weston Colored School, 345 Center St., Weston, 93000224

McDowell County

World War Memorial, US 52, Kimball, 93000227

Marion County

Masonic Temple, 320 Jefferson St., Fairmount, 93000218

Monongalia County

Kern's Fort, 305 Dewey St., Morgantown, 93000225

Monroe County

Reed's Mill, Co. Rd. 219/1, Second Creek, 93000226

Ohio County

Highland Park Historic District, Highland Park, jct. of Lincoln Dr. and National Rd., Wheeling, 93000222

Tiernan, William Miles, House, 5 Kenwood Pl., Wheeling, 93000223

WISCONSIN

Bayfield County

SEVONA (Bulk Carrier) Shipwreck Site (Great Lakes Shipwrecks of Wisconsin MPS), Address Restricted, Bayfield vicinity, 93000229

Dane County

Bram Mound Group (Late Woodland Stage in Archeological Region 8 MPS), Address Restricted, Dunn, 93000216

Halvorson Mound Group (Late Woodland Stage in Archeological Region 8 MPS), Address Restricted, Madison, 93000215

Oneida County

Little St. Germain Creek Site, Address Restricted, Newbold, 93000217

WYOMING

Hot Springs County

Callaghan Apartments, 116 E. Park St., Thermopolis, 93000231

Johnson County

TA Ranch Historic District, E of Wy 196 on N. Fork, Crazy Woman Cr., Buffalo vicinity, 93000198

Sublette County

Log Cabin Motel, 49 E. Magnolia St., Pinedale, 93000230

[FR Doc. 93–5328 Filed 3–8–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[No. MC–C–30210]

Towing and Recovery Association of America—Petition for Declaratory Order—Emergency Towing

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: In response to a joint request by the Towing and Recovery Association of America and the American Automobile Association, the Commission has instituted this declaratory order proceeding under 5 U.S.C. 554(e) to determine whether the emergency towing exemption at 49 U.S.C. 10526(b)(3), should be extended to include towing wrecked or disabled vehicles on flatbed platforms. The Commission is providing interested persons an opportunity to participate in this proceeding and is inviting their comments.

DATES: Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by March 24, 1993. (A copy of the notice should be sent to petitioners' representatives). Following receipt of the notices, the Commission will issue a service list of the parties. Petitioners will have 10 days after service of this list to provide each party with a copy of the petition and any additional material which they may file with the Commission in support of their position. Initial written comments (an original and 10 copies) must be filed within 30 days after the service of the list. All parties will have 50 days after service of the list to reply. All parties must send a copy of all comments and replies to each other party of record.

ADDRESSES: Send written notices of intent to participate to:

Office of the Secretary, Case Control Branch, Attn: No. MC–C–30210, Interstate Commerce Commission, Washington, DC 20423

and

Michael P. McGovern, P.O. Box 916430, Longwood, FL 32791–6430

Richard D. Rinner, General Counsel, James G. Brehm, Corporate Counsel, 1000 AAA Drive, Heathrow, FL 32746.

FOR FURTHER INFORMATION CONTACT:

Jasneth C. Metz, (202) 927–6294

or

Richard Felder, (202) 927–5610 [TDD for hearing impaired (202) 927–5721]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10526(b)(3) the emergency towing of accidentally wrecked or disabled vehicles is exempt from Commission regulation. The Commission has held that this activity is exempt only when the towing is done by use of conventional or wheelift wrecker equipment. The transportation of wrecked and disabled vehicles on platform wrecker-carrier trucks as been held to be a regulated activity requiring ICC operating authority.

The Towing and Recovery Association of America and the American Automobile Association have petitioned the Commission for a declaratory order finding the towing of wrecked and disabled vehicles on platform carriers also to be exempt.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

Decided: March 2, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–5338 Filed 3–8–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32255]

Texas Northeastern Division, Mid-Michigan Railroad, Inc.—Trackage Rights Exemption—Burlington Northern Railroad Co.

Burlington Northern Railroad Company (BN) has agreed to grant local trackage rights to Texas Northeastern Division, Mid-Michigan Railroad Company, Inc., over approximately 9.76 miles of BN's line between milepost 646.39 at Sherman, TX, and milepost 636.63 at Denison, TX. The exemption became effective on February 26, 1993, and the parties intended to consummate the transaction immediately thereafter.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kelvin J. Dowd, 1224 17th St., NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: March 3, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–5339 Filed 3–8–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

March 3, 1993.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jefferson B. Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115 or facsimile: (202) 514–1534. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20503.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Application for Certificate of Citizenship in Behalf of an Adopted Child.
(2) Form N–643. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is filed by U.S. citizen parent(s) in behalf of an adopted alien child to become a U.S. citizen and receive a Certificate of Citizenship.
(5) 8,000 annual responses at .5 hours per response.
(6) 4,000 annual burden hours.
(7) Not applicable under 3504(h).

(1) Hate Crimes Incident Report. Quarterly Hate Crime Report.
(2) Form 11–1. Form 11–2. Federal Bureau of Investigation.
(3) Monthly. Quarterly.
(4) State or local governments. These forms will be used to collect bias motivation of selected offenses. Resulting statistics are published annually.
(5) 64,000 annual responses at .17 hours per response.
(6) 10,880 annual burden hours.
(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: March 3, 1993.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–5322 Filed 3–8–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Morrison-Quirk Grain Corporation,* Civil Action No. CV–88–L–720, was lodged on March 1, 1993 with the United States District Court for the District of Nebraska. The proposed consent decree resolves the United States claims under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for past response costs, as defined in the consent decree, through December 31, 1990 incurred by the United States in connection with the Far-Mar-Co subsite of the Hastings Ground Water Contamination Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Morrison-Quirk Grain Corporation,* Civil Action No. CV–88–L–720, DOJ Ref. No. 90–11–3–431.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Nebraska, 520 Federal Building, 100 Centennial Mall North Lincoln, Nebraska 68508; Office of the Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 93–5306 Filed 3–8–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Final Judgment; Reno Merchant Plumbing and Heating Contractors, Inc., et al.

Notice is hereby given that defendant, Savage & Son, Inc., has filed with the United States District Court for the District of Nevada a motion to terminate the Final Judgment in *United States* v. *Reno Merchant Plumbing and Heating Contractors, Inc., et al.,* CV–N–868–ECR; and that the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the Judgment but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of the notice. The complaint in this case (filed June 5, 1950) alleged, that the defendant and other master plumbers in the Reno area had formed a bid depository and published various trade practice rules which had the effect of increasing prices charged for the sale and installation of plumbing and heating supplies and depriving general contractors and homeowners of competitive bids.

The Judgment (entered November 14, 1952) enjoined the defendants from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program to fix, establish, maintain or adhere to prices, discounts, interest rates or other terms or conditions for the sale, installation or repair of plumbing supplies to third persons. The operation of the bid depository was narrowly circumscribed to enjoin defendants from disclosing their bids to competitors, from agreeing not to revise bids after the original bids had been opened by the awarding authority, forcing other master plumbers to joint any bid depository plan and from interfering with the receipt and acceptance of bids by an awarding authority.

There is no longer any bid depository for plumbing contractors in Reno and, of the original defendants, only Savage & Son, Inc. is in business today.

The Department has filed with the court a memorandum setting forth the reasons why the Government believes that termination of the Final Judgment would serve the public interest. Copies of the Complaint and Final Judgment, Savage & Son's motion papers, the stipulation containing the Government's consent, the Government's memorandum and all further papers with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530, (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Nevada, 300 Booth Street, Reno, Nevada 89509. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Government. Such comments must be received within sixty (60) days and will be filed with the court by the Government. Comments should be addressed to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (Telephone: (415) 556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–5305 Filed 3–8–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, on February 2, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed a written notification on behalf of Bellcore and Digital Equipment Corporation ("DEC") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and DEC, Maynard, MA. Bellcore and DEC entered into an agreement effective as of November 18, 1992 to engage in cooperative research of personal communications services to better understand the feasibility and application of these technologies for exchange and exchange access services, including experimental prototype fabrication for the demonstration of such technologies.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–5304 Filed 3–8–93; 8:45 am]

BILLING CODE 4410–01–M

"Underwater Welding Research and Development Program"; National Cooperative Research Notifications

Notice is hereby given that, on January 25, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Global Industries, Ltd. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general area of planned activities are given below. The project is entitled "Underwater Welding Research and Development Program."

The current parties to the project identified by this notice are: Amoco Corporation Research Center, Naperville, IL; Colorado School of Mines, Golden, CO; Global Divers and Contractors, Inc., Lafayette, LA; Marathon Oil Company, Houston, TX; Mobil Research and Development Corporation, Dallas, TX; Shell Development Company, Houston, TX; and U.S. Navy Naval Sea Systems Command, Washington, DC.

The purpose of the project is to develop wet welding procedures that conform, to the greatest extent possible, to the requirements for dry welds (Type A) as defined in the AWS "Specifications For Underwater Welding," D3.6–89.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–5303 Filed 3–8–93; 8:45 am]

BILLING CODE 4410–01–M

Network Management Forum; National Cooperative Research Notification

Notice is hereby given that, on January 7, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional parties to the venture are as follows: Cray Communications, Ltd., Frimley, Surrey, ENGLAND; Novidigm, Inc., Saddle Brook, NJ; Pirelli Data Networks, Eastleigh, Hampshire, ENGLAND; and PTT Telecom Switzerland, Bern, SWITZERLAND are Associate Members; and Industrial Technology Research Institute, Chutung, Hsinchu, Taiwan, REPUBLIC OF CHINA, is an Affiliate Member.

No other changes have been made, since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on October 27, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 17, 1992 (57 FR 60005).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–5302 Filed 3–8–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,610 Houston, Texas TA–W–27,610A Odessa, Texas]

Baker Oil Tools; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 23, 1992, applicable to the workers at the subject firm.

At the request of the Texas State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages for Baker Oil Tools are being reported under the Unemployment Insurance (UI) tax account of Baker Hughes Production Tools, Inc., Houston, Texas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA–W–27,610 and TA–W–27,610A is hereby issued as follows:

All workers of Baker Oil Tools, also known as Baker Hughes Production Tools, Inc., Houston and Odessa, Texas who became totally or partially separated from employment on or after July 22, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 25th day of February 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–5389 Filed 3–8–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,997]

Texaco Exploration & Production, Inc., Eastern E & P Region, New Orleans, LA; Negative Determination Regarding Application for Reconsideration

By an application dated February 12, 1993, Counsel for the workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 15, 1993 and was published in the **Federal Register** on February 2, 1993 (58 FR 6810).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel argues that the workers' petition was intended to cover all employees of TEPI throughout the United States and the Department did not consider the trend of increasing crude oil imports. Counsel also states that public opinion, environmental issues and unfavorable government policies are driving capital investment for oil and gas exploration overseas.

A review of the petition, especially Question II, shows that the petition was filed for the Eastern E & P Region of TEPI in New Orleans, Louisiana.

The Department's investigation found that Texaco's imports of crude oil had decreased despite increased imports in the aggregate for the industry. Since Texaco was the dominant customer of TEPI and the layoffs occurred during the period Texaco's imports were declining, it could not be determined that increased imports contributed importantly to the workers separations and to the production and sales decline.

Further, the shift of capital outlays to overseas may, in fact, result in increased imports by Texaco in the future. But such prospective imports is not a basis for certification.

The Department's denial of adjustment assistance for workers of the Eastern E & P Region of TEPI was based on the fact that the petition did not meet the "contributed importantly" criterion of the Group Eligibility Requirements of the Trade Act.

The investigation findings show that the preponderant portion of crude oil and natural gas produced by the Eastern E & P Region of Texaco was used internally by Texaco. Other findings show that company imports of crude oil declined in the first ten months of 1992 compared to the same period in 1991. Texaco did not import natural gas in the period relevant to the petition. A projected trend of increasing imports would not form a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of February 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–5390 Filed 3–8–93; 8:45 am]

BILLING CODE 4510–30–M

Job Corps: Finding of No Significant Impact for the Construction of the Charleston Job Corps Center in Charleston, WV

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500 to 1508), implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and that proposed plans for constructing the Charleston Job Corps Center (Center) in Charleston, West Virginia, will have no significant environmental impact.

The existing facilities for the Charleston Job Corps Center are in leased space in downtown Charleston. Job Corps proposes to build a new center on a 20-acre undeveloped tract (River Site), approximately 2.5 miles from downtown Charleston.

The purpose of this proposed action is to construct facilities for the Charleston Job Corps Center serving 320 resident, 35 non-resident students, and 75 off-site students on college campuses. This will provide the necessary facilities for the Job Corps program to provide basic education, vocational skills training, work experience, counseling, health care, and related support services.

Establishing a Job Corps Center at this location will require constructing 10 new buildings to meet the needs of the Job Corps. The new Center will provide dormitories; recreational, medical/dental, and administrative services; educational and vocational training; and storage space; consistent with Job Corps guidelines and Center needs.

A summary of the EA follows:

The site is located in a suburban setting with surrounding land use predominantly residential or undeveloped. Noise levels from the proposed facility will be within allowable levels. Some additional noise will be generated during construction activities. However, this noise is expected to remain within allowable limits and is not expected to adversely impact neighboring properties. In

addition, the remote location of the site will lessen the impact of any noise on the environment.

Site and security lighting will consist of facility owned and maintained, building-mounted, photocell-controlled HID luminaries, as well as utility company owned and maintained, pole-mounted, photocell-controlled HID luminaries located throughout the roadway and parking areas. They will provide good levels of illumination for all areas on-site.

The Charleston Job Corps Center is not located within an area that has been designated as "historically significant". The site was previously graded to construct an automobile race track. No areas of archeological significance were found during that grading. Therefore, it is unlikely that any such areas are present.

The municipal services necessary to support the proposed action will not be adversely affected. There are enough existing utilities to service the new Center. Water and sewer are of sufficient capacity to handle the new demand and solid waste management will not be adversely impacted. Also, the proposed project will not adversely impact the City of Charleston police, fire, and/or emergency services.

Based upon the information gathered during the preparation of the EA, the Department of Labor, Employment and Training Administration, Office of Job Corps finds that the construction of the Charleston Job Corps Center will not cause any significant impact on the environment. Copies of the EA and additional information are available to interested parties by contacting Mr. James A. Bodnar, Acting Director, Region III, Office of Job Corps, at (215) 596–6301 (this is not a toll free number).

Dated at Washington, DC, this 23d day of February 1993.

Peter E. Rell,

Director of Job Corps.

[FR Doc. 93–5391 Filed 3–8–93; 8:45 am]

BILLING CODE 4510–30–M

Job Corps: Finding of No Significant Impact for the Purchase and Future Improvement of the Connecticut Job Corps Center in New Haven, CT

Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500 to 1508), implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and that the proposed plans for converting the New Haven Area Rehabilitation Center to the Connecticut Job Corps Center (Center) in New Haven, Connecticut, will have no significant environmental impact.

The New Haven Area Rehabilitation Center was constructed in the mid-1960's. The Center has been a public (State) building, used as a rehabilitation center for the local area. This 15-acre site presently includes five buildings, a small swimming pool and parking areas. Job Corps intends to convert the existing facilities to the Connecticut Job Corps Center serving 150 resident and 50 non-resident students. This will provide the necessary facilities for the Job Corps program to provide basic education, vocational skills training, work experience, counseling, health care, and related support services. The State of Connecticut supports these plans.

Establishing a Job Corps Center at this location will require refurbishing the existing five buildings and constructing one new building to meet the needs of the Job Corps. The new Center will ultimately provide dormitories, recreational, medical/dental, and administrative services, educational and vocational training, and storage space consistent with Job Corps guidelines and Center needs.

A summary of the EA follows: The site is located in a suburban setting. Adjacent land use includes: A State park; an elementary school; residential housing; a convalescent home and health care facility; and, a small shopping center. Some noise will be generated during construction activities and from the proposed, completed facility. However, building materials designed to alleviate noise will be used and noise levels are expected to remain within allowable limits as determined under the City of New Haven's noise regulations. No adverse noise impact on neighboring properties is expected.

Site and security lighting consists of facility-owned and maintained, building-mounted, photocell-controlled HID luminaries, as well as utility company-owned and maintained, pole-mounted, photocell-controlled HID luminaries located throughout the roadway and parking areas. They provide an adequate level of illumination for all areas on-site.

The New Haven Rehabilitation Center is not located within an area that has been designated as "historically significant". Based on the amount of cutting and filling that was performed to "terrace" the existing facility on the 9-percent grade, no areas of archaeological significance are likely to be present.

A small portion of the site is designated as inland wetlands. The proposed activity will not be conducted within the wetlands or disturb them in any way.

On-site and surrounding facilities such as West Rock Ridge State Park and West Rock Nature Center provide adequate recreational opportunities for the students.

Therefore, the Job Corps students will not need to use the neighboring residential area for recreational purposes.

The existing infrastructure is adequate for the proposed activities. Utilities are of adequate supply, water and sewer are of sufficient capacity, and solid waste management will not be adversely impacted. The proposed project will not adversely impact the City of New Haven police, fire and/or emergency services.

Asbestos is present at the site and will be properly managed during construction activities. Procedures for the containment and removal of asbestos will be prepared by a qualified asbestos abatement contractor.

Therefore, based upon the information gathered during the preparation of the EA, the Department of Labor, Employment and Training Administration, Office of Job Corps finds that the conversion of the New Haven Area Rehabilitation Center to the Connecticut Job Corps Center will not cause any significant impact on the environment. Copies of the EA and additional information are available to interested parties by contacting Mr. Donald Scott, Deputy Director, Region I, Office of Job Corps, at (617) 565–2175 (this is not a toll free number).

Dated at Washington, DC, this 23d day of February 1993.

Peter E. Rell,

Director of Job Corps.

[FR Doc. 93–5392 Filed 3–8–93; 8:45 am]

BILLING CODE 4510–30–M

Job Corps: Finding of No Significant Impact for the Future Improvement of the New Orleans Job Corps Center in New Orleans, LA

Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500 to 1508), implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and that the future improvement of the New Orleans Job Corps Center (Center) in New Orleans,

Louisiana, will have no significant environmental impact.

The New Orleans Job Corps Center provides educational and vocational training, administrative and medical services, food service and recreational facilities for 225 non-resident students. The Center is located at 8825 Airline Highway, approximately three miles northwest of downtown New Orleans, Louisiana, and is owned by the Federal Government. The New Orleans Job Corps Center operates its non-resident program under a Conditional Use Permit issued by the City of New Orleans.

The Center presently occupies two buildings of the four-building facility. The space currently occupied is fully utilized, but its present utilization is less than satisfactory due to building configuration. For example, some activities have no interior egress, necessitating an outside walk to access other center areas. Job Corps proposes to improve and update the facility in order to provide sufficient education and training facilities for the Center's optimal operation.

The municipal services necessary to support the proposed action will not be adversely affected. Utilities are of adequate supply, water and sewer are of sufficient capacity, and solid waste disposal capacity is available. The future improvements will not have a net adverse impact on the police, fire, and/or emergency services of the City of New Orleans. An on-site security program is part of normal Job Corps Center operations.

Based upon the information gathered during the preparation of the EA, the Department of Labor, Employment and Training Administration, Office of Job Corps, finds that the proposed future improvement of the New Orleans Job Corps Center at the existing building facility site in New Orleans, Louisiana, will not cause any significant impact on the environment. Copies of the EA and additional information are available to interested parties by contacting Mr. T. James Walker, Director, Region VI, Office of Job Corps, at (214) 767–2567 (this is not a toll free number).

Dated at Washington, DC, this 23d day of February 1993.

Peter E. Rell,

Director of Job Corps.

[FR Doc. 93–5393 Filed 3–8–93; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93–12; Exemption Application No. D–9057, et al.]

Grant of Individual Exemptions; Massachusetts Mutual Life Insurance (MassMutual), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendence before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Massachusetts Mutual Life Insurance Company (MassMutual) Located in Springfield, MA

[Prohibited Transaction Exemption 93–12; Exemption Application No. D–9057]

Exemption

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the arrangement, over a five year period, whereby MassMutual's general account (the General Account) will extend credit to unrelated third parties who purchase one or more parcels of real property (the Properties) from the MassMutual Real Estate Pooled Separate Account, SIA–R (the Separate Account), a separate account maintained by MassMutual on behalf of employee benefit plans (the Plans); provided that the following conditions are satisfied:

(A) All conditions of the transactions are no less favorable to the Separate Account than those which the Separate Account could obtain in arm's-length transactions not involving the General Account;

(B) The Separate Account receives a purchase price for each Property which is not less than the fair market value of that Property on the date of sale;

(C) The transactions do not involve sales of any of the Properties to any parties in interest with respect to the Plans participating in the Separate Account;

(D) No commissions, fees, or expenses in connection with the transaction are paid to MassMutual or any of its affiliates, other than loan origination fees of no more than .25 percent per transaction;

(E) The General Account does not charge or receive interest in excess of the fair market rate of interest;

(F) The interests of the Separate Account in the transactions are represented by one of the following fiduciaries (the Fiduciaries): Joseph J. Blake Associates of Los Angeles, California; Realty Advisory Group of Virginia Beach, Virginia; Realty Consultants, Ltd. of Chicago, Illinois; Trahan Partners of Houston, Texas; or American Appraisal Associates of Boston, Massachusetts;

(G) No transaction involving General Account financing of a Property sale shall occur until the appropriate Fiduciary has approved the transaction and completed a written report relating

its findings with respect to the transaction (the Report); and

(H) The Report is made available for inspection by any duly authorized representative of the Department, the Internal Revenue Service, and any fiduciary of a Plan participating in the Separate Account, for a period of no less than six years from the date of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1992 at 57 FR 60008.

Temporary Nature of the Exemption

This exemption will expire five years from the date on which it is published in the **Federal Register.**

Effective Date: This exemption is effective as of May 7, 1992.

Written Comments

The Department received one written comment and no requests for a hearing. The comment was submitted by the applicant, MassMutual, in correction and supplementation of the summary of facts and representations in the Notice of Proposed Exemption, as follows:

(1) The location of MassMutual is Springfield, Massachusetts.

(2) MassMutual had over $29.3 billion in assets as of December 31, 1991.

(3) Subsequent to the filing of the exemption application, the Separate Account sold one of the Properties, the Hycor Biomedical property, in a transaction involving General Account financing, under circumstances which MassMutual represents to have satisfied the conditions of the proposed exemption. The Notice of Proposed Exemption did not include a proposed effective date. Accordingly, the applicant requests that the exemption have an effective date of May 7, 1992, the date of the consummation of the Hycor Biomedical sale transaction.

(4) Subsequent to the filing of the exemption application, two other Properties, the Perimeter Center and Kennicott Industrial, were sold by the Separate Account in transactions which did not involve General Account financing and MassMutual requests that such transactions be excluded from the scope of the exemption.

(5) As of January 1, 1993, following the disbursement of available cash to the invested Plans, the Separate Account had total assets valued at $29,006,405.

(6) MassMutual wishes to clarify that the General Account will not necessarily finance the sale of each Property. However, each buyer of a Property will have the opportunity to obtain such financing.

(7) MassMutual further represents that in the event any of the named Fiduciaries is unable to perform an evaluation of the designated Property, MassMutual may substitute a qualified fiduciary with the prior consent of the Department. After consideration of the entire record, the Department has determined to grant the exemption, with an effective date of May 7, 1992.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. Retirement Program Master Trust (the Trust) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 93–13; Application Nos. D–9138 through D–9141]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective December 5, 1991, to (1) the past extension of credit (the Loan) to the Trust by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., the sponsor of employee benefit plans participating in the Trust, with respect to the Trust's proportionate interest in guaranteed investment contract number CG 0128203A (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the potential repayment of the Loan (the Repayments) by the Trust; provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Trust than those which the Trust could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/or expenses are paid by the Trust;

(C) The Repayments shall not exceed the principal amount of the Loan;

(D) The Repayments shall not exceed the proceeds actually received by the Trust from Executive Life and any other responsible payors with respect to the GIC (the GIC Proceeds); and

(E) Repayment of the Loan shall be waived to the extent that the principal amount of the Loan exceeds the GIC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 29, 1992 at 57 FR 61931.

Effective date: This exemption is effective as of December 5, 1991.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Ultronix, Inc., Employee Defined Contribution Profit Sharing Plan (the Plan) Located in Grand Junction, Colorado

[Prohibited Transaction Exemption 93–14; Exemption Application No. D–9185]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of its interest in a Guaranteed Income Contract (the GIC) of Pacific Standard Life Insurance Company to Ultronix, Inc., a party in interest with respect to the Plan, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GIC at the time of the transaction; (3) the Plan's actuary, Robert W. Jones, Jr., acting as independent fiduciary for the Plan, has determined that the sales price is not less than the current fair market value of the GIC; and (4) Mr. Jones has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 29, 1992 at 57 FR 61930.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Albert E. Suter Directed IRA Rollover Account (the IRA) Located in St. Louis, Missouri

[Prohibited Transaction Exemption 93–15; Exemption Application No. D–9223]

Exemption

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 purchase on November 5, 1991 by the IRA of certain shares of Boatmen's Bancshares, Inc. common stock (the Stock) from Bradley J. Suter, a disqualified person with respect to the IRA, provided that the following conditions were met:

(a) The IRA purchased the Stock for cash at a price which was no more than the fair market value of the Stock at the time of the transaction;

(b) The IRA paid no commissions or other expenses in connection with the transaction; and

(c) The assets of the IRA involved in the transaction represented less than 25% of the total assets of the IRA at the time of the transaction.

Effective Date: The effective date of this exemption is November 5, 1991.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 19, 1993 at 58 FR 5032.

For Further Information Contact: Mr. E.F. Williams of the Department at (202) 219–8883. (This is not a toll-free number.)

Toledo Roofers Local No. 134 Pension Plan and Trust; Cement Masons Local No. 886/404 Pension Plan and Trust; Millwrights, Machinery Erectors & Pile Drivers Local 1393 Retirement Plan and Trust; Sheet Metal Workers Local No. 6 Pension Plan and Trust; Toledo Painters and Allied Trades Pension Plan and Trust; Toledo Plumbers & Pipefitters Pension Plan and Trust; and Toledo Plumbers & Pipefitters Retirement Plan and Trust (collectively, the Plans) Located in Toledo, Ohio

[Prohibited Transaction Exemption 93–16; Exemption Application Nos. D–8502, D–8588, D–8589, D–8591, D–8592, D–8594 and D–8595]

Exemption

The restrictions of section 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) of the Code, shall not apply to the making by certain banks in the northwestern Ohio area (the Banks) of residential mortgage or home construction loans (the loans) to individuals who are participants of the Plans and parties in interest with respect to such Plans (the Participants) pursuant to an arrangement in which the Plans will purchase certificates of deposit (CDs) from the Banks, provided that the following conditions are met;

(a) The Trust Company of Toledo, N.A. (the Trust Company), an investment manager which is independent of the Banks, the Plans' trustees, and their affiliates, acts on behalf of the Plans for the assets involved in the proposed purchases of CDs, pursuant to the terms of separate written investment management agreements with each of the Plans, to independently determine whether each Plan should make a particular CD purchase;

(b) Callister, Duncan & Nebraska, P.C. (CDN), an independent fiduciary for the Plans, determines on an annual basis that the relevant Plan fiduciaries have discharged their fiduciary duties to the Plans in accordance with the requirements of the Act with respect to any decisions made by the Plans to adopt, implement, or continue participation in the proposed arrangement involving the purchase of CDs by the Plans and the making of the Loans by the Banks to the Participants (the Loan Program), and suspends a Plan's involvement in the Loan Program if such a determination cannot be made;

(c) Such CD purchases by a Plan comply with the conditions of section 408(b)(4) of the Act in instances where the Bank is a fiduciary or other party in interest with respect to the Plan (see 29 CFR 2550.408b–4);

(d) Each CD purchased by a Plan has a maturity not to exceed 36 months from the date of issuance, and pays the maximum rate of interest provided by the Bank for CDs of the same size and maturity being purchased at the time of the transaction by any customer of the Bank who is not eligible to participate in the Loan Program;

(e) Each CD offered to the Plans pursuant to this exemption is sold by the Bank in transactions with unrelated parties in the ordinary course of its business with customers other than the Plans;

(f) The interest rates on all CDs purchased by the Plans under the Loan Program, and the total net rate of return to the Plans taking into consideration all expenses associated with the transaction, are at least comparable to, or better than, the interest rates and total net rate of return that could be obtained by the Plans on other fixed income investments of similar risk and term at the time of each CD purchase;

(g) Each Bank which sells CDs to the Plans under the Loan Program is a solvent financial institution, as determined by the Trust Company at least annually based on an analysis of all relevant information involving the Bank's financial status;

(h) The CDs purchased by a Plan from any one Bank participating in the Loan Program do not exceed 4.99% of the fair market value of the Plan's total assets at the time of the transaction;

(i) The CDs purchased by a Plan from all of the Banks participating in the Loan Program do not exceed 8.49% of the fair market value of the Plan's total assets at the time of the transaction;

(j) No Plan trustee, or other Plan fiduciary, who may be involved in any decision regarding a Plan's participation in the Loan Program, received a Loan under the Loan Program;

(k) As of October 5, 1992, a Plan trustee involved in decisions regarding the Loan Program, or an entity in which such Plan trustee has a 50% or more ownership interest, may not engage in any additional personal or business transactions with a Bank during a Plan's participation in the Loan Program with such Bank, as attested to in each instance by appropriate Bank officials on an annual basis and monitored by CDN as the Plan's independent fiduciary;

(l) The investment of the Plans' assets by the Trust Company in CDs of a Bank which participates in the Loan Program is not part of an agreement, arrangement or understanding designed to benefit the Trust Company; and

(m) In the event any Participant defaults on a Loan from a Bank, the Bank has no claim against, or recourse to, the CDs or any other assets of the Plans.

Temporary Nature of Exemption

The exemption will be effective only for those Loans made by the Banks to the Participants pursuant to the Loan Program within five years of the date on which this exemption is published in the **Federal Register**. However, the applicant may, if desired, apply for an extension of the exemption at the end of the five-year period. The application for extension should describe: (i) Whether and how compliance with the exemption has been achieved; (ii) the number of transactions engaged in under the exemption; and (iii) the particular decisions made by the Plans' fiduciaries regarding the Loan Program.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on October 5, 1992 at 57 FR 45828.

Notice to Interested Persons

The applicant represents that it was unable to notify interested persons within the time period specified in the Notice. However, copies of the Notice were mailed by first class mail to all the local unions and contributing employers for the Plans by November 11, 1992. In addition, the Notice was published in the November 13, 1992 issue of The Voice of the Building Trades, the official newspaper of all the local unions affiliated with the Northwestern Ohio Building and Construction Trades

Council (the Council) and its constituent local unions. The Voice of the Building Trades is mailed to the homes of all members of all organizations affiliated with the Council and is made available at all union offices and halls, employer association offices, etc. The applicant states that all participants in the Plans received the Notice through the official newspaper by November 30, 1992. Interested persons were advised that they had until January 4, 1993 to comment on the Notice. The Department did not receive any written comments from such interested persons.

Written Comments

The applicant's representative submitted two written comments regarding condition (k) of the Notice. Condition (k) requires, in pertinent part, that as of October 5, 1992, the date of the publication of the Notice, a Plan trustee involved in decisions regarding the Loan Program (and certain entities owned by the trustee) may not engage in any additional personal or business transactions with a Bank during a Plan's participation in the Loan Program with such Bank.

By letter dated November 24, 1992, the applicant proposed that the Department consider a modification to condition (k) in order to allow a Plan trustee to engage in or continue personal or business transactions with a Bank that has offered a proposal to see a CD to the Plan. The modification proposed by the applicant would allow personal or business transactions between a Plan trustee and a Bank provided the Plan trustee would: "* * * make full disclosure of the business relationship * * * prior to the action being taken; recuse himself from the discussion and vote on the matter; not vote on the purchase; and not use the authority, control or responsibility the possessed as a trustee to affect the issue in any way."

The Department notes that condition (a) of the Notice requires that the Trust Company of Toledo, N.A., an investment manager which is independent of the Banks involved and the Plan trustees and their affiliates, act on behalf of the Plans for the assets involved in the proposed purchase of CDs to independently determine whether each Plan should make a particular CD purchase.

This understanding of the role of the Trust Company under the exemption is echoed in representations of the applicant summarized in the Notice. Paragraph 6 of the Notice states that the Trust Company, as the Plan's investment manager for the proposed CD purchases, will determine whether each Plan should make a particular CD purchase from any of the Banks. In the Department's view, the applicant's proposed modification is based upon a presumption that the Plan trustees would be directly involved in decisions regarding the purchase of a particular CD from a particular Bank. However, it has not been suggested, otherwise, in the applicant's comment that the role of the Trust Company should be changed from that described in the application. As a result, the Department believes that the proposed modification is inconsistent with the prior representations of the applicant and the Notice is proposed and is therefore rejected.

By letter dated January 5, 1993, the applicant requested an expression of confirmation by the Department of its interpretation of the language of condition (k). In that letter the applicant stated that "* * * it is our opinion that if the Plan trustees designate the Trust Company of Toledo (or another qualified entity) as independent investment manager and the independent investment manager makes all of the decisions regarding participation in the Program and the purchase of a CD or CDs from a Bank, then the Plan Trustee has not been involved in decisions regarding the Loan Program and is not bound by [condition] k."

The Department disagrees with the applicant's interpretation of condition (k) of the Notice. The duty of the Trust Company as described in the Notice is to act only as a CD investment manager within the guidelines set by the Plan trustees for the fixed income investment portfolio of the Plans. The Trust Company is not authorized to invest assets of the Plans other than in CDs. In this regard, as described in paragraph 6 of the Notice, among their duties with respect to the Loan Program, the Plan trustees will allocate a certain percentage of the Plan's assets to the Trust Company for CD investment; will monitor the Trust Company's purchases of CDs to ensure that such purchases are consistent with the Plan trustees' asset allocation and investment policy guidelines; will monitor the performance of the Trust Company; will determine whether fixed income investments of comparable risk and term other than CDs become attractive for the Plan; and will instruct the Trust Company to return the net proceeds of the Plan's redemption of the CDs to the Plan trustees who will reallocate the assets involved to other fixed income investments managed by other investment managers. It has not been suggested in the applicant's comment that the Trust Company will assume these duties of the Plan trustees or that it become investment manager for assets other than the CDs. Accordingly, it is the belief of the Department that the duties of the Plan trustees as represented by the applicant involve the trustees in decisions with respect to the Plans' participation in the Loan Program.

As stated in paragraph 4 of the Notice, condition (k) is designed to assure that the Plan trustees and certain related entities will not derive any financial benefit, such as banking services at a reduced cost or business or personal loans under more favorable conditions than available to other customers of the Banks, as a result of a Plan's participation in the Loan Program. Therefore, for a Plan trustee to engage in or continue personal or business transactions with a Bank involved in the Loan Program, condition (k) requires that a Plan trustee must either: (1) Remove himself from any considerations or decisions made by the Plan's trustees regarding the Plan's participation in the Loan Program while the Bank is involved; or (ii) not engage in any additional transactions with the Bank during the Plan's participation in the Loan Program with such Bank.

Therefore, the Department has determined upon review of the entire record to grant the exemption as proposed.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Ophthalmic Associates, P.A. Employees' Money Purchase Pension Plan (the Ophthalmic Money Purchase Plan) Located in Lansdale, PA

[Prohibited Transaction Exemption 93–17; Application No. D–9205]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed sale by the Ophthalmic Money Purchase Plan to TJS Realty, a party in interest, for the total cash consideration of $552,500, of a fee simple interest in one of two office condominiums (the Condominium Interest) that will be partitioned from certain improved real property, provided (1) the sale is a one-time transaction for cash, (2) the Ophthalmic Money Purchase Plan is not required to pay any real estate fees or commissions in connection therewith, (3) the fair

market value of the Condominium Interest is determined by a qualified, independent appraiser; and (4) the designated independent fiduciary approves of the subject transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published in the **Federal Register** on January 19, 1993 at 58 FR 5030.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of March 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–5395 Filed 3–8–93; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–9239, et al.]

Proposed Exemptions; Nomura Securities International, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). 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, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Nomura Securities International, Inc. (Nomura)

Located in New York, New York

[Application No. D–9239]

Proposed Exemption

I. Transactions

A. Effective October 27, 1992, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer or certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan

by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective October 27, 1992, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct of indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective October 27, 1992, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of sections 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective October 27, 1992, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate-

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument-

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which Nomura or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless:

(i) The investment pool consists only of assets of the type which have been included in other investment pools,

(ii) Certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and

(iii) Certificates evidencing interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Nomura;

(2) Any person directly or indirectly, through one of more intermediaries, controlling, controlled by or under common control with Nomura; or

(3) Any member of an underwriting syndicate or selling group of which Nomura or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial insurance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under

common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

EFFECTIVE DATE: This exemption, if granted, will be effective for transactions occurring on or after October 27, 1992.

Summary of Facts and Representations

1. Nomura is incorporated in the State of New York, and is a direct wholly-owned subsidiary of Nomura Holding America Inc. Nomura Holding America Inc. is a direct wholly-owned subsidiary of the Nomura Securities Company, Ltd., a Japanese corporation. Nomura is an international financial services company involved in securities and commodities brokerage, investment banking, and investment advisory services. Nomura also is a broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934. The applicant represents that Nomura has extensive experience in underwriting and trading mortgage-backed and asset-backed securities.

Trust Assets

2. Nomura seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts:

(1) Single and multi-family residential or commercial mortgage investment trusts;[4]

(2) Motor vehicle receivable investment trusts;

(3) Consumer or commercial receivables investment trusts; and

(4) Guaranteed governmental mortgage pool certificate investment trusts.[5]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[6]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor

[4] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. Nomura requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Nomura has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[5] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[6] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Nomura, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates made to date and all of the public offerings of certificates presently contemplated have been or are to be underwritten on a firm commitment basis. In addition, Nomura has privately placed certificates on both a firm commitment and an agency basis. Nomura may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annually installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed 45 days. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Nomura requests exemptive relief for two types of multi-class certificates: "Strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[7]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In certain transactions of this type, interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates have been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[8]

[7] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[8] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates. Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities:

(i) A special-purpose corporation unaffiliated with the servicer,

(ii) A special-purpose or other corporation affiliated with the servicer, or

(iii) The servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and

instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Nomura, the trust sponsor or the servicer. Nomura represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor or the trust as specified in the pooling and servicing agreement. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Nomura. In other cases, however, affiliates of Normura may originate or service receivables included in a trust, or may sponsor a trust.

11. Where the sponsor of a trust is not the originator of receivables included in a trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters. In some transactions, the sponsor or an affiliate may retain a portion of the certificates for its own account. In addition, in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for receivables sold to the trust. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payments.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[9] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support or deposited into a reserve fund. Any funds on deposit in a reserve fund after the certificateholders (and the credit enhancement provider, if any) have been paid in full are generally paid to the sponsor or the servicer. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories:

(a) Prepayment fees;

(b) Late payment and payment extension fees and fees related to the modification of the terms of an obligation as permitted by the provisions of the pooling and servicing agreement (including the partial release of collateral to the extent provided therein); and

(c) Fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of

[9] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. Nomura will receive a fee in connection with the securities underwriting or private placement of certificates. In a securities underwriting, this fee would normally consist of the difference between what Nomura receives for the certificates that it distributes and what it pays the sponsor for those certificates. In some public offerings, however, Nomura may sell certificates on an agency basis in a best efforts underwriting. In those cases, Nomura would receive an agency commission paid by the sponsor plus reimbursement for out-of-pocket expenses. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the certificates in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or the creation of a class of certificates with subordinated cash flow) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. However, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount,

subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. It is Nomura's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is Nomura's intention to attempt to make a market for any certificates for which Nomura is lead or co-managing underwriter.

Retroactive Relief

25. Nomura represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would not be granted. However, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3–101(b)), it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Therefore, Nomura requests relief retroactive for transactions which have occurred on or after October 27, 1992, the date Nomura originally filed its exemption application with the Department.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's,

Moody's D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Nomura seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Nomura has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects:

(1) The proposed exemption provides individual exemptive relief rather than class relief;

(2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages;

(3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and

(4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P or Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[10]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Nomura represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[11] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[12] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Nomura represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Nomura represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Nomura represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by section 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has

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[10] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[11] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Nomura or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[12] The applicant represents that where a trust sponsor is an affiliate of Nomura, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Nomura is not a fiduciary with respect to plan assets to be invested in certificates.

determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Junaluska Animal Hospital, P.A. Profit Sharing Plan (the Plan) Located in Waynesville, North Carolina

[Application No. D–9092]

Proposed Exemption

The Department is considering granting an 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 29 CFR part 2570, subpart B (55 FR 3283€, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a parcel of unimproved real property (the Property) by the Plan to a Veterinary Partnership (the Partnership), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(a) The proposed sale will be a one-time cash transaction;

(b) The price paid to the Plan will be the greater of: (1) $18,500, which was the fair market value of the Property as of February 7, 1992 as established by an independent qualified appraiser; or (2) the fair market value at the time of the sale as determined by an independent qualified appraiser;

(c) The Plan will pay no expenses associated with the sale; and

(d) The terms of the sale will be at least as favorable to the plan as an arm's length transaction between unrelated parties.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with seven participants and $266,298 in total assets as of December 31, 1991. The trustees of the Plan are Paul F. Bevilacqua, Sam H. Mitchell and William T. Snyder, II (the Trustees). The Trustees are equal owners of Junaluska Animal Hospital, P.A. (the Employer), which is the Plan sponsor. The Employer is a veterinary clinic located in North Carolina. The Trustees are equal owners of the Partnership which owns the land and the building (the Partnership Property). The Partnership leases the Partnership Property to the Employer.

2. The February 1982, the Plan purchased the Property for $13,000 in cash from Frank Enloe (Mr. Enloe), who was one of the original owners of the Employer. However, it is represented that at the time of the purchase, Mr. Enloe had ceased his relationship with the Plan and the Employer. Earlier in 1992 it was discovered that at the time of the original acquisition, the Property was not properly deeded to the Plan, and that this error was corrected on July 30, 1992, when a deed naming the Plan as the owner of the Property was recorded. The Property consists of an undivided ⅓ interest in an unimproved parcel of which the remaining undivided ⅔ interest is owned by Mack Setser (Mr. Setser), who was also one of the original owners of the Employer. However, Mr. Setser has been retired for approximately seven years, and has ceased his relationship with the Employer. The Property is also adjacent to the Partnership Property, however, it is represented that the Property has not been used by any parties in interest since original acquisition by the Plan.[13] The Property consists of .716 acres of unimproved land and is located in Waynesville, North Carolina, and was originally purchased for investment purposes. The Property is not encumbered by any debt. It is further represented that the Employer has paid all holding costs for the Property since the original acquisition in 1982.

3. It is proposed that the Plan sell the Property to the Partnership in a cash transaction. The Plan will bear no expenses with respect to the sale transaction. An appraisal of the Property was prepared on February 7, 1992, by Fred R. Spencer (Mr. Spencer), an independent qualified appraiser with Spencer Auction and Appraisal Services. Mr Spencer relied on the sales comparison approach and determined that the fair market value of the Property as of February 7, 1992, was $18,500. In a letter of January 21, 1993, Mr. Spencer stated that the adjacency of the Property to the Partnership Property does not merit a premium above the fair market value of $18,500 to unrelated buyers in a sale of the Property to the Partnership. It is Mr. Spencer's opinion that a plottage value did not apply to the Property as of the date of evaluation.[14] As such, Mr. Spencer concludes that the payment of $18,500 to the Plan as a result of this transaction reflects fair market value

4. It is represented that the transaction is desirable for the Plan as the sale will increase the liquidity of the Plan's investment portfolio. The transaction is protective of the Plan because the Plan will receive the fair market value of the Property as determined by an independent qualified appraiser at the time of the sale.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The price paid to the Plan will be the greater of:

(1) $18,500, which has fair market value as of February 7, 1992, as established by an independent qualified appraiser; or (2) the fair market value at the time of the sale, as determined by an independent qualified appraiser;

(c) The Plan will pay no expenses associated with the sale;

(d) The terms of the sale will be at least as favorable to the Plan as an arm's length transaction between unrelated parties;

(e) The sale will allow the Plan to liquidate its investment portfolio; and

(f) The applicant understands that the effectiveness of the exemption, if granted, is dependent on compliance with the terms as set forth herein, including any limitations, restrictions, or other conditions imposed on such exemption.

For Further Information Contact: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

United Security Bancshares, Inc., Employee Stock Ownership Plan (the Plan) Located in Thomasville, Alabama

[Application No. D–9317]

Proposed Exemption

The Department is considering granting an 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 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) an interest-free loan to the Plan (the Loan) by United Security Bancshares, Inc. (the Employer), the sponsor of the Plan, with respect to

[13] The Department expresses no opinion herein as to whether the Plan's acquisition or holding of the Property violated any provision of part 4 of title I of the Act.

[14] In this regard, Mr. Spencer maintains that plottage is defined as an increment of value that results when extra utility is created by combining two or more sites under a single ownership.

guaranteed investment contract number PY–C90043 (the GIC) issued by Inter-American Insurance Company of Illinois (Inter-American); and (2) the Plan's potential repayment of the Loan (the Repayment); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Loan is made in lieu of payments due from Inter-American under the terms of the GIC;

(C) The Repayment is restricted to cash proceeds paid to the Plan (the GIC Proceeds) by Inter-American and/or any other responsible third party with respect to the GIC, and no other Plan assets are used to make the Repayments; and

(D) The Repayments will be waived to the extent the Loan exceeds the GIC Proceeds.

Summary of Facts and Representations

1. The Plan is an employee stock ownership plan, originally established April 12, 1985, and most recently restated, with section 401(k) features, as of January 1, 1991. As of December 31, 1991 the Plan had approximately 113 participants and total assets of approximately $899,906.23. The trustees of the Plan are Jack M. Wainwright, III and Larry M. Sellers (the Trustees), each of whom is an officer and employee of the Employer. The Employer is a commercial bank operating primarily in Clarke County, Alabama. Participants in the Plan are employees of the Employer and its affiliates, and contributions to the Plan are made by the participants and by the Employer and its affiliates. Investment decisions with respect to Plan assets are made by the Trustees.

2. Among the assets of the Plan is the GIC, a guaranteed investment contract purchased by the Trustees from Inter-American on September 25, 1985. The Plan made principal deposits under the GIC in the amounts of $28,216.11 on December 31, 1985 and $96,894.55 on December 31, 1986. The GIC terms provide for the accrual of interest on principal (the Contract Interest) at the rate of 11 percent per annum over an initial three-year guarantee period, and thereafter at the rate of 9 percent per annum through the GIC's maturity on September 25, 1991 (the Maturity Date). The GIC terms authorize withdrawals by the Plan under certain circumstances, but the Trustees represent that no withdrawals have been made from the GIC. Upon the Maturity Date, Inter-American was obligated to make a final maturity payment (the Maturity Payment) in the amount of total principal deposits plus Contract Interest through maturity. As of the Maturity Date, the accumulated book value of the GIC was $210,637.18, representing the Plan's total principal deposits under the GIC, plus accrued interest at the Contract Rate. The Employer represents that the GIC constituted approximately 23.4 percent of the Plan's assets as of December 31, 1991.

4. In January 1992, Inter-American was placed into conservatorship by the Illinois Insurance Commissioner, and a moratorium was imposed on payments on Inter-American contracts, including the GIC.[15] Since the commencement of the moratorium, the Plan has received no payments under the GIC for Withdrawal Events, and the Maturity Payment due on the Maturity Date has not been paid.[16] The Employer represents that it is uncertain whether, or to what extent, holders of Inter-American contracts will recover the full amounts of principal and interest due under the contracts currently outstanding. The Employer desires to alleviate the Plan's participants of risks associated with continued investment in the GIC, to prevent any losses of Account investments in the GIC, and to provide the Plan with the cash which otherwise would have been provided by the Maturity Payment. Accordingly, the Employer proposes to make the Loan to the Plan in the amount due the Plan under the GIC, plus interest through the date of the Loan, and is requesting an exemption for the Loan, and for its potential Repayment by the Plan, under the terms and conditions described herein.

5. The Loan will be made pursuant to a written agreement between the Employer and the Plan (the Agreement) embodying all terms of the extension of credit and its repayment. The Agreement provides for the Employer to make the Loan in one lump-sum payment in the total amount of the Maturity Payment which was due September 25, 1991, consisting of total principal deposits plus accrued Contract Interest, through the Maturity Date, plus interest thereon from the Maturity Date through the date of the Loan at the highest rate allowed by the Internal Revenue Service (the Service) pursuant to a closing agreement between the Service and the Employer pursuant to Revenue Procedure. 92–16. The Loan will not bear interest, and the Employer shall not charge any fees, commissions or other charges for the Loan.

Repayment of the Loan under the Agreement is limited to payments made to the Plan pursuant to the GIC by Inter-American, by any conservator, trustee or other person performing similar functions with respect to Inter-American, or by any state guaranty fund or other person or entity, other than the Employer, acting as a surety or insurer with respect to Inter-American (collectively, the GIC Payors). No other Plan assets will be available for repayment of the Loan. If payments from the GIC Payors are not sufficient to repay fully the Loan, the Agreement provides that the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. To the extent the Plan receives amounts with respect to the GIC from the GIC Payors in excess of the total amount of the Loan, such additional amounts will be retained by the Plan and allocated among the accounts of participants in the Plan.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons:

(1) The Loan will enable the Plan to recover the full Maturity Payment which was due on the Maturity Date, plus interest thereon at the highest rate allowed by the Service;

(2) The Plan will pay no interest or incur any expenses with respect to the Loan;

(3) Repayment of the Loan will be restricted to payments by the GIC Payors and no other Plan assets will be involved in the transactions; and

(4) Repayment of the Loan will be waived to the extent the Plan recoups less from the GIC Payors than the total amount of the Loan.

For Further Information Contact: Ronald Willett of the Department (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of

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[15] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GIC.

[16] The Employer represents that the Plan's investment in the GIC had been recommended by a third party, Business Planning, Inc. (BPI), which also provided administrative services to the Plan. The Employer represents that BPI was responsible for redeeming the GIC upon its Maturity Date and collecting from Inter-American the amount of cash due the plan as the Maturity Payment. However, upon the GIC's maturity on September 25, 1991, and subsequently, the Employer states that BPI failed to submit the GIC for redemption and that BPI has been sued in connection with its failure to collect the Maturity Payment on behalf of the Plan.

disqualified person from certain other provisions of the Act and/or 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of March, 1993.

Ivan Strasfeld,

Director of Exemption Determinations.

[FR Doc. 93–5394 Filed 3–8–93; 8:45 am]

BILLING CODE 4510–29–M

LEGAL SERVICES CORPORATION

Availability of Funds and Requests for Migrant Alternative Dispute Resolution Proposals

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation (LSC or Corporation) announces that up to $100,000 is available for pilot projects using dispute resolution (ADR) to address labor and work-related disputes between U.S. migrant farmworkers and their employers. The Corporation solicits grant proposals from its existing grantees and other non-profit organizations. Each grant will be on a one-time, non-recurring basis, with a grant term of up to 12 months, and in an amount no greater than $75,000 per grant. All grants will be awarded pursuant to the authority conferred by section 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended.

DATES: Applications, including technical guidelines for proposals, and criteria to be used in evaluating proposals, will be available after March 9, 1993. Grant proposals will be reviewed in early May 1993. Consequently, proposals must be received by the Office of Field Services no later than 5 p.m., April 12, 1993.

ADDRESSES: Office of Field Services, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC, 20002–4250.

FOR FURTHER INFORMATION CONTACT: Ressie Walker, Grants Specialist, Office of Field Services, (202) 336–8826.

SUPPLEMENTARY INFORMATION: LSC is authorized to fund organizations that provide legal assistance to eligible clients. As such, LSC seeks to fund a project whereby attorneys or attorney-supervised personnel, such as paralegals, provide alternative dispute resolution on behalf of LSC-eligible clients.

Dated: March 4, 1993.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 93–5377 Filed 3–8–93; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Advancement Phase I Review Committee Section) to the National Council on the Arts will be held on March 29, 1993 from 9:30 a.m.–5:30 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m.–10:15 a.m. and 4:30 p.m.–5:30 p.m. The topics will be opening remarks and policy discussion.

The remaining portion of this meeting from 10:15 a.m.–4:30 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 2, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–5296 Filed 3–8–93; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Section) to the National Council on the Arts will be held on March 31, 1993 from 9 a.m.–6:30 p.m. and April 1 from 9 a.m.–5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 31 from 9 a.m.–9:30 a.m. and April 1 from 5 p.m.–5:30 p.m. for introductory remarks and policy discussion.

The remaining portions of this meeting on March 31 from 9:30 a.m.–6:30 p.m. and April 1 from 9 a.m.–5

p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 2, 2993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–5297 Filed 3–8–93; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice of a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #2 Section) which was to have been held on March 26–27, 1993 from 9 a.m.–5:30 p.m. will be held on March 25–26, 1993 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 4, 1993.

Yvonne M. Sabine,

Director, Panel Operations National Endowment for the Arts.

[FR Doc. 93–5378 Filed 3–8–93; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies B Section) to the National Council on the Arts will be held on March 29, 1993 from 9:30 a.m.–8:30 p.m., March 30–April 1 from 9:30 a.m.–9:30 p.m. and April 2 from 9:30 a.m.–5.30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 29 from 9:30 a.m.–10:30 a.m. and April 2 from 4:00 p.m.–5:30 p.m. The topics will be opening remarks, policy discussion, and guidelines review.

The remaining portions of this meeting on March 29 from 10:30 a.m.–8:30 p.m., March 30–April 1 from 9:30 a.m.–9:30 p.m. and April 2 from 9:30 a.m.–4:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 2, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–5295 Filed 3–8–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Regional Programs

The ACRS Subcommittee on Regional Programs will hold a meeting on March 23, 1993, at the Region II Office, 101 Marietta Street, NW., suite 2900, Atlanta, GA.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss privileged and/or proprietary information (5 U.S.C. 552b(c)(4)).

The agency for the subject meeting shall be as follows:

Tuesday, March 23, 1993—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the activities of the NRC Region II Office. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be

considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Region II Office, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492–8558), between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised or any changes in schedule, etc., that may have occurred.

Dated: March 1, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–5329 Filed 3–8–93; 8:45 am]

BILLING CODE 7590–01–M

[Facility Operating License Nos. DPR–58 and DPR–74; Docket Nos. 50–315 and 316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units 1 and 2; Notice of Withdrawal of Application for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted a request by Indiana Michigan Power Company (the licensee) to withdraw its February 25, 1991, application, as supplemented February 13, 1992, for amendments to Facility Operating License Nos. DPR–58 and DPR–74, issued to the licensee for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan. Notice of Consideration of Issuance and the amendments was published in the Federal Register on May 15, 1991 (56 FR 22470).

The purpose of the licensee's amendments request was to modify Technical Specification (TS) 4.0.3 such that the Action Requirements of the TS may be delayed for up to 24 hours to permit completion of a missed surveillance when the allowable outage time limits for the Action Requirements are less than 24 hours. The 24-hour delay was addressed by the staff in Generic Letter 87–09, dated June 4, 1987.

Subsequently, the licensee informed the staff that the amendments are no longer requested. Thus, the amendments application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendments dated February 25, 1991, and additional information provided in a letter dated February 13, 1992.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland this 26th day of February 1993.

For the Nuclear Regulatory Commission.

William M. Dean, Sr. Project Manager,

Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–5330 Filed 3–8–93; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A93–12; Order No. 965]

McAdams, Mississippi 39107 (Jimmy Kettleman, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued March 3, 1993.

Docket Number: A93–12.

Name of Affected Post Office: McAdams, Mississippi 39107.

Name(s) of Petitioner(s): Jimmy Kettleman.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: March 1, 1993.

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A));

2. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before March 16, 1993.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

March 1, 1993—Filing of Petition.

March 3, 1993—Notice and Order of Filing of Appeal.

March 26, 1993—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)].

April 5, 1993—Petitioner's Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)].

April 26, 1993—Postal Service Answering Brief [see 39 CFR 3001.115(c)].

May 11, 1993—Petitioner's Reply Brief should Petitioner choose to file one [see 39 CFR 3001.115(d)].

May 18, 1993—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].

June 29, 1993—Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 93–5313 Filed 3–8–93; 8:45 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1993, shall be at the rate of 31 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1993, 33.3 percent of the taxes collected under sections 3211(b) and 3221(c) of the

Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.7 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.

Dated: March 2, 1993.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–5331 Filed 3–8–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane, (202) 272–2142.

Upon written request copies available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street NW., Washington, DC 20549

New

Form TH File No. 270–377

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 creation of new Form TH, Notification of Reliance on Temporary Hardship, for use in the EDGAR system. Filers may obtain a temporary hardship exemption from electronic filing when they experience unanticipated technical difficulties preventing the preparation and submission of an electronic filing by filing the subject document in paper under cover of Form TH.

It is estimated that approximately 2,000 respondents will file Form TH annually at an estimated .33 burden hours per response. The estimated average burden hours are made solely for proposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or 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 Securities and Exchange Commission 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, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 20, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–5352 Filed 3–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19305; 812–8130]

Great American Reserve Insurance Co., et al.; Application

March 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Great American Reserve Insurance Company ("GARCO"), Great American Reserve Variable Annuity Fund (the "Annuity Fund"), Great American Reserve Variable Annuity Account C ("Account C"), Great American Reserve Variable Annuity Account D ("Account D", collectively with Annuity Fund and Account C, the "GARCO Accounts"), GARCO Equity Sales, Inc. ("Equity Sales") and Conseco Series Trust (the "Trust").

RELEVANT 1940 ACT SECTIONS AND RULE: Order requested under sections 6(c) and 17(b) for exemption from Sections 17(a), 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit: (1) The combination of the assets of Annuity Fund and Account D with and into Account C (the "Continuing Account"); (2) the simultaneous restructuring of the Continuing Account from a management investment company into a unit investment trust investing in shares of portfolios of the Trust; (3) the simultaneous issuance of shares of the portfolios of the Trust to newly created sub-accounts of the Continuing Account in exchange for all of the assets and related liabilities of Account C (the transactions described in (1), (2) and (3) are collectively referred to herein as the "Reorganization"); and (4) the deduction of a mortality and expense risk charge from the assets of the Continuing Account.

FILING DATE: The application was filed on October 22, 1992. The first amendment and restatement of the application was filed on January 29, 1993 and the second amendment and restatement of the application was filed on February 22, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on March 29, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit, or for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: c/o Michael L. Sapir, Esq., Jorden Schulte & Burchette, suite 400–E, 1025 Thomas Jefferson Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. GARCO, a stock life insurance company organized under the laws of Texas, is a wholly-owned subsidiary of a subsidiary of CCP Insurance, Inc. ("CCP"). Conseco, Inc. ("Conseco"), a publicly owned financial services holding company, owns approximately 36% of the outstanding stock of CCP and manages the daily operations of CCP. Conseco also has the right to elect one half of the directors of CCP.

2. Annuity Fund, Account C and Account D were created by Voyager Life Insurance Company ("Voyager") pursuant to the insurance laws of Texas. GARCO acquired the GARCO Accounts on May 15, 1986 when GARCO acquired all of Voyager's variable annuity business. Each GARCO Account is organized as a "separate account" and is registered with the Commission as an open-end diversified management investment company under the 1940 Act. The GARCO Accounts fund benefits under certain group and individual variable annuity contracts (the "GARCO Contracts").

3. Equity Sales, a wholly-owned subsidiary of GARCO, is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member

of the National Association of Securities Dealers, Inc. Equity Sales acts as a principal underwriter for the GARCO Contracts, which are sold by licensed insurance agents and insurance brokers of GARCO. The licensed agents and brokers are also registered representatives of Equity Sales.

4. Conseco Capital Management, Inc. ("CCM") acts as the investment adviser to the GARCO Accounts. CCM has entered into an investment sub-advisory agreement with John McStay Investment Counsel ("McStay") pursuant to which McStay acts as the sub-adviser to the Annuity Fund. CCM and McStay are both registered as investment advisers under the Investment Advisers Act of 1940, as amended.

5. GARCO Contracts are issued in two types: Individual Variable Retirement Annuity Contracts ("IVRACS") and Group Variable Retirement Contracts for Deferred Compensation Plans ("DC Contracts"). The Group Variable Retirement Annuity Contracts ("GVRACS"), the third type of GARCO Contracts, are no longer offered by GARCO, although previously issued GVRACS remain outstanding.

6. IVRACS are offered as both flexible installment purchase payment contracts and single payment contracts. An annual administrative fee of $20 for installment purchase contracts and $25 for single premium contracts is imposed. When the account value is surrendered or applied to an annuity option, an administrative fee is deducted from the proceeds at the lesser of $25 or 2% of the aggregate proceeds. Withdrawal of up to 10% of the purchase payment without a withdrawal penalty is permitted under specified circumstances. Withdrawals in excess of this amount are subject to a contingent deferred sales charge as follows:

Contract year	Stipulated single payment annuity contract (Percent)
1	7
2	6
3	5
4	4
5	3
6-8	0

Contract year	Flexible payment deferred annuity contract (Percent)
1	8
2	7
3	6
4	5
5	4
6	3
7	2
8	1

Contingent sales charges may also be deducted upon selection of certain annuity options; however, the application states that cumulative deductions from IVRACS will not exceed 8.5% of cumulative purchase payments made.

7. An annual administrative fee of $15 is imposed on DC Contracts. When the account value is surrendered or applied to an annuity option, an administrative fee is deducted from the proceeds at the lesser of $15 or 2% of the aggregate proceeds.

8. Upon partial or full surrender of a DC Contract during the accumulation period, a contingent deferred sales charge is made from the amount surrendered as follows:

Completed annual contribution periods	Contingent deferred sales charge (Percent)
Less than 5	5
5 or more but less than 10	3
10 or more but less than 15	2
15 or more	0

Contingent sales charges may also be deducted upon selection of certain annuity options; however, the application states that cumulative deductions from DC Contracts will not exceed 8.5% of cumulative purchase payments made.

9. There are no contingent deferred sales charges assessed against GVRACS; however, GARCO makes deductions from purchase payments (*i.e.*, renewal premiums on outstanding GVRACS) for the following items: Sales expenses; administrative expenses; and, minimum death benefits. Total deductions from premium payments range from 1% to 6% of total premium payments made and decrease as the amount of premium payments increases.

10. Applicants represent that the amount of the administrative charge for each of the three types of GARCO Contracts is guaranteed and cannot be increased.

11. GARCO makes daily deductions from the variable portion of all of the GARCO Contracts at an annual rate of 1.44%. Of the 1.44% charge, .44% is paid to CCM pursuant to an investment advisory agreement for investment management services and 1.00% is for the mortality and expense risks assumed by GARCO. Of the 1.00% charge for mortality and expense risks, .50% is attributable to mortality risks and .50% is attributable to the expense risks assumed by GARCO. The application states that the mortality risk assumed by GARCO is that annuitants may live longer than estimated. If annuitants live longer than the life expectancy by GARCO, GARCO will make annuity payments from its general account; however, if annuitants do not reach the life expectancy determined by GARCO, GARCO will realize a gain. The application states that the expense risk assumed by GARCO is the risk that expenses of administering the GARCO Contracts will exceed the proceeds of the administrative and expense charges.

12. Any premium tax due is deducted from purchase payments or from individual account values at the annuity commencement date or at such other time as the tax becomes due. The current range of premium taxes in jurisdictions in which the GARCO Contracts are made available ranges from 0% to 4%. Certain other expenses and deductions are made by GARCO with respect to each form of GARCO Contract and these expenses and deductions are described more fully in the application.

13. The Trust is an open-end diversified management investment company registered under the 1940 Act. Shares of the Trust are offered in connection with certain individual flexible purchase payment deferred variable annuity contracts (the "Bankers Contracts") issued by Bankers National Life Insurance Company ("Bankers Life"), a subsidiary of Conseco. The Bankers Contracts are funded through Bankers National Variable Account B (the "Bankers Account"), a unit investment trust registered under the 1940 Act. Bankers Life and the Bankers Account currently own all of the outstanding shares of the Trust. Responsibility for managing the affairs of the Trust and overseeing its investment adviser rests with the trustees of the Trust ("Trustees"). The Trust is a series fund consisting of a Money Market Portfolio, a Government

Securities Portfolio, a Common Stock Portfolio and an Asset Allocation Portfolio (individually, a "Portfolio", collectively, the "Portfolios"). Pursuant to a resolution of the Trustees, the Trust will amend its registration statement to add a Corporate Bond Portfolio. The Corporate Bond Portfolio has no assets and will not be operational until the Effective Date of the Reorganization.[1]

14. Pursuant to an investment advisory agreement, and subject to the authority of the Trustees, CCM serves as the Trust's investment adviser and conducts the daily operations of the Trust. For serving as investment adviser, the Trust currently pays CCM a monthly fee based upon each Portfolio's average monthly net asset value at the following annual rates: .50% of the daily net asset value of the Money Market Portfolio and the Government Securities Portfolio; .55% of the daily net asset value of the Corporate Bond Portfolio; .60% of the daily net asset value of the Common Stock Portfolio and .65% of the daily net asset value of the Asset Allocation Portfolio.

15. The GARCO Contracts ("Contract Owners"), the GARCO Accounts will be combined into Account C with the Continuing Account simultaneously restructured as a unit investment trust investing exclusively in shares of the Trust. All of the Trust's Portfolios are expected to be available under the GARCO Contracts as of the Effective Date of the Reorganization except that the Government Securities and the Asset Allocation Portfolios may not be made available until approximately 30 days after the Reorganization. All of the portfolios assets of Annuity Fund and Account D will be sold, assigned and transferred to the Continuing Account and GARCO, on behalf of the Continuing Account, will simultaneously transfer all of the Continuing Account's combined assets to the Trust in exchange for shares of certain Portfolios which will be issued to newly-created corresponding sub-accounts of the Continuing Account. The Continuing Account will retain its existing name of Account C, and the separate registrations of Annuity Fund and Account D with the Commission under the 1940 Act will be terminated.

16. GARCO will bear all expenses incurred in effecting the Reorganization. In exchange for the assets of the GARCO Accounts, the Trust will issue shares of beneficial interest to the Continuing Account. Shares of the Common Stock Portfolio of the Trust will be issued in return for the assets of the Annuity Fund, shares of the Corporate Bond Portfolio (to be created upon the Reoganization) of the Trust will be issued in return for the assets of Account C and shares of the Money Market Portfolio of the Trust will be issued in return for the assets of Account D.

17. The number of shares of each Portfolio to be issued in connection with the Reorganization to the respective corresponding sub-account of the Continuing Account shall be determined by dividing the value of the portfolio assets of each GARCO Account to be transferred (as of the close of trading on the business day next preceding the Effective Date of the Reorganization) by the per share net asset value of shares of the corresponding Portfolio (as of the close of trading on the business day next preceding the Effective Date). Applicants state that as a result, each Portfolio share that is issued in the Reorganization will be issued for consideration equal to the net asset value of the share. The Trust will issue full and fractional shares of each Portfolio receiving assets in the reorganization. Applicants represent that they intend to comply with section 22(c) of the 1940 Act and Rule 22c–1 thereunder in effecting the transfers of shares of the Reorganization.

18. As of the Effective Date, the investment management agreements between CCM and each of the GARCO Accounts and the investment sub-advisory agreement between CCM and McStay with respect to the Annuity Fund will terminate. CCM will continue as investment adviser under its present investment advisory arrangements with the Trust, except that CCM will also manage the Corporate Bond Portfolio.

19. With respect to existing GARCO Contracts outstanding immediately prior to the Effective Date, GARCO will issue an endorsement guaranteeing that the total of the advisory fees charged against any of the Trust's Portfolios the shares of which are purchased by the Continuing Account, plus the mortality and expense risk, administrative and any other charges upon the assets of the corresponding sub-accounts of the Continuing Account, will never exceed an amount that is equal to the total amount of the same charges that would have been imposed under such GARCO Contracts absent the Reorganization. With respect to such GARCO Contracts, GARCO will reimburse to the appropriate sub-account of the Continuing Account an amount that represents the difference between the current investment advisory fee of .44% per annum charged the GARCO Accounts and the amount of the advisory fee charged to the corresponding Portfolio of the Trust. The mortality and expense risk and administrative charges will not change, or will be reimbursed, and any other charges imposed on the assets of the Continuing Account are not expected to exceed the amount of such charges prior to the Reorganization or they will be reimbursed.

20. The application states that GARCO will not assume extraordinary or non-recurring expenses of the Trust, no does the reimbursement apply to any federal income tax if the Trust or any Portfolio fails to qualify as a "registered investment company" under applicable provisions of the Internal Revenue Code, as amended.

21. The Continuing Account has filed with the Commission a post-effective amendment on Form N–4 to its current registration statement on Form N–3. The application states that such registration statement is expected to be effective as of the Effective Date.

22. On matters upon which Contract Owners currently have a voting privilege, the application represents that, following the Reorganization, Contract Owners will have the opportunity to instruct GARCO as to the voting of the Trust's shares attributable to the Contract Owners' respective account values. GARCO will then vote the shares of each Portfolio of the Trust held by the Continuing Account and attributable to the GARCO Contracts in accordance with instructions received from Contract Owners. Shares of the Trust held by the Continuing Account that are not attributable to Contract Owners or for which instructions have not been received will be voted by GARCO in the same proportion as the shares for which instructions have been received.

23. The Application states that proxy materials were provided to Contract Owners. These materials included a proxy statement/prospectus filed with the Commission on Form N–14 and incorporated by reference into the application. On December 14, 1992, special meetings of the Contract Owners of each GARCO Account were held. At these meetings, the application represents that, with respect to each

[1] The application defines the Effective Date as the date specified in the Agreement and Plan of Reorganization by and among GARCO, each of the GARCO Accounts and the Trust (the "Agreement") or, such other date as may be mutually agreed upon by all parties to the Agreement, when "all of the cash, securities and other investments held or in transit, receivables for investments sold, dividends, interest receivables and any other assets, and all investment related liabilities of Annuity Fund and Account D will be transferred into the Continuing Account." Concurrently therewith, GARCO, on behalf of the Continuing Account, will sell, assign and transfer all of the Continuing Account's assets to the Trust.

GARCO Account, the Reorganization was approved by a vote of the Contract Owners which fulfills the requirements of the 1940 Act.

Applicants' Legal Analysis

Affiliated Transactions

1. Applicants request that the Commission, pursuant to sections 6(c) and 17(b) of the 1940 Act, grant the exemptions set forth in the application in connection with the Reorganization.

2. Section 17(a)(1) of the 1940 Act prohibits an affiliated person of a registered investment company, or an affiliated person of such an affiliated person, acting as principal, from knowingly selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described in section 17(a)(1) from purchasing any security or other property from a registered investment company.

3. Each GARCO Account and the Trust may be deemed to be an affiliated person of one another or an affiliated person of an affiliated person under section 2(a)(3) of the 1940 Act, and the Reorganization may be deemed to involve one or more purchase or sales of securities or property among the GARCO Accounts and the Trust.

4. Section 6(c) of the 1940 Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision of or any rule or regulation under the 1940 Act if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

5. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a) of the 1940 Act, upon application, if evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(b) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in such company's registration statement and reports filed under the 1940 Act; and

(c) The proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicants represent that the terms of the Reorganization, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants further represent that the terms of the Reorganization are consistent with the investment policies of each of the GARCO Accounts and the Portfolios of the Trust, and are consistent with the general purposes of the 1940 Act. Applicants submit that the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors.

7. The application notes that the governing bodies of the GARCO Accounts and of the Trust have separately determined that the transactions contemplated by the Agreement are in the best interest of the Contract Owners and of the shareholders of the Trust. The Board of Trustees of the Trust concluded that the overall level of fees and charges borne, directly or indirectly, by the present shareholders of the Trust will be no greater immediately after the Reorganization than immediately prior to the Reorganization. Applicants argue that certain fees and expenses may be reduced by virtue of the economies of scale that could result from the larger asset base after the Reorganization.

8. Applicants argue that the Reorganization will benefit Contract Owners by making investments in each of the Portfolios of the Trust available. A Contract Owner may direct GARCO to allocate purchase payments or effect transfers among any one of the sub-accounts of the Continuing Account which will invest in shares of a corresponding Portfolio of the Trust. Applicants note that because of the guaranteed limitation on expenses that will be applicable under the existing GARCO Contracts, the current Contract Owners will be able to invest in any one of the Portfolios at no increase in cost even though the investment advisory fees to be paid by each of the Portfolios are higher than the advisory fees now charged to the GARCO Accounts.

9. Applicants state that the Reorganization is expected to benefit the GARCO Accounts, as well as GARCO, by reducing costs through administrative efficiencies, economies of scale and less complex record keeping. Moreover, existing and future Contract Owners with interests in the Trust are expected to benefit to the extent that, as a result of the transactions, common management of a larger asset base will tend: To facilitate maximum investment flexibility; to increase the possibility that additional investment portfolios may be added to the Trust in the future; and, to enhance liquidity.

10. GARCO will obtain an opinion of tax counsel indicating that the transfer of assets and the combination of the GARCO Accounts in the Reorganization will be "tax-free events". No gain or loss will be realized on the transfers or combinations contemplated by the Reorganization.

11. Applicants state that GARCO has obtained Contract Owner approval of the Reorganization by at least the vote required under the 1940 Act. Applicants represent that Contract Owners were informed fully of the terms of the Reorganization through the proxy materials and had an opportunity to approve or disapprove the Reorganization at special meetings of the Contract Owners called for that purpose.

12. Applicants represent that the terms of the Agreement and of the Reorganization meet all of the requirements of sections 6(c) and 17(b) of the 1940 Act and that an order should therefore be granted exempting, to the extent requested, the proposed Reorganization from the provisions of section 17(a).

13. Applicants state that they do not request an order under Rule 17d–1 in reliance upon an opinion of counsel concluding that the Reorganization is not a joint transaction or joint arrangement as contemplated by section 17(d) or Rule 17d–1 thereunder.[2]

Mortality and Expense Risk

1. Applicants[3] request that the Commission, pursuant to section 6(c) of the 1940 Act, grant the exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for mortality and expense risks. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under agreements which prohibit any payment to the depositor or principal underwriter for such trust except a fee, not exceeding such reasonable amount as the Commission may prescribe for

[2] Applicants represent that the application will be amended during the notice period to reflect this representation.

[3] With respect to the exemptive request in connection with the assessment of mortality and expense risk charges, "Applicants" refers only to GARCO, the Continuing Account and Equity Sales.

bookkeeping and other administrative duties, of a character normally performed by the bank.

2. Applicants represent that the level of the mortality and expense risk that will be charged is within the range of industry practice for comparable variable annuity contracts. Applicants state that they have reviewed publicly available information regarding products of other companies taking into consideration, in addition to the mortality and expense risk charges of the other companies, such factors as: Guaranteed minimum death benefits; guaranteed annuity purchase rates; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under contracts; and availability to individual qualified and non-tax-qualified plans. Based upon this review, Applicants conclude that the mortality and expense risk to be charged is within the range of charges determined by industry practice. Applicants represent that they will, from the Effective Date, maintain at GARCO's principal executive office, and make available to the Commission or its staff upon request, a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, GARCO's comparative review.

3. Applicants recognize that the sales loads under the GARCO Contracts may not cover all costs relating to the distribution of the GARCO Contracts and that, if a profit is realized from the mortality and expense risk charge, the profit may be offset by distribution expenses not reimbursed by sales loads. The application states that GARCO has concluded that there is a reasonable likelihood that the distribution financing arrangement will benefit the Continuing Account and Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained, from the Effective Date, at GARCO's principal executive office and will be available to the Commission.

4. GARCO represents that the Continuing Account will invest only in the Trust which undertakes, in the event the Trust should adopt any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the Trustees; including at least a majority of the members of which are not "interested persons" of the Trust within the meaning of section 2(a)(19) of the 1940 Act.

5. The application states that, for all of the reasons stated therein, the requests for exemption from sections 26(a)(2)(C) and 27(c)(2) meet the standards set forth in section 6(c) and are, therefore, necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–5353 Filed 3–8–93; 8:45 am]

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[Release No. IC–19306; 812–7992]

Ivy Fund, et al.; Notice of Application

March 2, 1993.

AGENCY: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Ivy Fund, The Mackenzie Funds Inc. ("Mackenzie"), Mackenzie Investment Management Inc. ("MIMI") and Ivy Management, Inc. ("Ivy Management").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that will permit certain open-end management investment companies to (a) issue multiple classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales load ("CDSC") on certain redemptions of shares.

FILING DATE: The application was filed on July 21, 1992 and amendments were filed on October 22, 1992, December 23, 1992, and February 10, 1993. In letters dated February 25, 1993 and March 2, 1993, applicant's counsel has stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 29, 1993 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 700 North Federal Highway, Suite 300, Boca Raton, Florida 33432.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Barry D. Miller, Senior Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Ivy Fund and Mackenzie are both registered diversified, open-end management investment companies of the series type. Ivy Fund is a Massachusetts business trust and Mackenzie is a Maryland corporation.

2. Ivy Fund currently has four separate portfolios: Ivy Growth with Income Fund ("IGIF"), Ivy Growth Fund ("IGF"), Ivy International Fund ("IIF"), and Ivy Money Market Fund. Currently IGF, IIF, and IGIF (the "Equity Portfolios") charge a front-end sales load of 5.75% for purchases of less than $50,000, scaling down in steps to no front-end sales load for purchases of $1 million or more. In addition, the Equity Portfolios have adopted a plan pursuant to rule 12b–1 under the Act ("12b–1 Plan").

3. Mackenzie currently has four portfolios: Mackenzie Canada Fund, Mackenzie Growth and Income Fund (the "Mackenzie Fund"), Mackenzie Global Fund, and Mackenzie Adjustable U.S. Government Securities Trust.[1] The Mackenzie Fund currently charges a front-end sales load of 2.75% for purchases of less than $100,000, scaling down in steps to no front-end sales load for purchases of $1 million or more. It also has a 12b–1 Plan.

4. MIMI, a majority-owned subsidiary of Mackenzie Financial Corporation ("MFC"), is a Delaware corporation that is a registered investment adviser and a registered broker-dealer. MIMI currently acts as the business manager and principal underwriter for Mackenize, and as investment adviser for the

[1] Mackenzie Canada Fund, Mackenzie Global Fund, and The Mackenzie Adjustable U.S. Government Securities Trust do not currently intend to rely on the order.

Mackenzie Global Fund, Mackenzie Adjustable U.S. Government Securities Trust, and the Mackenzie Fund. MFC serves as investment adviser to Mackenzie Canada Fund. MIMI also acts as distributor of the shares of the Ivy Fund.

5. Ivy Management, a wholly-owned subsidiary of MIMI, is a Massachusetts corporation that is a registered investment adviser. Ivy Management serves as manager of and investment adviser to Ivy Fund.

6. Mackenzie and Ivy Fund have entered into an administrative services agreement (the "Mackenzie Services Plan") with MIMI under which each portfolio pays MIMI a monthly fee based on the average daily value of the portfolio's net assets during the preceding month at an annual rate of 0.10%. In addition, Ivy Management serves as transfer agent and dividend paying agent for the Mackenzie Fund and the Ivy Fund portfolios and provides certain shareholder and shareholder-related services under a transfer agency and shareholder services agreement ("Transfer Agency Agreement") with the portfolios.

7. On October 9, 1991, the Commission issued an order under section 6(c) of the Act exempting MIMI and Mackenzie from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act to permit the issuance and sale of two separate classes of securities representing interests in the same portfolio (Investment Company Act Release No. 18357, Oct. 9, 1991). The dual distribution system has not yet been implemented. The requested order would supersede the prior order.

8. Applicants request that relief extend to any future investment portfolio of Ivy Fund, Mackenize, or any registered open-end investment companies (or series thereof) (a) whose investment adviser is MIMI, MFC, Ivy Management, or an investment adviser that is under common control with MIMI (collectively, the "Adviser"), or (b) whose principal underwriter is MIMI, or a principal underwriter that is under common control with MIMI (collectively, the "Distributor"). (Collectively, Ivy Fund, Mackenzie, and all such investment companies are referred to as the "Funds." Series of the Funds are referred to as the "Portfolios.") Any existing or future open-end investment company and any existing or future Portfolio relying upon the requested order will comply with each of the conditions and the representations as set forth in the application. No money market portfolio will rely on the order requested.

A. The Multiple Class Distribution System

9. Applicants propose to establish a multiple class distribution system to enable each Portfolio to select among an array of different loads, distribution, service and administration fees, and CDSCs (the "Multiple Class Distribution System"). Options offered will be limited to combinations of those described in the application. Initially, the applicants anticipate that only the Equity Portfolios would implement the Multiple Class Distribution System, and it is expected that IGF and IIF would establish two classes, while IGIF would establish three classes. In the future other Portfolios may want to implement the Multiple Class Distribution System.

10. If the relief requested in the application is granted, a Portfolio utilizing the Multiple Class Distribution System would adopt a policy of making a daily distribution declaration on shares of the various classes in a manner that would result in all classes having the same net asset value. The board of trustees would have authority to declare distributions on the classes of shares of a Portfolio at its discretion, including distributions made to comply with the distribution requirements under federal tax law. Any such distributions, other than amounts needed to equalize the net asset of the shares of the classes of a Portfolio, will be declared equally on all classes.

11. While the Equity Portfolios currently pay distributions on shares on an annual basis, certain Portfolios of other Funds currently pay distributions more frequently, such as quarterly. If such Portfolios adopt the Multiple Class Distribution System, it is anticipated that the distribution policies for such Portfolios would provide for the payment of distributions more frequently. Applicants' current intent, however, is to pay daily dividend declarations on Class A shares (as described below) of the Equity Portfolios monthly.

12. Applicants expect that the daily distribution declarations generally would be comprised of net investment income and net realized short-term capital gains, although the source of these distributions for purposes of the Act would not be determined until the time of the payment. If, for any daily declaration of distributions of a class of shares of a Portfolio, it is determined that, at the time of payment, net investment income and short-term capital gains are less than the amount of the declaration, the difference would be treated as a distribution from the Portfolio's capital attributable to such shares for purposes of the Act. Applicants represent that they will comply with the requirements of section 19(a) of the Act and rules 19a–1 and 19b–1 thereunder.

13. Ivy Fund proposes to divide its shares of beneficial interest of IGF and IIF into two classes, each with its own distribution financing method. The outstanding shares of IGF and IIF would be classified as Class A shares. New Class A shares would be offered to the public with a front-end sales load, although certain classes of shareholders would be entitled to purchase without a front-end sales load. Ivy Fund's current 12b–1 Plan would continue for the Class A shares of IGF and IIF. Class A shares of IGF and IIF would be subject to a 12b–1 fee, which is expected to be at a rate equal on an annual basis of up to 0.25% of the average daily net asset value of outstanding shares issued after December 31, 1991 for which a broker-dealer is designated as nominee or the dealer of record for the shareholder account.

14. IGF and IIF would adopt a policy of making a daily distribution declaration on their Class A shares at a rate of 0.75% of the net assets attributable to such shares, plus any amount needed to equalize the net asset value of Class A shares with Class B shares. The daily distribution declarations on the Class A shares of IGF and IIF, when added to the 12b–1 fees attributable to the Class A shares of these Portfolios, will decrease the net asset value per share of the Class A shares so that it equals that of the Class B shares.

15. IGF and IIF would create a new class of shares, designated Class B shares. As currently contemplated, the Class B shares would be sold without a front-end sales load, subject to a 12b–1 fee of 1.0% (0.25% of such fee would be designated a service fee) of the average daily net assets attributable to such shares and, during the first year following the date of purchase, a 1.0% CDSC. A portion of these fees will be paid to securities dealers and the balance of the 12b–1 fee would be retained by MIMI.

16. Applicants anticipate that Mackenzie Fund will be reorganized into IGIF (the "Reorganization"). After the Reorganization, IGIF would create three classes of shares. IGIF Class A shares would have all the same features as the Class A shares of IGF and IIF, except that IGIF would adopt a policy of making a daily distribution declaration on Class A shares at a rate of 0.95% of the net assets attributable to such shares, plus any amount needed to equalize the net asset value of Class A

shares with Class B and Class C shares. The daily distribution declaration on IGIF Class A shares and the daily distribution declaration on IGIF Class B shares, respectively, when added to the 12b–1 fees attributable to IGIF Class A and Class B shares will decrease the net asset value per share of IGIF Class A and Class B shares in equal amounts.

17. IGIF Class C shares will have all the same features as the Class B shares of IGF and IIF, except that IGIF would adopt a distribution policy that would provide for a daily distribution declaration on its Class B shares at a rate of 0.20% per annum of the net assets attributable to such shares.

18. IGIF Class C shares would be shares of IGIF which are issued to Mackenzie Fund shareholders in connection with the Reorganization. There would be no specific policy for IGIF Class C on the declaration of distribution except to make sufficient distributions to relieve it of federal income tax on its earnings.

19. IGIF Class C shares would be subject to a 12b–1 fee of 1.20% (0.25% of the fee to be designated a service fee) of the average net assets attributable to such shares. On or before July 7, 1993, the aggregate 12b–1 fee for IGIF Class C shares would be reduced to 1.0% in accordance with article III, section 26 of the National Association of Securities Dealers, Inc., as amended, when it becomes effective on July 7, 1993 (the "NASD Rule"). When the 12b–1 fee on the IGIF Class C shares is reduced to 1.0% to comply with the NASD Rule there will be a reduction in the distribution policies for the IGIF Class A and Class B shares of 0.20%. Accordingly, the net asset value per share of IGIF Class A, Class B, and Class C shares will remain identical. No sales load would be charged for the exchange of Mackenzie Fund shares for IGIF Class shares.

20. IGIF Class C shares would convert to Class A shares after specified holding periods from 2 to 8 years. The conversion of IGIF Class C shares to IGIF Class A shares may be suspended if either a tax ruling, if obtained, is revoked by the Internal Revenue Service, an opinion of counsel is withdrawn, or IGIF's board of trustees determines that continuing such conversions would have adverse tax consequences for IGIF or its shareholders. In the event that conversions of IGIF Class C shares do not occur, such shares might continue to be subject to a 12b–1 fee for an indefinite period which may extend beyond the period prescribed by the proposed Multiple Class Distribution System.

21. The purpose of the third class of IGIF, Class C, is to compensate MIMI for expenses incurred in the sale of shares of Mackenzie Fund shares and relieve the holders of Mackenzie Fund shares that have been outstanding for more than the prescribed period of the burden of a portion of the distribution fee.

22. Class C shares will not be offered to the public. The Mackenzie Fund shareholders will receive disclosure required in form N–14 regarding the IGIF Class C shares as part of the proxy materials soliciting their approval of the Reorganization. IGIF Class A and Class B shareholders will not be able to purchase IGIF Class C shares. After all IGIF Class C shares have converted to IGIF Class A shares, IGIF Class C will be terminated. For the period of time that IGIF Class C is in existence, the prospectus for IGIF Class A and Class B will identify its existence.

23. It is currently contemplated that only IGIF Class C shares will have conversion rights. Applicants also desire to have the ability to convert shares of a future class or classes of a Portfolio to those of another subject to terms fully disclosed in a Portfolio's then current registration statement, including the following: (a) All conversions will be done at net asset value without the imposition of any sales load, fee, or other charge, so that the value of each shareholder's account immediately before conversion will be the same as the value of the account immediately after conversion; (b) any conversion feature adopted by a Portfolio will be fully disclosed in the Portfolio's then-current prospectus; (c) the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversions; (d) any conversion feature will be subject to the availability of a ruling of the Internal Revenue Service or an opinion of counsel, as may be appropriate, that the conversion of shares does not constitute a taxable event under federal tax law; and (e) shares purchased through the reinvestment of dividends and other distributions paid in respect of the class subject to conversion ("target class shares") will either be paid in shares of the class in which they are to be converted ("purchase class shares") or will be considered to be held in a separate sub-account and would convert to purchase class shares in the same proportion as the ratio that the shareholder's target class shares converting to purchase class shares bears to the shareholder's total target class shares not acquired through dividends and distributions. A Portfolio would elect one of these two methods and would treat the reinvestment of dividends and distributions of a target class uniformly. In addition, different breakpoints and holding periods, within 2 and 8 years limits, may be adopted for new classes of shares of a Portfolio that determines to implement the Multiple Class Distribution System.

24. If a shareholder holds more than one class of shares in a Portfolio, or any combination of classes, the Portfolio will redeem the shares having the highest 12b–1 fees first; provided that shares subject to a CDSC will always be redeemed last, unless the shareholder specifically elects otherwise. Broker-dealers redeeming shares of a Portfolio will be provided guidelines on advising shareholder redemptions when a shareholder holds more than one class of shares in a Portfolio. In the case of IGIF Class C shares, redemption will occur in the order that will result in the shortest holding period before conversion for the remaining IGIF Class C shares (if any) after redemption.

25. Under the Multiple Class Distribution System, each share in a particular Portfolio, regardless of class, would represent an equal *pro rata* interest in the Portfolio, and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except for: (a) The impact of the differing 12b–1 fees, service and administration fees paid with respect to classes of shares; (b) the different distribution declarations on different classes to equalize the net asset value of all classes of shares; (c) the voting rights on matters which pertain to the 12b–1 Plan of a particular class; (d) the conversion feature applicable only to the Class C shares or future equivalent shares; (e) classes that impose a rule 12b–1 fee may convert to another class; (f) the option to sell shares subject to no load, a front-end load or a CDSC; (g) the designation of each class of shares; and (h) the different exchange privileges for each class.

26. It is contemplated that one or more of the Funds or Portfolios may enter agreements for administrative and transfer agency services for the Fund, Portfolio or one or more of its classes (the "Service Agreements"). Only the class or classes that receive the services as a result of such Service Agreements will bear the fees for such services. To the extent the service fees are not shared *pro rata* among the classes of a Fund or

Portfolio, the distribution policies of the classes will be structured to account for this and the net asset value of the classes will remain the same.

27. The net asset value of all outstanding shares of a Portfolio will be computed on the same days and at the same time by adding the value of all Portfolio securities and other assets belonging to the Portfolio involved, subtracting the liabilities charged to the Portfolio, and dividing the result by the number of such outstanding shares. Further, the gross income of a Portfolio will be allocated on a pro rata basis to each outstanding share in the Portfolio regardless of class.

28. Expenses of a Fund that cannot be attributed directly to any one Portfolio will be allocated to each Portfolio based on the relative net assets of each Portfolio. Certain expenses attributable to a particular Portfolio, but not to a particular class will be borne pro rata by the outstanding shares of the Portfolio regardless of class.

29. It is contemplated that those Portfolios that implement a Multiple Class Distribution System may have a class of shares that is exchangeable for the same or similar class of another Portfolio. In the case of the Equity Portfolios, the following exchange privileges are contemplated. Class A shares may be exchanged for shares of any of the Mackenzie funds on payment of any differential in sales load in compliance with rule 11a–3. As currently contemplated, the additional sales charge will be waived on an exchange of shares which have been held for one year or longer. There would be no sales charge for exchanges into the Ivy Money Market Fund. Also, there would be no sales charge on exchanges of shares acquired through dividends reinvested, except for shares purchased through dividend reinvestment in the Mackenzie Fund, Mackenzie Adjustable U.S. Government Securities Trust, or Mackenzie Limited Term Municipal Fund and exchanged into a Mackenzie load fund. Class B shares may be exchanged for shares of any of the Mackenzie group of funds on payment of any differential in sales load in compliance with rule 11a–3. The sales load differential, expressed as a percentage, will be reduced 1.0% per year for each full year for which the exchanged shares have been outstanding. Class C shares may be exchanged in the same manner as Class A shares.

B. The CDSC

30. Applicants also propose assessing a CDSC on certain redemptions of shares. Each Portfolio's particular CDSC schedule may vary, but the CDSC will comply with the NASD sales load limitations and the provisions of proposed rule 6c–10.

31. The CDSC will not be imposed on redemptions of shares which were purchased more than eight years prior to redemption (the "CDSC Period") or shares derived from the reinvestment of dividends. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares representing capital appreciation, second of shares derived from reinvestment of dividends and capital gains distributions, and finally, of other shares held by the shareholder for the longest period of time. No CDSC will be imposed on any class of shares purchased before the date applicants receive an order of the Commission or the adoption of rule 6c–10, whichever comes first.

32. The applicants are requesting the ability to waive the CDSC (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the Code, of a shareholder if redemption is made within one year of death or disability of a shareholder, as relevant; (b) on redemptions made in connection with a lump sum or other distribution following retirement, or in the case of an IRA, Keogh Plan, or a custodial account established pursuant to section 403(b)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), after attaining age 59½; (c) in connection with any redemption which results from a tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code; (d) in connection with redemptions of shares purchased by active or retired officers, directors or trustees, partners and employees of the Funds, the distributor or affiliated companies, by members of the immediate families of such persons and by dealers having a sales agreement with the distributor or any trust, pension or profit sharing plan for the benefit of such persons; (e) in connection with redemptions by any state, county, or city, or any instrumentality, department, authority or agency thereof and by trust companies and bank trust departments where law prohibits or limits these entities from paying a sales-related charge; (f) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Portfolio; (g) in connection with redemptions by accounts established with an initial purchase order of $1 million or more; (h) in connection with redemptions the proceeds of which are reinvested in shares of the same Portfolio within a set number of days after such redemption, not to exceed 365 days, as set forth in the prospectus;[2] (i) in connection with redemptions effected by advisory accounts managed by MIMI, Ivy Management, MFC or by a company affiliated with any of them; (j) in connection with redemptions by tax-exempt employee benefit plans as a result of the enactment or promulgation of any law or regulation pursuant to which continuation of the investment would be improper; (k) in connection with redemptions effected by registered investment companies in connection with the combination of the investment company with another Fund or Portfolio by merger, acquisition of assets, or by any other transaction; and (l) on redemptions made for the purpose of funding a loan to a participant in a tax-qualified retirement plan permitted to make such loans.

33. If the directors/trustees of a Portfolio determine to discontinue the waiver or reduction of the CDSC, the disclosure in the Portfolio's prospectus will be appropriately revised. Any class of shares subject to a CDSC purchased prior to the termination of such waiver or reduction would be able to have the CDSC waived or reduced as provided in a Portfolio's prospectus at the time of the purchase of such shares.

Applicants' Legal Analysis

1. Applicants believe that the issuance and sale of different classes of shares of a Portfolio that combine different options such as no-load, front-end load and CDSC with varying 12b–1 Plans and Service Agreements will facilitate meeting competitive demands of today's financial services industry. The proposed arrangement would both enable the Funds to facilitate the distribution of their shares and to tailor services and expenses without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

2. Applicants believe that the proposed allocation of expenses and voting rights relating to the 12b–1 Plans in the manner described above is equitable and would not discriminate against any group of shareholders.

3. The proposed arrangement does not involve borrowings, and does not affect

[2] The proposed CDSC waiver allows investors who redeemed to reinvest the proceeds plus the amount of any CDSC previously paid. The credit will be paid for by the distributor, not the Funds.

a Portfolio's assets and reserves or increase the speculative character of the shares of a Portfolio. All shares will participate pro rata in all of a Portfolio's income and all of its expenses. Mutuality of risk will be preserved with respect to the classes of a Portfolio; each class will represent, on a per share basis, an equal pro rata interest in the same investment Portfolio and will be subject to the same investment risk as the other classes of shares of the Portfolio. Since all classes of shares will be redeemable at all times, neither class will have any preferences or priority over the other classes of the Portfolio in the usual sense. The concern that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value the securities of a Portfolio is not present under the proposed arrangement. The classes of securities that were present in the capital structures that prompted the Commission to recommend the adoption of section 18 of the Act (i.e., funded debt, preference stocks and convertible securities) are not present in the proposed arrangement.

4. Applicants submit that the requested exemption to permit the Portfolios to implement the proposed CDSC arrangement is appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. The proposed CDSC arrangement will provide shareholders with the option of having their full payment invested for them at the time of their purchase of shares of the Portfolios with no deduction of a sales charge.

Applicants' Conditions [3]

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same Portfolio of investments of the Portfolio, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Portfolio will relate solely to: (a) Differences in policies with respect to the payment of distributions; (b) the impact the disproportionate payments made under the rule 12b–1 distribution plan of the Portfolio or under any Service Agreement or Transfer Agent Agreement and any incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (c) the conversion feature applicable only to the Class C shares or future equivalent shares; (d) the fact that the classes will vote separately with respect to the Portfolio's rule 12b–1 distribution plan, except as provided in condition 4; (e) the different exchange privileges of the classes of shares; and (f) the designation of each class of shares of a Portfolio.

2. The Directors of the Portfolio, including a majority of the independent Directors, will approve the Multiple Class Distribution System. The minutes of the meetings of the Directors of the Portfolio regarding the deliberations of the Directors with respect to the approvals necessary to implement the Multiple Class Distribution System will reflect in detail the reasons for the Directors' determination that the proposed Multiple Class Distribution System is in the best interests of both the Portfolio and its shareholders.

3. On an ongoing basis, the Directors of the Portfolio pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor Portfolios for the existence of any material conflicts between the interests of the classes of shares. The Directors, including a majority of the independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. If IGIF or another Portfolio implements any amendments to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares of IGIF or equivalent shares of another Portfolio ("target class" shares) under the plan, IGIF Class C shares or equivalent shares of another Portfolio ("purchase class" shares) will stop converting into the target class unless the purchase class shareholders, voting separately as a class, approve the proposal. The Directors shall take such action as is necessary to ensure that existing purchase class shares are exchanged or converted into a new class of shares ("new target class"), identical in all material respects to the target class as it existed prior to the implementation of the proposal, no later than such shares previously were scheduled to convert into the target class. If deemed advisable by the Directors to implement the foregoing, such action may include the exchange of all existing purchase class shares for a new class ("new purchase class"), identical to existing purchase class shares in all material respects except that new purchase class will convert to new target class. New target class or new purchase class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of new target class or new purchase class shall be borne solely by the Adviser and the Distributor. Purchase class shares sold after the implementation of the proposal may convert into target class shares subject to a higher maximum payment, provided that the material features of the target class plan and the relationship of such plan to the purchase class shares are disclosed in an effective registration statement.

5. Any Shareholder Services Agreement and Transfer Agent Agreements ("Agreements") will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating the Agreements, the Directors will specifically consider whether (a) the Agreements are in the best interest of the applicable classes and their respective shareholders; (b) the services to be performed pursuant to the Agreements are required for the operation of the applicable classes; (c) the service organizations can provide services at least equal, in nature and quality, to those provided by others, including the Portfolio, providing similar services; and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each Agreement entered into pursuant to the shareholder services plan will contain a representation by the service provider that any compensation payable to the service provider in connection with the investment of its customers' assets in the Portfolio (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and

[3] Matters specifically related to IGIF are identified separately where appropriate. "Directors" includes both the members of a board of directors of a portfolio or of a board of trustees.

(c) will not result in an excessive fee to the service provider.

Stuart, W. Scott, House, 109 High St., West Union, 9300219

7. Each Agreement entered into pursuant to the shareholder services plan will provide that, in the event an issue pertaining to the shareholder services plan is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportions as the vote of those shares held for its' customers' accounts.

8. The Directors of the Portfolio will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors in the exercise of their fiduciary duties.

9. Dividends paid by the Portfolio with respect to each class of its shares, to the extent that dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except for distributions made to maintain an equal net asset value among the classes. Distribution and shareholder services payments relating to each respective class of shares will be borne exclusively by that class and any incremental transfer agency costs relating to a particular class of shares will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses between the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Portfolio(s) that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Portfolio (which the Portfolios agree to provide), will be available for inspection by the SEC staff upon the written request to a Portfolio for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.[4]

11. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition (10) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (10) above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert, or appropriate substitute Expert.

12. The prospectus of a Portfolio will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Portfolio shares may receive different compensation will respect to one particular class of shares over another in a Portfolio.

13. The Distributor will adopt compliance standards, as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Portfolio to agree to conform to such standards.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors of the Portfolio with respect to the Multiple Class Distribution System will be set forth in guidelines which will be furnished to the Directors.

15. The Portfolio will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares of the Portfolio, other than IGIF Class C shares, in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Portfolio will disclose the respective expenses and performance data applicable to all classes of shares of the Portfolio in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of a Portfolio other than Class C of IGIF, it will disclose the respective expenses and/or performance data applicable to all classes of the Portfolio other than Class C of IGIF. Advertising materials reflecting the expenses or performance data for Class C shares of IGIF will be available only to Class C investors. The information provided by applicants for publication in any newspaper or similar listing of the Portfolio's net asset values and public offering prices will separately present all classes of the Portfolio, except the Portfolio may omit data regarding IGIF Class C shares.

16. The applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that a Portfolio may make pursuant to its 12b–1 Plan or the Agreements in reliance on the exemptive order.

17. Any purchase class shares will convert into target class shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

18. The applicants will comply with the representations in the application concerning the CDSC and the provisions of rule 6c–10 under the Act, as such rule is currently proposed and as it may be reproposed, adopted, or amended.

[4] The staff notes that SAS No. 44 of the AICPA has been superseded by SAS No. 70, which is effective for all auditors' reports dated after March 31, 1993.

For the Commission by the Division of Investment Management under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–5354 Filed 3–8–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at William R. Fairchild International Airport, Port Angeles, WA; Correction

SUMMARY: This correction incorporates information from the public agency's application.

In notice document 93–3619 beginning on page 8812 in the issue of Wednesday, February 17, 1993 make the following correction:

In the second column: Air carriers and foreign air carriers may submit copies of written comments previously provided to Spokane Airport Board under § 158.23 of part 158. Should read "Air carriers and foreign air carriers may submit copies of written comments previously provided to Port of Port Angeles under § 158.23 of part 158."

Issued in Renton, Washington on March 2, 1993.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–5371 Filed 3–8–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Intelligent Vehicle-Highway Systems (IVHS); Early Deployment Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for information.

SUMMARY: The FHWA is announcing its procedures for implementing the IVHS Early Deployment Program. This Program is intended to provide assistance to State and local transportation agencies and Metropolitan Planning Organizations (MPO) for the development of a multi-year strategic deployment plan for IVHS in major metropolitan areas and on major Interstate intercity corridors. The assistance will take the form of grants which provide funding for planning studies, and development and documentation of strategic deployment plans. It is anticipated that up to 15 studies may be funded in fiscal year (FY) 1993.

DATES: Information regarding an area's plans for implementing traffic management systems and interest in requesting Early Deployment Program grants should be submitted by May 7, 1993.

ADDRESSES: Division Office in the appropriate State. See Appendix A for a listing of Division office addresses.

FOR FURTHER INFORMATION CONTACT: Shelley R. Lynch, Traffic Management Systems Division, Federal Highway Administration, HTV–31, 400 7th Street, SW., Washington, DC 20590, 202–366–2184.

SUPPLEMENTARY INFORMATION: The Intelligent Vehicle-Highway Systems Act of 1991, part B of title VI of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), established and provided funding, including planning grants, for IVHS activities. Sections 6055(b) and 6058(b), Public Law 102–240, 105 Stat. 1914, 2192, 2194 (1991). Section 6055(b) provides for grants to State and local governments for feasibility and planning studies to develop and implement intelligent vehicle-highway systems. The Early Deployment Program implements the planning grants section of the ISTEA.

The Early Deployment Program is designed to accelerate the application of IVHS technologies in metropolitan areas and along intercity corridors that have demonstrated a readiness to seriously pursue deployment of IVHS applications. Those areas that are ready to participate in the Early Deployment Program will typically have the following general characteristics:

(a) An understanding of local needs,

(b) A demonstrated commitment to good transportation management,

(c) A cooperative relationship between agencies, and

(d) A general understanding of the type of IVHS user services which will address local needs.

The Early Deployment Program is intended to provide assistance to these metropolitan areas and major corridors to develop a strategic deployment plan for IVHS that would (a) identify and document applicable IVHS user services, (b) establish system performance criteria, (c) assess the functions and requirements of the system, (d) identify and evaluate potential technologies on the basis of performance, compatibility, flexibility, and cost, (e) assess potential funding and implementation options, including use of private sector resources, and (f) identify time frames for implementation.

The Early Deployment Program will initially target the 75 largest metropolitan areas (listed in Appendix B) and 30 of the major intercity corridors linking metropolitan areas. Metropolitan and corridor areas that demonstrate their readiness and are selected for funding will be contacted for development of a grant proposal. Funds will be obligated through the State Transportation Agency, in cooperation with the MPO, by execution of the grant. Early Deployment funds are available at a maximum Federal share of 80 percent with a 20 percent match from non-Federal sources. Funds for approved projects in the amount of the IVHS contribution will be added to the State's obligational limitation. It is anticipated that approximately 15 studies will be funded in FY 93.

Recipients of Early Deployment Program grants will be selected based on results from the following:

A. Information Requested

States and metropolitan areas that are ready to pursue IVHS technologies for area wide or intercity corridor applications should respond to this announcement by notifying their local FHWA division office. The expressions of interest should include the following information:

1. A brief description of the current traffic and transit management systems and their capabilities, including operations and maintenance commitments, and staffing;

2. Organizational structure and assignments of responsibility, and any ongoing or planned interagency coordination activities;

3. A brief description of any ongoing or planned studies or infrastructure improvements relating to traffic/transit management and IVHS; and

4. A description of the types of IVHS services that the area or corridor envisions for its future transportation system (in the next ten years).

Information provided in the expression of interest will be used by the FHWA and the Federal Transit Administration personnel to determine the area's current state of readiness, its current capabilities, and appropriateness for participation in the IVHS Early Deployment Program.

B. General Selection Procedures

Based on the expressions of interest and review of all information available, region offices will arrange in priority order the areas that they have determined to be ready. Initial selection will be made by a national team

(composed of headquarters and field personnel) based on available funds. When initial selections are made, selected parties will be asked to prepare a more detailed proposal, which will form the basis for the commitment of funding through execution of a grant. Approved planning grants will include a requirement to produce a report which may be given wide distribution in order to assist others who are interested in deployment of IVHS technologies. Implementation of recommendations from the report will be monitored and evaluated.

Assistance Provided by FHWA

Technical assistance is available from the FHWA and other sources regardless of the status of an individual metropolitan area or corridor relative to IVHS deployment. Even though an individual metropolitan area or corridor may not be ready for funding in FY 93, technical assistance can be provided as needed to prepare the area for future participation in the Early Deployment Program. The local division offices will be able to identify specific areas where technical assistance is available.

Appendix A—List of FHWA Division Office Addresses

Alabama (HDA–AL)
Mr. Joe D. Wilkerson
Administrator
500 Eastern Blvd., suite 200
Montgomery, AL 36117–2018

Alaska (HDA–AK)
Mr. Robert E. Ruby
Administrator
709 W. Ninth Street, room 443
Juneau, AK 99802–1648

Arizona (HDA–AZ)
Mr. Edward A. Wueste
Administrator
234 N. Central Ave., suite 330
Phoenix, AZ 8504

Arkansas (HDA–AR)
Mr. William D. Richardson
Administrator
Federal Office Bldg., room 3128
700 West Capitol Avenue
Little Rock, AR 72201

California (HDA–CA)
Mr. Roger E. Borg
Administrator
Federal Building, 2d Floor
801 I Street
Sacramento, CA 95814

Colorado (HDA–CO)
Mr. George H. Osborne
Administrator
555 Zang Street, room 250
Lakewood, CO 80228

Connecticut (HDA–CT)
Mr. Gary Hamby
Administrator
450 Main Street, room 635
Hartford, CT 06103

Delaware (HDA–DE)
Mr. John J. Gilbert
Administrator
300 South New Street, room 2101
Dover, DE 19901–6726

District of Columbia (HDA–DC)
Mr. Arthur J. Hill
Administrator
Union Center Plaza, suite 750
820 First Street, NE.
Washington, DC 20002

Florida (HDA–FL)
Mr. Jennings R. Skinner
Administrator
227 N. Bronough St., room 2015
Tallahassee, FL 32301

Georgia (HDA–GA)
Mr. Larry Dreihaup
Administrator
1720 Peachtree Road NW., suite 300
Atlanta, GA 30367

Hawaii (HDA–HI)
Mr. William R. Lake, Jr.
Administrator
Prince Jonah Kuhio Kalanianaole Federal Building
300 Ala Moana Blvd., room 3202
Honolulu, HI 96850

Idaho (HDA–ID)
Mr. Jack T. Coe
Administrator
3050 Lakeharbor Lane, suite 126
Boise, ID 83703

Illinois IL (HDA–IL)
Mr. Lyle P. Renz
Administrator
3250 Executive Park Drive
Springfield, IL 62705

Indiana (HDA–IN)
Mr. Arthur A. Fendrick
Administrator
575 N. Pennsylvania Street, room 254
Indianapolis, IN 46204

Iowa (HDA–IA)
Mr. Hubert A. Willard
Administrator
105 Sixth Street
Ames, IA 50010

Kansas (HDA–KS)
Mr. Robert J. Deatrick
Administrator
3300 South Topeka Boulevard, suite 1
Topeka, KS 66611–2237

Kentucky (HDA–KY)
Mr. Paul E. Toussaint
Administrator
John C. Watts Federal Building and U.S. Courthouse
330 W. Broadway
Frankfort, KY 40602

Louisiana (HDA–LA)
Mr. William A. Sussman
Administrator
Federal Building, room 255
750 Florida Street
Baton Rouge, LA 70801

Maine (HDA–ME)
Mr. Paul Lariviere
Administrator
Edmund S. Muskie Federal Building
40 Western Avenue, room 614
Augusta, ME 04330

Maryland (HDA–MD)
Mr. A. Porter Barrows
Administrator
The Rotunda, suite 220
711 West 40th Street
Baltimore, MD 21211

Massachusetts (HDA–MA)
Mr. Donald E. Hammer
Administrator
55 Broadway—10th Floor
Cambridge, MA 02142

Michigan (HDA–MI)
Mr. A. George Ostensen
Administrator
Federal Building, room 211
315 West Allegan Street
Lansing, MI 48933

Minnesota (HDA–MN)
Mr. Charles E. Foslien
Administrator
Metro Square Bldg., suite 490
Seventh & Robert Streets
St. Paul, MN 55101

Mississippi (HDA–MS)
Mr. John F. Sullivan, Jr.
Administrator
666 North Street, suite 105
Jackson, MS 39202–3199

Missouri (HDA–MO)
Mr. Gerald J. Reihsen
Administrator
209 Adams Street
Jefferson City, MO 65101

Montana (HDA–MT)
Mr. Henry D. Honeywell
Administrator
Federal Office Building
301 S. Park, Drawer 10056
Helena, MT 59626–0056

Nebraska (HDA–NE)
Mr. Charles A. Culp
Administrator
Federal Building, room 220
100 Centennial Mall North
Lincoln, NE 68508–3851

Nevada (HDA–NV)
Mr. Frederick G. Wright, Jr.
Administrator
1535 Hot Springs Rd., suite 100
Carson City, NV 89701–0602

New Hampshire (HDA–NH)
Mr. Gerald L. Eller
Administrator
Federal Building, room 204
279 Pleasant Street
Concord, NH 03301

New Jersey (HDA–NJ)
Mr. Charles J. Nemmers

Administrator
Suburban Square Building
25 Scotch Road, 2d Floor
Trenton, NJ 08628–2595

New Mexico (HDA–NM)
Mr. Reuben S. Thomas
117 U. S. Courthouse
S. Federal Place
Santa Fe, NM 87501

New York (HDA–NY)
Mr. Harold J. Brown
Administrator
Leo W. O'Brien Federal Building, 9th Floor
Clinton Avenue & North Pearl St.
Albany, NY 12207

North Carolina (HDA–NC)
Mr. Nicholas L. Graf
Administrator
310 New Bern Avenue, suite 410
Raleigh, NC 27611

North Dakota (HDA–ND)
Mr. George A. Ensen
Administrator
1471 Interstate Loop
Bismarck, ND 58501–0567

Ohio (HDA–OH)
Mr. Fred J. Hempel
Administrator
200 North High Street, room 328
Columbus, OH 43215

Oklahoma (HDA–OK)
Mr. Gary E. Larsen
Federal Office Bldg., room 454
200 NW. Fifth Street
Oklahoma City, OK 73102

Oregon (HDA–OR)
Mr. Robert G. Clour
Administrator
The Equitable Center, ste. 100
530 Center Street, NE.
Salem, OR 97301

Pennsylvania (HDA–PA)
Mr. Manuel A. Marks
Administrator
228 Walnut Street
Harrisburg, PA 17108

Puerto Rico (HDA–PR)
Mr. Juan O. Cruz
Administrator
Frederico Degetau Federal Building & U.S. Courthouse
Carlos Chardon Street, room 329
Hato Rey, PR 00918

Rhode Island (HDA–RI)
Mr. Gordon G. Hoxie
Administrator
380 Westminster Mall, 5th Floor
Providence, RI 02903

South Carolina (HDA–SC)
Mr. Robert J. Probst
Administrator
Strom Thurmond Federal Building
1835 Assembly Street, suite 758
Columbia, SC 29201

South Dakota (HDA–SD)
Mr. Donald F. Kamnikar
Administrator
Federal Building, room 337
225 South Pierre Street
P.O. Box 700
Pierre, SD 57501

Tennessee (HDA–TN)
Mr. Dennis C. Cook
Administrator
249 Cumberland Bend Drive
Nashville, TN 37228

Texas (HDA–TX)
Mr. Frank M. Mayer
Administrator
Federal Office Building
300 East Eighth St., room 826
Austin, TX 78701

Utah (HDA–UT)
Mr. Donald P. Steinke
Administrator
2520 West 4700 South, suite 9A
Salt Lake City, UT 84118

Vermont (HDA–VT)
Mr. Don West
Administrator
Federal Building
87 State Street
Montpelier, VT 05602

Virginia (HDA–VA)
Mr. James M. Tumlin
Administrator
Federal Building, 10th Floor
400 N. 8th Street
Richmond, VA 23240

Virgin Islands (HVI–01)
Ms. Charlotte Amalie
U.S. Federal Building & Courthouse, room 281
St. Thomas, VI 00801

Washington (HDA–WA)
Mr. Barry F. Morehead
Administrator
Suite 501, Evergreen Plaza
711 South Capitol Way
Olympia, WA 98501

West Virginia (HDA–WV)
Mr. Billy R. Higginbotham
Administrator
550 Eagan Street, suite 300
Charleston, WV 253014

Wisconsin (HDA–WI)
Mr. James E. St. John
Administrator
4502 Vernon Boulevard
Madison, WI 53705–4905

Wyoming (HDA–WY)
Mr. Frederick A. Behrens
Administrator
1916 Evans Avenue
Cheyenne, WY 82001–3764

Appendix B—75 Largest Metropolitan Areas by Population

New York, Northern New Jersey, Long Island, NY–NJ
Los Angeles, Anaheim, Riverside, CA
Chicago, Gary, Lake County, IL–IN–WI
San Francisco, Oakland, San Jose, CA
Philadelphia, Wilmington, Trenton, PA–NJ
Detroit, Ann Arbor, MI[1]
Boston, Lawrence, Salem, MA–NH[1]
Washington, D.C.
Dallas, Forth Worth, TX[1]
Houston, Galveston, Brazoria, TX
Miami, Fort Lauderdale, FL
Atlanta, GA
Cleveland, Akron, Lorain, OH
Seattle, Tacoma, WA
San Diego, CA
Minneapolis, St. Paul, MN–WI
St. Louis, MO–IL[1]
Baltimore, MD
Pittsburgh, Beaver Valley, PA[1]
Phoenix, AZ
Tampa, St. Petersburg, Clearwater, FL[1]
Denver, Boulder, CO[1]
Cincinnati, Hamilton, OH–KY–IN
Milwaukee, Racine, WI
Kansas City, MO–KS
Sacramento, CA
Portland, Vancouver, OR–WA[1]
Norfolk, Virginia Beach, Newport, VA
Columbus, OH
San Antonio, TX
Indianapolis, IN
New Orleans, LA
Buffalo, Niagara Falls, NY
Charlotte, Gastonia, Rock Hill, NC[1]
Providence, Pawtucket, Fall River, RI
Hartford, New Britain, Middletown, CT
Orlando, FL
Salt Lake City, Odgon, UT
Rochester, NY[1]
Nashville, TN
Memphis, TN
Oklahoma City, OK
Lousiville, KY–IN[1]
Dayton, Springfield, OH
Greensboro, Winston-Salem, High Point, NC
Birmingham, AL
Jacksonville, FL
Albany, Schenectady, Troy, NY
Richmond, Petersburg, VA
West Palm Beach, Boca Raton, Delray, FL
Honolulu, HI
Austin, TX
Las Vegas, NV
Raleigh-Durham, NC
Scranton, Wilkes-Barre, PA
Tulsa, OK
Grand Rapids, MI
Allentown, Bethlehem, Easton, PA–NJ
Fresno, CA
Tucson, AZ
Syracuse, NY
Greenville, Spartanburg, SC[1]
Omaha, NE–IA
Toledo, OH
Knoxville, TN
El Paso, TX

[1] Metropolitan areas that have received IVHS Early Deployment funding in prior years.

Harrisburg, Lebanon, Carlisle, PA
Bakersfield, CA
New Haven, Meriden, CT
Springfield, MA
Baton Rouge, LA
Little Rock, North Little Rock, AR
Charleston, SC[1]
Youngstown, Warren, OH–PA
Wichita, KS

(Secs. 6055(b) and 6058(b), Pub. L. 102–240, 105 Stat. 1914, 2192, 2194, 23 U.S.C.; 49 CFR 1.48)

Issued on: March 3, 1993.

E. Dean Carlson,

Executive Director.

[FR Doc. 93–5314 Filed 3–8–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

[Directive Number: 16–01]

Order of Succession of Officials Authorized To Act as Fiscal Assistant Secretary

March 2, 1993.

1. *Delegation.* This directive authorizes and directs the following officials to act as Fiscal Assistant Secretary in the order set forth and to perform all the functions of that official during the absence or disability of the Fiscal Assistant Secretary or when there is a vacancy in that office.

a. Deputy Fiscal Assistant Secretary.

b. Assistant Fiscal Assistant Secretary.

c. Director, Office of Cash and Debt Management.

2. *Cancellation.* Treasury Directive 16–01, "Order of Succession of Officials Authorized To Act as Fiscal Assistant Secretary of the Treasury," dated October 3, 1986, is superseded.

3. *Authority.* 31 U.S.C. 306(d).

4. *Office of Primary Interest.* Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 93–5316 Filed 3–8–93; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Availability of Report on Closed Meetings of the Art Advisory Panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. 552b, the Government in the Sunshine Act; and Treasury Directive 21–03 section 8 (1–29–87): A report summarizing the closed meeting activities of the Art Advisory Panel during 1992, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224. Telephone (202) 622–5164 (not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

For further information contact: Karen Carolan, CC:AP:AS:4, 901 D Street SW., room 224, Washington, DC 20024. Telephone (202) 401–4128 (not a toll free telephone number).

Michael P. Dolan,

Acting Commissioner.

[FR Doc. 93–5289 Filed 3–8–93; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 44

Tuesday, March 9, 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).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 2:00 pm, Wednesday, March 31, 1993.

PLACE: SD–116, Dirksen Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Report on financial status of the Foundation fund
   A. Review of investment policy and current portfolio
1. Report on results of Scholarship Review Panel.
   A. Discussion and consideration of scholarship candidates
   B. Selection of Goldwater Scholars

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (202) 755–2312.

Gerald J. Smith,

Executive Secretary.

[FR Doc. 93–5534 Filed 3–5–93; 3:53 pm]

BILLING CODE 4738–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

DATE AND TIME: March 16, 1993 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meetings.
2. Minutes.
3. Ratification List.
4. Invs. Nos. 731–TA–566, 568–569 (Final) (Ferrosilicon from Kazakhstan, Russia, and Ukraine)—briefing and vote.
5. Outstanding action jacket requests none.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Issued: March 4, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–5532 Filed 3–5–93; 3:39 pm]

BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

DATE AND TIME: March 18, 1993 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meetings.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–559 (Final) (New Steel Rails from the United Kingdom)—briefing and vote.
5. Outstanding action jacket requests none.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Issued: March 4, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–5533 Filed 3–5–93; 3:39 pm]

BILLING CODE 7020–02–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:30 a.m., Monday, March 15, 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: March 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–5504 Filed 3–5–93; 2:33 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 8, 15, 22, and 29, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 8

Monday, March 8

10:00 a.m.
Briefing on NRC Financial Management Matters (Public Meeting) (Contact: Ron Scroggins, 301–492–4750)

2:30 p.m.
Discussion of NRC Policy Options Concerning Nuclear Safety Issues in Eastern Europe and Former Soviet Union (Public Meeting) (Contact: Michael Congdon, 301–504–2744)

Tuesday, March 9

10:00 a.m.
Briefing on Activities of the Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting) (Contact: Malcolm Knapp, 301–504–3324)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) a. Amendments to 10 CFR Parts 50 and 52 on Training and Qualification of Nuclear Power Plant Personnel (Tentative) (Contact: R. Auluck, 301–492–3794)

2:00 p.m.
Briefing on Proposed Rulemaking for Preparation and Use of Radiopharmaceuticals (Public Meeting) (Contact: Anthony Tse, 301–492–3797)

Week of March 15—Tentative

Monday, March 15

10:00 a.m.
Discussion on Full Power Operating License for Comanche Peak (Unit 2) (Public Meeting) (Tentative) (Contact: Suzanne Black, 301–504–1318)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on License Renewal Issues (Public Meeting) (Contact: William Travers, 301–504–1117)

Week of March 22—Tentative

Friday, March 26

10:00 a.m.
Briefing on Progress of NRC Regulatory Review (Public Meeting) (Contact: Frank Gillespie, 301–504–1275)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 29—Tentative

Tuesday, March 30

10:00 a.m.
Briefing on Status of Technical Specification Improvement Program (Public Meeting) (Contact: Chris Grimes, 301–504–1161)

ADDITIONAL INFORMATION: "Continuation of 2/26 Discussion of Internal Management Issues" (Closed—Ex. 2) was held on March 4.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–5502 Filed 3–5–93; 2:24 pm]

BILLING CODE 7590–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:00 a.m.–12:00 p.m., Wednesday, March 10, 1993.

PLACE: Park Hyatt Hotel, 24th and M Street, NW., Washington, DC.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Finance Board will meet with the Federal Home Loan Banks' Directors. Matters to be considered are the following:

1. Strategic Plan—"System 2000"
2. FHLBank System Congressional Outreach Plan

The above matters are exempt under one or more of sections 552b(c)(9) (A) and (B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–5454 Filed 3–5–93; 12:15 pm]

BILLING CODE 6725–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 11, 1993, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

B. *New Business*

1. *Regulations*

a. Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations—Capital (Proposed)

Closed Session*

A. *Reports*

1. OSMO Quarterly Report

Dated: March 4, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8).

[FR Doc. 93–5435 Filed 3–5–93; 10:16 am]

BILLING CODE 6705–01–P

Corrections

Federal Register
Vol. 58, No. 44
Tuesday, March 9, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPTS-62122; FRL 4174-9]

RIN 2070-AC01

Polychlorinated Biphenyls (PCBs); Storage for Disposal of PCBs

Correction

In proposed rule document 92-1875 beginning on page 6184 in the issue of Tuesday, January 26, 1993, in the first column, under **DATES**, "[insert date 45 days after date of publication in the **Federal Register**]" should read "March 12, 1993".

For an agency related correction, see the issue of Thursday, March 4, 1993, page 12352.

BILLING CODF 1505-01-D

federal register

Tuesday
March 9, 1993

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 29 et al.
Agency Reorganization of Analytical Testing Services; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 29, 52, 55, 58, 59, 61, 70, 90–159, 180

[CS–91–009]

RIN 0581–AA51

Agency Reorganization of Analytical Testing Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise Agricultural Marketing Services's (AMS) regulations by establishing a new subchapter E, Commodity Laboratory Testing Programs, designating the rules and regulations under the Plant Variety Protection Act and consolidating and transferring functions related to analytical testing services to AMS Science Division. The proposed regulations provide for uniform laboratory test fees for different commodity products and include revised analytical service fees.

DATES: Comments must be received by April 8, 1993.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Director, Science Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), room 3507 South Agriculture Building, P.O. Box 96456, Washington, DC 20090–6456.

Comments should make reference to the docket number found in brackets in the heading of this document along with the date and page numbers of this issue of the **Federal Register**. All written submissions pursuant to this proposed rule will be made available for public inspection in the above office, between the hours of 9 a.m., and 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Craig A. Reed, Director, Science Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 3507 South Agriculture Building, Washington, DC 20090–6456, Telephone (202) 720–5231.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12291 and Secretary's Memorandum No. 1512–1; Executive Order 12778

This proposed rule has been reviewed under Executive Order 12291 and the USDA procedures established in Departmental Regulation 1512–1. The Agency has determined that this action is non-major and will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; significant adverse affects 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. Further, the proposed fee increases only reflect an increase in costs to the applicants that utilize certain laboratory services.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

II. Effect on Small Entities

The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612). The proposed fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which utilize certain laboratory services. In addition to reorganizing AMS analytical testing services under the new Science Division, this proposed rule would provide for uniform laboratory test fees for the same type of analysis performed in different commodities and their related products.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the reporting and recordkeeping included in 7 CFR part 96 have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0581–0008. The forms included in 7 CFR part 97 have been approved by the Office of Management and Budget and have been assigned OMB control number 0581–0055.

IV. Background Information

AMS provides voluntary and mandatory analytical laboratory testing, licensure of chemists and analysts, and quality assurance oversight services to private and government applicants in accordance with applicable authorities. Prior to January 15, 1989, laboratory services and technical support were provided by various AMS Divisions—Cotton, Poultry, Fruit and Vegetable, Tobacco, Dairy, and Livestock and Seed. The laboratory testing programs operated independently under the divisions according to the respective division's rules published in title 7 of the Code of Federal Regulations.

In August 1987, the AMS Administrator established a task force composed of members from the various divisions. The task force reviewed and evaluated existing AMS laboratory and technical support programs to identify organizational alternatives that could improve the quality, efficiency, and cost-effectiveness of services.

Based on task force findings and recommendations, the AMS Administrator proposed to reorganize and consolidate the field laboratory structure under the Science Division (formerly the Commodities Scientific Support Division). On October 28, 1988, the Assistant Secretary for Administration approved the proposal. On January 15, 1989, the Administrator announced the transfer of functions to the Science Division (SD).

Presently, regulations pertaining to analytical testing programs appear in chapter I, subchapters A and C of the regulations under the former divisions' sections. Due to the reorganization and consolidation of the field laboratory structure of AMS, and the transfer of functions and responsibilities to Science Division, a new subchapter E, Commodity Laboratory Testing Programs, would be established to implement the changes. Proposed subchapter E would amend the present regulations and would redesignate parts 29, 52, 55, 58, 59, 61, 70 and 180 of title 7 of the Code of Federal Regulations as parts 92–98. In addition, laboratory testing fees and hourly rates currently specified in parts 52, 55, 58, and 70 would be revised, consolidated, and published in a new part 91. Fees pertaining to cottonseed grading and certification in current part 61 would remain in proposed new part 96 pertaining to cottonseed because cottonseed grade determination is a direct result of laboratory analysis performed by USDA licensed chemists in their individual laboratories. Fees charged under the Plant Variety Protection program in current part 180 would remain in proposed new part 97 which pertains to nonlaboratory services under the Plant Variety Protection program. Since the hourly rate for the laboratory services provided

herein may change from time to time, by consolidating the majority of these fees in proposed part 91, the Agency would only need to amend one part instead of several different parts of the CFR each time the rate for such laboratory test services is revised. This proposed consolidation would also result in greater fee uniformity for identical tests and would ease the administration of laboratory services and oversight.

Proposed new part 90 would contain the introduction to subchapter E and would provide an overview of the functions and responsibilities of the Science Division. In addition, part 90 would contain the good laboratory practice and general quality assurance requirements for laboratory service programs of laboratories certified and approved by the Science Division. Part 91, in addition to laboratory testing fees, would contain general administrative provisions and definitions.

Part 92 pertaining to tobacco would contain definitions, the location of the Science Division laboratory, specific pesticide residues tests, and other types of laboratory testing services. Part 93 would contain definitions, locations of Science Division laboratories, references for analytical methods, and available laboratory tests, and special analyses performed on processed fruits and vegetables. Part 93 would be divided into three subparts in order to separate the analytical testing and laboratory services for fruits and vegetables performed at the multidisciplinary Science Division Midwestern laboratory in Chicago, Illinois, and the specialty Science Division laboratories located throughout the southern United States. Subpart A of part 93 would describe the analytical services performed at Science Division's Citrus Laboratory in Winterhaven, Florida. Laboratory analyses are conducted at this specialty laboratory primarily to determine if citrus products produced in Florida satisfy quality and grade standards set forth in the Florida Citrus Code. Analyses of citrus juice and citrus products from other countries and other locations within the United States are also available. Subpart B of part 93 would describe the laboratory analyses available for different types of food products, including processed fruits and vegetables and beverage products. The Midwestern Laboratory in Chicago conducts the majority of analyses for these food products to derive their grade and quality, and to determine compliance of the product with applicable government specifications. Subpart C of part 93 would describe the analytical services and the quality control sample programs conducted at Science Division's nine aflatoxin laboratories located in Georgia, Virginia, North Carolina, Alabama, and Oklahoma. These specialty laboratories primarily determine the aflatoxin content for peanuts, peanut products and tree nuts. In addition, some of the laboratories offer physical and chemical composition analyses for oilseeds or oilseed products.

Part 94 would contain definitions, locations of the Science Division laboratories, references for the majority of analytical methods, available laboratory analyses that are applicable to assure food safety, and the identity and quality of egg products or poultry products. Subpart A of this part would describe the mandatory egg product samples that are analyzed for the Poultry Division by appropriated and annually designated funds. Subpart B of this part would describe the voluntary egg product samples that are analyzed for a fee at a previously ascertained analysis time, and the current hourly rate. Subpart C of this part would be reserved for the Salmonella Laboratory Recognition Program.

Part 95, Processed Dairy Products, would contain definitions, the location of the Science Division laboratory, references for analytical testing methods, and available laboratory analyses to determine the United States grade standards, wholesomeness and quality of processed dairy products. Laboratory analyses that are applicable to determine compliance with government specifications and tolerances for residues would also be specified. In addition, part 95 would outline the laboratory quality assurance programs for dairy products that are administered by the Science Division. These programs would involve annual on-site laboratory reviews to assess continued conformance with method and equipment requirements of USDA approved procedures, and to assess the analysts' current proficiency in performing analyses of dairy products with quality control check samples.

Part 96 would contain definitions, regulations regarding the issuance of licenses, and the conditions for renewal of licenses for chemists in analyzing and performing official grade determination of cottonseed. Part 96 would include user fees for grading, the official certification for cottonseed, the cottonseed chemist license examination fee, and the annual chemist license renewal fee. In addition, part 96 would include procedure for issuance of the certificates and recordkeeping responsibilities of cottonseed chemists, grounds for suspension of chemists' licenses, and the procedures for official cottonseed grade determinations using individually determined composition factors.

Part 97 would contain all the regulations of the Plant Variety Protection (PVP) Office in Beltsville, Maryland. Part 97 results from the AMS transferral of the PVP Office from the Livestock and Seeds Division to the Science Division. The existing PVP regulations in part 180 of former subchapter H would be removed in their entirety and would be redesignated and moved to part 97 of new subchapter E. Except for changes in applicable words from the masculine to neuter gender, no text nor fee schedule changes would be made.

Part 98 would contain definitions, locations of the Science Division laboratories, references for the majority of analytical methods, quality assurance programs and the available laboratory analyses for meats and meat products, that are often specified by purchase contracts, to be performed for the Department of Defense (DOD), Defense Personnel Support Center (DPSC), or for city or state government parties through the inspection service of the AMS Livestock and Seed Division. Part 98 would be divided into two subparts: Subpart A of this part would pertain to meat and meat product procurement testing for school lunch, defense, prison and other feeding programs, and subpart B of this part would describe the Science Division's certification program for private United States Laboratories, conducting the examination of horsemeat for trichinae parasites in exported products to the European Community.

Part 99 would contain statistical terms and provisions pertaining to the Statistical Science Program within the AMS Science Division. The Statistical Science staff, comprised of specialists in Washington, DC and Kansas City, Missouri, would provide technical consulting and advising services for the AMS commodity divisions, and data processing and statistical support for applied research, for the standardization of inspection equipment. This branch would also render advice and answers concerning sampling problems through the application of mathematical statistics and computing. Together with other divisions of AMS, the branch would establish uniform testing procedures and develop rapid identification methods for hazardous substances which present an environmental and human health risk.

Part 100 would contain administrative details of the Science Division's National Laboratory Accreditation Program once it is implemented.

Laboratories would be required to meet established criteria for accreditation in chemical residue testing of agricultural products and minimum requirements for facility, equipment, methodology and quality controls. In addition, analysts in such laboratories would be required to demonstrate sustained acceptable performance through regular testing of interlaboratory proficiency check samples at different chemical residue levels. Part 100 would also include fees for laboratory accreditation to offset the costs of the National Laboratory Accreditation Program (NLAP).

Part 101 would be reserved for regulations pertaining to Science Division's Pesticide Data Program (PDP). The Program is currently staffed by Science Division employees in Washington, DC and Manassas, Virginia.

Part 110 would be reserved for Science Division's recordkeeping program for restricted use pesticides by certified applicators. Parts 102–109 and parts 111–159 would be reserved for the future SD programs.

V. Basis for Proposed Fee and Hourly Analysis Rate Changes

Fees and hourly analysis rates which are presently in effect are inadequate to recover the current cost of providing the laboratory services and technical support to the AMS Divisions—Poultry, Fruit and Vegetable, Dairy, and Livestock and Seed and to other applicants of the services. The Agricultural Marketing Act of 1946, 7 U.S.C. 1621–1627, provides that reasonable fees be collected from the user of program services to cover as nearly as practicable the costs of services rendered. This proposal would amend the current hourly analytical testing rates to a consolidated and single rate of $34.20 per hour for the users of the laboratory services to cover costs associated with improvements in operation of the programs, replacements of outdated essential laboratory equipment, and increases in those costs due to raises in salaries of Federal employees as well as other increases affecting Federal employees, such as costs for travel and benefits.

Cost analysis studies have revealed that since the last fee change on October 19, 1992, as published in the **Federal Register** at 57 FR 47566, the current hourly rate of $32.11 for the voluntary laboratory testing of eggs and poultry products is inadequate to cover expenses. Analysis of costs have shown that since the last fee change on April 17, 1989, as published in the **Federal Register** at 54 FR 15167, the current hourly rate of $28.00 for the laboratory testing of dairy and meat products is also inadequate to cover expenses. In addition, the current hourly rate of $25.00 for analysis and testing of fruits and vegetables, as published on November 19, 1990, in the **Federal Register** at 55 FR 48102, is insufficient to recover this program's costs. The major increase in expenses is the result of salary increases effective each January for Federal employees that have increased General Schedule (GS) salaries by 11.9 percent since Fiscal Year 1989. Furthermore, the program's cost for the retirement system and health insurance of Federal employees has increased by over 13 percent. There have also been expenditures for new laboratory equipment and facilities. The Agency has determined that due to the aforementioned increases in operating costs of the programs, the two Science Division regional laboratories (Eastern and Midwestern) will incur a $304,900 loss in fiscal year 1992. Therefore, the Agency is proposing that the above mentioned hourly rates be revised to an hourly rate of $34.20. This hourly fee for laboratory service was established by distributing the annual operating expenditures for the laboratories over the total bench hours of service required to perform the analytical tests. The laboratory program costs do not include premium pay or service performed in the laboratories on Federal legal holidays. Hence, the proposed rate for appeal, Federal holidays, and overtime laboratory service shall be 1½ times the proposed base, or $51.30 per hour. The proposed fees would meet the expenses of the Science Division laboratory service programs.

VI. Programs Without Consolidated Fees and Charges

Certain programs administered by Science Division would not have a consolidated fee schedule because the laboratory fees and charges are set by agreement, the scientific programs are not a laboratory based service, or the costs are covered by allocated funds. The analysis for citrus juices and certain citrus products (part 93, subpart C) are performed in the Science Division laboratory in Winter Haven, Florida, for the State of Florida. The costs of analytical testing are covered by a Florida State Cooperative Agreement. The fees for imported tobacco pesticide residue determinations (part 92) are set annually and covered by a Memorandum of Understanding with the AMS Tobacco Division. The Science Division costs for the mandatory analyses of egg product samples (part 94, subpart A) are covered by designated funds of the Poultry Division which are appropriated annually. The cost of administering the USDA licensing program for cottonseed oil chemists would be covered by license application and annual license renewal fees, as well as a unit fee assessed on each official certificate for cottonseed quality analyses and grade determination. These fees would be specified in part 96. The Plant Variety Protection (PVP) schedule of fees would remain with the PVP regulations in proposed part 97. The PVP fees are assessed to certify the novelty and distinctiveness of sexually reproduced plant varieties. The costs of scheduled laboratory analyses and nonscheduled laboratory analyses for meats and related meat food products, that are listed in subpart A of part 98, are paid to the Science Division by a reimbursable agreement with the Livestock and Meat Standardization Branch of the Livestock and Seed Division. The fee charged to certify or to renew certification for each laboratory or analyst performing trichina testing on horsemeat for export to European Community countries is set annually by agreement between the Science Division and the United States Horsemeat Association in Fort Worth, Texas. Since the fee is based on actual costs that are part of the agreement, it does not appear in subpart B of part 98. The costs of the Science Division Statistical Science support services for AMS commodity divisions are covered by the Agency's administrative overhead funds. The fees and charges for statistical science service to applicants outside AMS would not appear in part 99 because they are set by agreement with the applicant on an individual project and on a cost reimbursement basis. The fees and charges associated with the National Laboratory Accreditation Program would appear in part 100 and would be aligned with the actual costs of administering this program when available. The costs for the Pesticide Data Program (PDP) in part 101 and the Recordkeeping Program for Restricted Use by Certified Applicators (part 110) would be covered by appropriated and annually designated funds.

VII. Basis for Proposed Fee Changes Related to Cottonseed Grading and Quality Certification

Cottonseed inspection, grading, and certification is conducted pursuant to authority in the Agricultural Marketing Act of 1946. The regulations concerning cottonseed may be found in 7 CFR part 61. The Act provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the cost of services rendered. Since the last fee change on

September 18, 1987, program operating costs have increased but revenues from assessed user fees for cottonseed grading have substantially declined.

The major amount of funds under the cottonseed grading program is obtained from fees assessed for official grade certificates. A portion of the certificate fees is used to recover the expenses of official cottonseed sampling and the remainder is used to meet the costs of supervision of the licensed chemists. There has been a reduction in the number of official certificates issued during recent years from 32,000 in Fiscal Year (FY) 1988, to 24,600 and 25,400 in FY 1990 and FY 1991. In addition, the future volume of official cottonseed to be graded is anticipated to decline further with the closing of cottonseed oil mills. This warrants a unit cost increase per certificate to provide sufficient revenue to balance the expenses of the service. The cost of administering the cottonseed chemist licensing examination, including the travel costs, and the cost of preparing and fumigating check samples for proficiency testing have increased. The Federal General Schedule salaries have increased by 18 percent since the last increase in cottonseed grading user fees. The Agency has determined that due to the aforementioned increases in program operating costs, the program will incur a $49,600 loss in FY 1992. Therefore, the Agency is proposing to revise the certificate fee charged for official analysis and cottonseed grade determination from $1.35 per certificate, issued by the chemist, to $3.00. It is proposed that the application fee for a chemist's license be raised from $360.00 to $1,100.00 for the examination, while the fee for renewal of the license be increased from $125.00 to $275.00. These substantial increases in licensing fees are also necessary, in part, because of the additional costs associated with the relocation of the supervisor of the licensed chemists from the vicinity of the cottonseed laboratories. The proposed fees serve to meet the financial obligations of keeping the licensed cottonseed chemist program active.

VIII. Proposed Amendments

This proposal would amend parts 29, 52, 55, 58, 59, 61, and 70 to conform with the changes resulting from the AMS reorganization and reassignment of functions in January 1989. Accordingly, subchapter H, part 180, Plant Variety Protection would be deleted in its entirety.

IX. Discussion of Proposed Changes of Regulations

It is proposed that § 29.500 of part 29 for subchapter A be revised. It is proposed the following sections of part 52, part 55, part 58, part 59, part 61 and part 70 of the regulations for subchapter C either be revised or be removed: §§ 52.2, 52.47, 55.20 (b), (d), 55.510(d), 55.550, 58.44, 58.101, 58.126, 59.580, 61.2, 61.6, 61.8, 61.10 to 61.24, 61.44, 61.45, 61.46, 61.101, 61.102, 61.103, 61.104, 70.72 and 70.73. All sections of part 180 for subchapter H should be removed. It is proposed that the following parts either be added or be reserved in the new subchapter E, chapter I of title 7 of the CFR: 90 (in part reserved), 91, 92, 93, 94 (includes reserved section 94.200), 95, 96, 97, 98 (in part reserved), 99 (reserved except § 99.3), 100 (reserved except for § 100.3), 101 (reserved except for § 101.3), 102 to 109 (reserved), 110 (reserved for separate rulemaking except § 110.9), and 111 to 159 (reserved).

To identify those sections of the current regulations that are redesignated without amending into the new subchapter E, chapter I of this title, the following redistribution table is provided as a reference aid:

REDISTRIBUTION TABLE

Current section(s)	Redesignated section(s)
61.22	96.18
61.101	96.25
180.24	97.24
180.122	97.122
180.131	97.131
180.142	97.142
180.144	97.144
180.155 to 180.158	97.155 to 97.158
180.176	97.176
180.206	97.206
180.208	97.208
180.222	97.222
180.800	97.800

To identify those sections of the current regulations that are proposed to be amended or repealed for subchapters A or C, chapter I of this title, the following revision table is provided as a reference aid:

REVISION TABLE

Section(s)	Proposed action
29.500	Amend heading and text.
52.2	Amend; remove terms.
52.47	Remove in its entirety.
55.20(b)	Amend text.
55.20(d)	Remove in its entirety.
55.510(d)	Amend text.
55.550	Remove in its entirety.
58.44	Remove in its entirety.
58.101	Amend text.
58.126	Amend: remove paragraph (5)(ii) and redesignate paragraph (5)(iii) as (5)(ii).
59.580	Amend wording.
61.2	Amend wording.
61.6	Amend wording.
61.8	Amend wording.
61.104	Amend wording.
70.72	Amend wording.
70.73	Remove in its entirety.

To identify those sections of the current regulations that are proposed to be amended and transferred into the new subchapter E, chapter I of this title, the following distribution table is provided as a reference aid:

DISTRIBUTION TABLE

Current section(s)	Amended and redesignated section(s)
61.10 to 61.13 ...	96.3 to 96.6.
61.14 to 61.18 ...	96.9 to 96.11.
61.17 to 61.19 ...	96.13 to 96.15.
61.20	96.7 (a), (b), (c), and 96.16.
61.21	96.7(d) and 96.17.
61.23	96.12.
61.24	96.19.
61.44 to 61.46 ...	96.20 to 96.22.
61.102 to 61.103	96.26 to 96.27.
180.1 to 189.23 .	97.2 to 97.23.
180.100 to 180.121.	97.100 to 97.121.
180.130	97.130.
180.132 to 180.141.	97.132 to 97.141.
180.143	97.143.
180.150 to 180.154.	97.150 to 97.154.
180.175	97.175.
180.177 to 180.205.	97.177 to 97.205.
180.207	97.207.
180.209 to 180.221.	97.209 to 97.221.
180.300 to 180.700.	97.300 to 97.700.

To identify those sections that are proposed to be reserved or added as regulations in the new subchapter E, chapter I of title 7 of the Code of Federal Regulations, the following table, noting the proposed actions, is provided as a reference aid:

TABLE OF PROPOSED NEW REGULATIONS

Added section(s)	Proposed action
90.1 to 90.3; 90.101 to 90.103.	New additions.
90.4 to 90.100; 90.104 to 90.200.	Reserved.
91.1 to 91.45; 92.1 to 92.6	New additions.
93.1 to 93.5; 93.10 to 93.14.	New additions.
93.100 to 93.105; 94.1 to 94.5.	New additions.
94.100 to 94.104; 94.300 to 94.304.	New additions.
94.200	Reserved
95.1 to 95.6; 96.1; 96.2; 96.8.	New additions.
96.23; 96.24; 96.28; 96.29	New additions.
97.1; 98.1 to 98.5; 98.100 to 98.101.	New additions.
98.102 to 98.600: 99.1 to 99.2.	Reserved
99.4 to 99.999	Reserved
99.3; 100.3; 101.3; 110.9 ..	New additions.
100.1 to 100.2; 100.4 to 100.999.	Reserved
101.1. to 101.2; 101.4 to 101.999.	Reserved.
110.1 to 110.8	Addition under separate rulemaking.
Parts 111 to 159	Reserved parts.

X. Comments Invited

Comments and recommendations from the public, other governmental agencies, the scientific community, industry, or any other interested party concerning this proposal are invited. Comments must be filed within 30 days of the date of this proposal. Such comments must be made in writing and must be sent in triplicate to the Science Division Director's office [address above]. Comments are to be identified with the docket number found in brackets in the heading of this document along with the date and applicable page numbers of this issue of the **Federal Register**. All written comments submitted in response to this proposal will be available for public inspection in the Director's office between 9 a.m. and 3 p.m., Monday through Friday. We expect to publish a final rule as soon as practicable after the close of the comment period. The final rule will take into consideration the comments and any additional information received by AMS.

List of Subjects

7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

7 CFR Part 55

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 58

Food grades and standards, Dairy products, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 59

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

7 CFR Part 61

Cottonseed, Inspection, Samplers, Grades.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

7 CFR Part 90

Introduction, Functions and responsibilities of Science Division, Good Laboratory Practice (GLP) for commodity laboratory, Quality assurance.

7 CFR Part 91

Administrative practice and procedure, Science Division Laboratories, Fees and charges.

7 CFR Part 92

Laboratories, Pesticides and pests, Tobacco.

7 CFR Part 93

Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetables.

7 CFR Part 94

Eggs, Laboratories, Poultry.

7 CFR Part 95

Dairy products, Laboratories, Milk.

7 CFR Part 96

Cottonseeds, Chemist's licensure, Cottonseed quality analysis, Official grade.

7 CFR Part 97

Plant variety and protection, Novel seed variety certification.

7 CFR Part 98

Meals, Ready-to-Eat (MRE's), Ground beef, Pork, Meats, Meat products, Laboratories, Horsemeat Trichinae, European Community.

7 CFR Part 99

Statistical model, Scatter plot, Econometrics, Sampling plan.

7 CFR Part 100

National laboratory accreditation, Certification, Raw agricultural product, Pesticide residue.

7 CFR Part 101

Commodity and pesticide pairs, Risk assessment, Human exposure estimates, Pesticide residue levels.

7 CFR Part 110

Recordkeeping on restricted use pesticides by certified applicators, Access to records, Enforcement, Surveys and reports.

7 CFR Part 180

Administrative practice and procedure, Labeling, Plants.

For the reasons set out in the preamble, AMS proposes to amend title 7, chapter I, Code of Federal Regulations as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for subpart B of part 29 continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

§ 29.500 [Amended]

2. Section 29.500 is amended as follows:

a. The heading for § 29.500 is revised to read as follows:

§ 29.500 Fees and charges for inspection and acceptance of imported tobacco.

b. In § 29.500, paragraphs (b) and (c) are amended by removing (both times that it appears) the word "testing" and replacing with the word "accepting."

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

1. The authority citation for part 52 continues to read as follows:

Authority: 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

§ 52.2 [Amended]

2. Section 52.2 is amended by removing the definition of the term "Commodities Scientific Support Division (CSSD)."

§ 52.47 [Removed]

3. Section 52.47 is removed.

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

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

Authority: 60 Stat. 1087 -1091; 7 U.S.C. 1621–1627

§ 55.20 [Amended]

2. Section 55.20 is amended by removing in paragraph (b) the phrase "and laboratory analysis" and paragraph (d) is removed.

§ 55.510 [Amended]

3. In § 55.510, paragraph (d) is amended by removing (both times that it appears) the phrase "laboratory analysis,"

§ 55.550 [Removed]

4. Section 55.550 is removed.

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

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

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

§ 58.44 [Removed]

2. Section 58.44 is removed.

§ 58.101 [Amended]

3. In § 58.101, paragraph (c) is amended by removing (the first time it appears) the phrase "the Administrator" and replacing with the phrase "the AMS Science Division Director".

§ 58.126 [Amended]

4. Section 58.126 is amended by removing paragraph (e)(5)(ii) and redesignating paragraph (e)(5)(iii) as paragraph (e)(5)(ii).

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

1. The authority citation for part 59 continues to read as follows:

Authority: 84 Stat. 1620–1635; 21 U.S.C. 1031–1056.

§ 59.580 [Amended]

2. In § 59.580, paragraph (b) is amended by changing the phrase "the Administrator" to "the AMS Science Division Director", and paragraph (d) is amended by changing the phrase "USDA laboratory" to "AMS Science Division laboratory".

PART 61—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (INSPECTION, SAMPLING AND CERTIFICATION)

Subpart A—Regulations

1. The authority citation for subpart A of part 61 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

§ 61.2 [Amended]

2. In § 61.2, paragraph (n) is amended by removing the phrase "the Director" and replacing with the phrase "the Science Division Director of the Agricultural Marketing Service".

§ 61.6 [Amended]

3. The paragraph of § 61.6 is amended by removing the phrase "and licensed cottonseed chemists".

§ 61.8 [Amended]

4. In § 61.8, first sentence is amended by changing the phrase "any sample of cottonseed" to "any official sample of cottonseed".

§ 61.10 to 61.24 [Removed]

5. Subpart A of part 61 is amended by removing the undesignated center heading "Licensed Cottonseed Chemists" and §§ 61.10 through 61.24

§ 61.44 to 61.46 [Removed]

6. Subpart A of part 61 is amended by removing §§ 61.44 through 61.46.

Subpart B—Standards for Grades of Cottonseed Sold or Offered for Sale for Crushing Purposes Within the United States

1. The authority citation for subpart B of part 61 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, 1090, as amended; 7 U.S.C. 1622, 1624.

§ 61.101 [Amended]

2. In § 61.101, introductory text, after the word "samples" the phrase "by licensed chemists" is added.

§ 61.104 [Amended]

3. Section 61.104 is amended as follows:

a. The heading for § 61.104 is revised to read as follows:

§ 61.104 Sampling and certification of samples and grades.

b. Section 61.104 is amended by removing the words "and the analysis" in the paragraph.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

1. The authority citation for part 70 continues to read as follows:

Authority: 60 Stat. 1087–1091; U.S.C. 1621–1627.

§ 70.72 [Amended]

2. Section 70.72 is amended as follows:

a. The heading for § 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading or examination or review of a grader's decision.

b. Section 70.72 is amended by removing in the paragraph (both times that it appears) the words "laboratory analysis,".

§ 70.73 [Removed]

3. Section 70.73 is removed

Subchapter H and Part 180 [Removed]

1. Subchapter H consisting of part 180 is removed in its entireties.

Subchapter E [Added]

2. Subchapter E, consisting of parts 90 through 159, is proposed to be added to read as set forth below:

SUBCHAPTER E—COMMODITY LABORATORY TESTING PROGRAMS

Part
90—Introduction
91—Services and General Information
92—Tobacco
93—Processed Fruits and Vegetables
94—Poultry and Egg Products
95—Processed Dairy Products
96—Cottonseed Sold or Offered for Sale for Crushing Purposes (Chemical Analysis and United States Official Grade Certification)
97—Plant Variety and Protection
98—Meals, Ready-to-Eat (MRE's), Meats, and Meat Products
99—Statistical Science Program
100—National Laboratory Accreditation Program
101—Pesticide Data Program
102–109—[Reserved]
110—Recordkeeping on Restricted Use Pesticides by Certified Applicators; Surveys and Reports
111–159—[Reserved]

PART 90—INTRODUCTION

Subpart A—Scope of Subchapter

Sec.
90.1 General

Subpart B—Subchapter Definitions

90.2 General terms defined

Subpart C—Good Laboratory Practices for Commodity Laboratory Analyses

90.3 General
90.4–90.100 [Reserved]

Subpart D—Quality Assurance

90.101 General
90.102 Quality assurance review
90.103 Maintenance of quality control records
90.104–90.200 [Reserved]

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7. U.S.C. 1622, 1624).

Subpart A—Scope of Subchapter

§ 90.1 General.

This subchapter sets forth the functions and responsibilities of the Science Division (SD) of the Agricultural Marketing Service (AMS) relating to:

(a) The performance of comprehensive analytical tests and laboratory determinations of agricultural commodities and processed products.

(b) The conduct of experiments and collaborative studies to validate new analytical procedures and improved methodologies in order to promote faster, more precise, or safer laboratory testing for agricultural commodities and processed products.

(c) The supervised issuance of external quality control or proficiency check samples to laboratories under the Science Division's direction or performance review in order to regularly spot check and assess that analytical or test data produced by each laboratory is reproducible, precise, and reliable for a specific test program.

(d) The granting of laboratory program accreditation or certification or approval for specialty testing of agricultural commodities and products.

(e) The licensing of chemists to analyze cottonseed in order to certify its quality and grade.

(f) The granting of certification to non-federal laboratories for testing for trichinae in horsemeat for export to the European Community (EC).

(g) The granting of acceptance of standardized methodology or new procedures for commodity testing.

(h) The auditing of the facilities, equipment, quality control procedures, standard methodologies, and good laboratory practices for a commodity testing program of a laboratory.

(i) The furnishing of consultation and centralized technical and statistical science support for marketing programs.

(j) The recommendation of statistical sampling plans.

(k) The examination of plants for novelty and distinctiveness in order to grant certificates of protection for new varieties of sexually reproduced plants, and the provision of other fee based services authorized by the Plant Variety Protection Act.

(l) The extension or coordination of research for the determination of a new chemical analyte or microorganism in a commodity product or food.

(m) The management of a pesticide residue monitoring program for agricultural commodities (especially fresh fruits and vegetables), currently referred to as the Pesticide Data Program.

(n) The analysis of imported flue-cured and burley tobacco for pesticide residues.

(o) The supervision and implementation of the State enforcement of the recordkeeping requirements for private applicators of restricted-use pesticides for agricultural production.

Subpart B—Subchapter Definitions

§ 90.2 General terms defined.

Words used in the regulations in this subchapter in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subchapter and unless the context requires otherwise, the following terms will be construed to mean:

Act. The Agricultural Marketing Act of 1946 (Title II of the act of Congress approved August 14, 1946, 60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627).

Administrator. The Administrator of the Agricultural Marketing Service, or any officer or employee of the Service, to whom authority has been delegated, or to whom authority may be delegated, to act in his or her stead.

Cooperative agreement. An agreement between the Agricultural Marketing Service and another Federal agency or a State agency, or other agency, organization or person that defines in the general terms the basis on which the parties concerned will cooperate to serve a mutual interest on an agricultural service project. The responsibilities for AMS and each cooperator are stated in the document along with the conditions as applicable.

Department. The United States Department of Agriculture.

Director. The Director of the Science Division, or any officer or employee of the Division to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his or her stead.

Division. The Science Division (SD) of the Agricultural Marketing Service (AMS), which performs analytical testing services, issues licenses for cottonseed chemists, conducts quality assurance reviews and grants accreditation or certification for commodity testing programs of laboratories.

Laboratories. Division laboratories performing the analyses described in this subchapter.

Quality assurance. The assurance that there is accuracy of analytical data using proficiency check sample or analyte recovery techniques. In addition, the certainty that there is strict adherence by the analysts in following the quality control details in the recommended or official methods for reagents, laboratory apparatus and procedures. The overall objective of quality assurance, as a comprehensive program, is to ensure that all analytical data produced by the laboratory meets certain quality criteria and that all data produced is reproducible, precise, and accurate.

Quality control. The system of close examination of the critical details of an analytical procedure in order to have the proper equipment parameters, techniques, supplies and reagents to achieve a predetermined level of quality data, with the performance of a particular laboratory analysis.

Secretary. The Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may

hereafter be delegated, to act in his or her stead.

Service. The Agricultural Marketing Service of the United States Department of Agriculture.

Subpart C—Good Laboratory Practices for Commodity Laboratory Analyses

§ 90.3 General.

Laboratory service programs of laboratories certified and approved by the Science Division shall have good laboratory practice (GLP) requirements that are generalized in this subpart.

§§ 90.4–90.100 [Reserved]

Subpart D—Quality Assurance

§ 90.101 General.

Laboratory service programs of laboratories certified and approved by the Science Division shall have quality assurance requirements that are generalized in this subpart.

§ 90.102 Quality assurance review.

(a) Each laboratory performing tests and analysis under this subchapter will be subject to a quality assurance program evaluation at least annually, and more often if deemed necessary by the Director. Such evaluation will include:

(1) A review of the adequacy of quality control measures taken by the laboratory for the standardized method of analysis for a commodity and its related products;

(2) A review of the laboratory methodologies and procedures;

(3) A review of records for the calibration and maintenance of equipment;

(4) A review of records documenting sample handling;

(5) The evidence of quality control records;

(6) The evidence of correct reporting and determination of analytical data.

(b) A laboratory will receive a quality assurance report following the review. This evaluation will address any necessary improvements to the laboratory program(s) being examined.

§ 90.103 Maintenance of quality control records.

Quality control records pertaining, but not limited to the following areas, shall be retained by the laboratory for at least the 3 most recent years:

(a) Prepared solution standardizations

(b) Recovery studies by known analyte additions

(c) The purity checks of reagents and test materials

(d) Apparatus and equipment calibrations

(e) The quality examination and testing of materials

(f) The mandatory participation in proficiency check sample testing or collaborative studies

(g) Daily critical parameter checks of equipment, such as temperature readings

(h) The equivalency tests of new procedures with standard methodologies.

§§ 90.104–90.200 [Reserved]

Part 91—Services and General Information

Subpart A—Administration

Sec.

91.1 General
91.2 Definitions
91.3 Authority

Subpart B—General Services

91.4 Kinds of services
91.5 Where services are offered
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Subpart C—Application for Services

91.7 Nondiscrimination
91.8 Who may apply
91.9 How to make an application
91.10 Information required in connection with an application
91.11 Filing of an application
91.12 Record of filing time and laboratory tests
91.13 When an application may be rejected
91.14 When an application may be withdrawn

Subpart D—Laboratory Service

91.15 Basis of a laboratory service
91.16 Order of a laboratory service
91.17 Postponing a laboratory service
91.18 Financial interest of a scientist

Subpart E—Samples

91.19 General requirements of suitable samples
91.20 Shipping
91.21 Protecting samples
91.22 Disposition of analyzed sample

Subpart F—Method Manuals

91.23 Analytical methods

Subpart G—Reporting

91.24 Reports of test results
91.25 Certificate requirements
91.26 Issuance of certificates
91.27 Corrections to certificates prior to issuance
91.28 Issuance of corrected certificates or amendments for analysis reports
91.29 Issuance of duplicate certificates or reissuance of an analysis report
91.30 Maintenance and retention of copies of certificates or analysis reports

Subpart H—Appeal of Laboratory Services

91.31 When an appeal of a laboratory service may be requested
91.32 Where to file for an appeal of a laboratory service and information required
91.33 When an application for an appeal of a laboratory service may be withdrawn
91.34 When an appeal of a laboratory service may be refused
91.35 Who shall perform an appealed laboratory service
91.36 Appeal laboratory certificate

Subpart I—Fees and Charges

91.37 Fees for laboratory testing, analysis, and other services (general schedules)
91.38 Additional fees for appeals of analysis
91.39 Special request fees for overtime and legal holiday service
91.40 Fees for courier service and facsimile of the analysis report
91.41 Charges for demonstrations and courses of instruction
91.42 Billing
91.43 Payment of fees and charges
91.44 Charges on overdue accounts and issuance of delinquency notices
91.45 Charges for laboratory services on a contract basis.

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624)

SUBPART A—ADMINISTRATION

§ 91.1 General.

This part consolidates the procedural and administrative rules of the Science Division of the Agricultural Marketing Service for conducting the analytical testing and laboratory audits with quality assurance reviews. It also contains the fees, charges and laboratories applicable to such services.

§ 91.2 Definitions.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

Analyses. Microbiological, chemical, or physical tests performed on a commodity.

Applicant. Any person who requests services provided by the Division.

Legal holidays. Those days designated as legal public holidays specified by Congress in paragraph (a) of section 6103, Title 5 of the United States Code and any other day declared to be a holiday by Federal Statute or Executive Order. Under section 6103 and Executive Order 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered the holiday, or if the specified legal holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

§ 91.3 Authority.

The Division Director is charged with the administration of this subchapter.

Subpart B—General Services

§ 91.4 Kinds of services.

(a) *Analytical tests.* Analytical laboratory testing services under the regulations consist of microbiological, chemical, and certain other analyses, requested by the applicant and performed on tobacco, seed, dairy, egg, fruit and vegetable, meat and poultry, and related processed products. Analyses are performed to determine if products meet Federal specifications or specifications defined in purchase contracts and cooperative agreements. Analyses are also performed on egg products as part of the mandatory Egg Products Inspection Program.

(b) *Examination and licensure.* The Division administers examinations and issues licenses to chemists to certify the grade of cottonseed.

(c) *Quality assurance reviews.* The Division performs on-site laboratory quality assurance reviews (both required and voluntary) to ensure that appropriate technical methods, equipment maintenance, and quality control procedures are being observed.

(d) *Consultation.* Technical advice, statistical science consultation, and quality assurance program assistance are provided by the Division for domestic and foreign laboratories.

§ 91.5 Where services are offered.

(a) Services are offered to applicants at the Science Division laboratories and facilities as listed below.

(1) *Science Division regional laboratories.* A variety of tests and laboratory analyses are available in two regional multi-disciplinary Science Division (SD) laboratories, and are located as follows:

(i) USDA, AMS, SD, Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618

(ii) USDA, AMS, SD, Eastern Laboratory, 645 Cox Road, Gastonia, NC 28054.

(2) *Science Division aflatoxin laboratories.* The specialty laboratories performing aflatoxin testing on peanuts, peanut products, tree nuts and other commodities are located as follows:

(i) USDA, AMS, SD, 1411 Reeves Street, Mail: P.O. Box 1368, Dothan, AL 36302

(ii) USDA, AMS, SD, 200 West Washington Street, Mail: P.O. Box 488, Ashburn, GA 31714

(iii) USDA, AMS, SD, 2705 Taft Street, Albany, GA 31707

(iv) USDA, AMS, SD, 301 West Pearl Street, Mail: P.O. Box 279, Aulander, NC 27805

(v) USDA, AMS, SD, 610 North Main Street, Blakely, GA 31723

(vi) USDA, AMS, SD, 42 North Ellis Street, Mail: P.O. Box 548, Camilla, GA 31730

(vii) USDA, AMS, SD, 107 South Fourth Street, Madill, OK 73446

(viii) USDA, AMS, SD, 715 North Main Street, Mail: P.O. Box 272, Dawson, GA 31742

(ix) USDA, AMS, SD, 308 Culloden Street, Mail: P.O. Box 1130, Suffolk, VA 23434

(3) *Citrus laboratory.* The Science Division Citrus Laboratory specializes in testing citrus juices and other citrus products and is located as follows: Science Division Citrus Laboratory, 111 Third Street, SW, Suite 211, Winter Haven, FL 33880.

(4) *Divisional laboratories.* Laboratory services are available in all areas covered by cooperative agreements providing for this laboratory work and entered on behalf of the Department with cooperating Federal or State laboratory agencies pursuant to authority contained in Act(s) of Congress. Also, services may be provided in other areas not covered by a cooperative agreement if the Administrator determines that it is possible to provide laboratory services.

(5) *Other alternative laboratories.* Laboratory analyses may be conducted at alternative Science Division laboratories and can be reached from any commodity market in which a laboratory facility is located to the extent laboratory personnel is available.

(6) *The Plant Variety Protection (PVP) Office.* The PVP office and plant examination facility of the Science Division issues certificates of protection to developers of novel varieties of plants which reproduce sexually and is located as follows: USDA, AMS, Science Division, Plant Variety Protection Office, Room 500 National Agricultural Library Building, Beltsville, MD 20705.

(7) *Science Division headquarters offices.* The examination, licensure, quality assurance reviews, and consultation services are provided by headquarters staff located in Washington, DC.

(8) *Statistical Branch offices.* Statistical Science services are provided by Science Division (SD) offices located as follows:

(i) USDA, AMS, Science Division, Statistical Branch, Kansas City Technical Center, 10383 No. Executive Hills Blvd., Kansas City, MO 64153.

(ii) USDA, AMS, SD, Statistical Branch, 0611 So. Agriculture Bldg., 14th & Independence Ave., S.W., Washington, DC 20250.

(9) *Residue Branch offices.* Services afforded by the Recordkeeping Program for restricted use pesticides by certified applicators and services afforded by the Pesticide Data Program are provided by offices located as follows:

(i) USDA, AMS, Science Division, 8700 Centreville Rd., Suite 200, Manassas, VA 22110.

(ii) USDA, AMS, Science Division, Office of Director, 3507 So. Agriculture Bldg., Washington, DC 20250.

(b) The addresses of the various laboratories and offices appear in the pertinent parts of this subchapter. A prospective applicant may obtain a current listing of addresses and telephone numbers of Science Division laboratories, offices, and facilities by addressing an inquiry to the Director, Science Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), P.O. Box 96456, Washington, DC. 20090–6456.

§ 91.6 Availability of services.

(a) Services may be furnished whenever a Science Division staff is available and the facilities and conditions are satisfactory for the conduct of such service.

(b) Laboratories may provide limited service on Saturdays and Sundays at a premium fee. Weekend service may be obtained by contacting the laboratory director or supervisor.

(c) Holiday and overtime laboratory service may be obtained with a minimum 24 hour advance notice, at a premium fee, by any prospective applicant through the laboratory director or supervisor.

Subpart C—Application for Services

§ 91.7 Nondiscrimination.

All services under these regulations are provided to applicants without discrimination as to race, color, handicapped or disabled condition, religion, sex, age, or national origin.

§ 91.8 Who may apply.

An application for service may be made by any individual or interested party including, but not limited to, the United States and any instrumentality or agency thereof, any State, county, municipality, or common carrier, and any authorized agent on behalf of the foregoing.

§ 91.9 How to make an application.

(a) *Voluntary.* An application for analysis and testing may be made by contacting the director or supervisor of the Science Division laboratory where the service is provided, or by contacting either the Laboratory Operations Coordination branch chief, or the Technical Services branch chief at Science Division Headquarters, Washington, DC. A list of the Science Division laboratories is included in § 91.5.

(b) *Mandatory.* In the case of mandatory analyses, such as those required to be performed on eggs and egg products, application for services may be submitted to the office or division which administers the program, or by contacting an inspector who is involved with the program.

§ 91.10 Information required in connection with an application.

(a) An application for laboratory service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by facsimile. If an application for laboratory service is made orally, written confirmation may be required by the laboratory involved.

(b) In connection with each application for a laboratory service, information that may be necessary to perform analyses on the processed product(s) shall also be furnished. The information shall include, but is not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or load number, codes or other identification marks, the number of containers, the type and size of the containers, the analytical test requested, and the size of the sample. In addition, information regarding analysis of the lot by any federal agency previous to the application and the purpose of the desired laboratory service may be requested.

§ 91.11 Filing of an application.

An application for a laboratory service shall be regarded as filed only when made in accordance with the regulations in this part.

§ 91.12 Record of filing time and laboratory tests.

A record showing the date of receipt for each application for a laboratory service or an appeal of a laboratory service shall be maintained. In addition, the requested laboratory analyses shall be recorded at the time of sample receipt.

§ 91.13 When an application may be rejected.

(a) An application for a laboratory service may be rejected by the Administrator when deemed appropriate as follows:

(1) For non-compliance by the applicant with the regulations in this part,

(2) For non-payment of previous laboratory services rendered,

(3) When the sample is not properly identified by a code or other marks,

(4) When the samples are received in an unsatisfactory condition and are rejected for analysis,

(5) When there is evidence or knowledge of tampering with the sample,

(6) When it appears that to perform the analytical testing or laboratory service specified in this part would not be to the best interests of the public welfare or of the Government, or

(7) When it appears to the Administrator that prior commitments of the Department necessitate rejection of the application.

(b) Each such applicant shall be promptly notified by registered mail of the reasons for the rejection.

(c) A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after the receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

§ 91.14 When an application may be withdrawn.

An application for a laboratory service may be withdrawn by the applicant at any time before the analytical testing is performed: *Provided*, that, the applicant shall pay, at the hourly rate prescribed in § 91.37, for the time incurred by the scientist or laboratory technician, in connection with such application and any travel expenses, telephone, facsimile, mailing, telegraph or other expenses, which have been incurred by the laboratory servicing office, in connection with such application.

Subpart D—Laboratory Service

§ 91.15 Basis of a laboratory service.

Analytical testing and laboratory determination for analyte or quality constituent shall be based upon the appropriate standards promulgated by the U.S. Department of Agriculture, applicable standards prescribed by the laws of the State where the particular product was produced, specifications of any governmental agency, written buyer and seller contract specifications, or any written specifications by an applicant which is approved by the Administrator: *Provided*, that, if such product is regulated pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), or the comparable laws of any State, such testing and determination shall be on the basis of the standards, if any, prescribed in, or pursuant to, the marketing order and/or agreement effective thereunder.

§ 91.16 Order of a laboratory service.

Laboratory service shall be performed, insofar as possible, in the order in which applications are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal inspection.

§ 91.17 Postponing a laboratory service.

If the scientist determines that it is not possible to accurately analyze or make a laboratory determination of a sample immediately after receipt because standard materials, laboratory equipment and supplies need replacement, or for any other substantial reason, the scientist may postpone laboratory service for such period as may be necessary.

§ 91.18 Financial interest of a scientist.

No scientist shall perform a laboratory analysis on any product in which he is directly or indirectly financially interested.

Subpart E—Samples

§ 91.19 General requirements of suitable samples.

(a) Samples must be representative of the product tested and provided in sufficient quantity for the analyses requested.

(b) Each sample must be identified with the following information:

(1) Product type (specific description);

(2) Lot number or production date;

(3) Analyses desired;

(4) Date/time collected;

(5) Storage conditions prior to shipping;

(6) Name of applicant;

(7) Name of sampler;

(8) Any other information which is required by the specific program under which analysis or test is performed.

§ 91.20 Shipping.

(a) Samples must be submitted to the laboratory in a condition (including temperature) that does not comprise the quality and validity or analytical results.

(b) All samples must be submitted in sealed, leakproof containers.

(c) Containers for perishable refrigerated samples should contain ice or ice packs to maintain temperatures of 0° to 5° C, unless a different temperature is required for the sample to be tested.

(d) Containers for frozen samples should contain dry ice or other effective methods of maintaining samples in a frozen state.

(e) The applicant is responsible for providing shipping containers and paying shipping costs for fee basis tests.

(f) A courier charge may apply for the shipment of some samples.

§ 91.21 Protecting samples.

Laboratory personnel shall protect each sample from manipulation, substitution, and improper or careless handling which would deprive the sample of its representative character from the time of receipt in the laboratory until the analysis is completed and the sample has been discarded.

§ 91.22 Disposition of analyzed sample.

(a) Excess samples not used in analyses will be placed in proper storage for a maximum period of 30 days after reporting results of tests.

(b) Any sample of a processed commodity that has been used for a laboratory service may be returned to the applicant at his or her request and expense; otherwise, it shall be destroyed or disposed of to a charitable institution.

Subpart F—Method Manuals

§ 91.23 Analytical methods.

Most analyses are performed according to approved procedures described in manuals of standardized methodology. These standardized methods are the specific methods used. Alternatively, equivalent methods prescribed in cooperative agreements are used. The manuals of standard methods most often used by the Science Division laboratories are listed as follows:

(a) Edwards, P.R. and W.H. Ewing, Edwards and Ewing's Identification of Enterobacteriaceae, Elsevier Science Publishing Co., Inc., 52 Vanderbilt Avenue, New York, NY 10017.

(b) Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, U.S. Environmental Protection Agency (EPA), Environmental Toxicology Division, Health Effects Research Laboratory (HERL), Alexander Drive and Highway 54, Mail Drop 51, Research Triangle Park, NC 27711.

(c) Official Analytical Methods of the American Spice Trade Association (ASTA), American Spice Trade Association, 580 Sylvan Avenue, P.O. Box 1267, Englewood Cliffs, NJ 07632.

(d) Approved Methods of the American Association of Cereal Chemists, American Association of Cereal Chemists, 3340 Pilot Knob Road, St. Paul, MN 55121–2097.

(e) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, 1608 Broadmoor Drive, P.O. Box 3489, Champaign, IL 61826–3489.

(f) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, Suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(g) Standard Analytical Methods of the Member Companies of Corn Industries Research Foundation, Corn Refiners Association (CRA), Suite 1120, 1100 Connecticut Avenue, NW, Washington, DC 20036.

(h) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Eighteenth Street, NW, Washington, DC 20036.

(i) Standard Methods for the Examination of Water and Wastewater, American Public Health Association (APHA), the American Water Works Association and the Water Pollution Control Federation, APHA, 1015 Eighteenth Street, NW, Washington, DC 20036.

(j) U.S. Army Individual Protection Directorate's Military Specifications, approved analytical test methods noted therein, U.S. Army Natick Research, Development and Engineering Center, Kansas Street, Natick, MA 01760–5017.

(k) U.S. Food and Drug Administration Bacteriological Analytical Manual (BAM), Association of Official Analytical Chemists, Suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(l) U.S. Food and Drug Administration Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, U.S. Department of Health and Human Services, 200 C Street, SW, Washington, DC 20204 (available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161).

Subpart G—Reporting

§ 91.24 Reports of test results.

(a) Results of analyses are provided, in writing, by facsimile or other electronic means to the applicant.

(b) Applicants may call the appropriate Science Division laboratory for interim or final results prior to issuance of the formal report. The advance results may be telegraphed, telephoned, or sent by facsimile to the applicant. Any additional expense for advance information shall be borne by the requesting party.

(c) A letter report in lieu of a certificate of analysis may be issued by a laboratory representative when such action appears to be more suitable than a certificate: *Provided*, that, issuance of such report is approved by the Division Director.

§ 91.25 Certificate requirements.

Certificates of analysis and other memoranda concerning laboratory service and the reporting of results should have the following requirements:

(a) Certificates of analysis shall be on standard printed forms approved by the Division Director;

(b) Shall be printed in English;

(c) Shall have results typewritten, computer generated, or handwritten in ink and shall be clearly legible;

(d) Shall show the results of laboratory tests in a uniform, accurate, and concise manner with abbreviations identified on the form;

(e) Shall show the information required by §§ 91.25–91.29; and

(f) Show only such other information and statements of fact as are provided in the instructions authorized by the Division Director.

§ 91.26 Issuance of certificates.

(a) The person signing and issuing the certificate of analysis shall be one of the following:

(1) The scientist who performed the analysis;

(2) Another technician of the laboratory facility, who has been given power of attorney by the scientist who performed the analytical testing and been authorized by the Division Director to affix the scientist's signature to a certificate. The power of attorney shall be on file with the employing office or laboratory of the Division;

(3) A person designated as the "laboratory director in charge," when the certificate represents composite analyses by several technicians.

(b) The laboratory certificate shall be prepared in accordance with the facts set forth in the official memoranda made by the scientist or technicians in connection with the analysis.

(c) Whenever a certificate is signed by a person under a power of attorney, the certificate should so indicate. The signature of the holder of power shall appear under the name of the scientist who personally analyzed the sample, and whenever a certificate issued is signed by a scientist in charge, that title must appear in connection with the signature.

§ 91.27 Corrections to certificates prior to issuance.

(a) The accuracy of the statements and information shown on certificates of analysis must be verified by the individual whose name or signature, or both, is shown on the certificate or by the authorized agent who affixed the name or signature, or both. When a name or signature, or both, is affixed by an authorized agent, the initials of the agent shall appear directly below or following the name, or signature of the person. Errors found during this process shall be corrected according to this section.

(b) Only official personnel or their authorized agents may make corrections, additions, or other changes to certificates.

(c) No corrections, additions, or other changes shall be made which involve identification, quality, or quantity. If such errors are found, a new certificate shall be prepared and issued and the incorrect certificate marked "Void." Otherwise, errors may be corrected, provided there is evidence of satisfactory correction procedures as follows:

(1) The corrections are neat and legible;

(2) Each correction is initialed by the individual who corrects the certificate; and

(3) The corrections and initials are shown on the original and all copies.

§ 91.28 Issuance of corrected certificates or amendments for analysis reports.

(a) A corrected certificate of analysis or an amended letter report may be issued by the laboratory representative who issued the original certificate or report after distribution of the form if errors, such as incorrect dates, analytical results, or test determination statements, lot numbers, or errors in any other pertinent information require the issuance of a corrected certificate or an amended report.

(b) Whenever a corrected certificate or amended report is issued, such certificate or report shall supersede the original form which was issued in error. The superseded certificate or incorrect report shall become null and void after the issuance of the corrected certificate or the amended analysis report.

(c) The corrected certificates or amended reports shall show the following:

(1) The terms "Corrected Original" and "Corrected Copy;"

(2) A statement identifying the superseded certificate or incorrect letter report and the corrections;

(3) A new serial number or new date of issuance; and

(4) The same statements and information, including permissive statements, that were shown on the incorrect certificate or the incorrect report, along with the correct statement or information, shall be shown on the corrected form.

(d) If all copies of the incorrect certificate or incorrect report can be obtained, then the superseded form shall be marked "Void" when submitted.

(e) Corrected certificates or amended letter reports cannot be issued for a certificate that has been superseded by another certificate, or superseded on the basis of a subsequent analysis or an additional laboratory test determination.

§ 91.29 Issuance of duplicate certificates or reissuance of an analysis report.

(a) Upon request by an applicant, a duplicate certificate or an additional report may be issued for a lost, destroyed, or otherwise not obtainable original form.

(b) The duplicate certificate or the reissuance of an analysis report shall be at the expense of the applicant.

(c) Requests for duplicate certificates or additional analysis reports shall be filed as follows:

(1) In writing;

(2) By the applicant who requested the service covered by the lost, destroyed, or otherwise not obtainable original form; and

(3) With the office that issued the initial certificate or original laboratory analysis report.

(d) The duplicate certificates or reissued analysis reports shall show the following:

(1) The terms "Duplicate Original," and the copies shall show "Duplicate Copy,"

(2) A statement that the certificate or letter report was issued in lieu of a lost or destroyed or otherwise not obtainable certificate or laboratory analysis report; and

(3) The same statements and information, including permissive statements, that were shown on the original certificate or the initial analysis report shall be shown on the duplicate form.

(e) Duplicate certificates or duplicate analysis reports shall be issued as promptly as possible and distributed as the original certificates or original analysis reports and their copies.

(f) Duplicate certificates shall not be issued for certificates that have been superseded.

§ 91.30 Maintenance and retention of copies of certificates or analysis reports.

(a) At least one copy of each certificate or analysis report shall be filed in the laboratory for a period of not less than 3 years either from the date of issuance of the document, from the date of voiding a certificate, or from the date last payment is made by applicant for a reported laboratory determination, whichever is later.

(b) Whenever any document, because of its condition, becomes unsuitable for its intended or continued use, the laboratory personnel shall make a copy of the original document.

(c) True copies shall be retained as photocopies, microfilm, microfiche, or other accurate reproductions and durable forms of the original document. Where reduction techniques, such as microfilming are used, suitable reader and photocopying equipment shall be readily available. Such reproductions shall be treated and considered for all purposes as though they were the original documents.

(d) All documents required to be maintained under this part shall be kept confidential and shall be disclosed only to the applicants or other persons with the applicants' knowledge and permission. Only such information as the Administrator deems relevant shall be disclosed to the public without the applicants' permission, and then, only in a suit or administrative hearing brought at the direction, or on the request, of the Administrator, or to which the Administrator or any other officer of the United States is a party.

Subpart H—Appeal of Laboratory Services

§ 91.31 When an appeal of a laboratory service may be requested.

(a) An application for an appeal of a laboratory service may be made by any interested party who is dissatisfied with the results of an analysis as stated in a certificate or laboratory report, if the lot of the commodity can be positively identified by the laboratory service as the lot from which originally drawn samples were previously analyzed.

(b) An application for an appeal of a laboratory service shall be made within thirty (30) days following the day on which the previous analysis was performed. However, upon approval by the Division Director, the filing time for an appeal application may be extended.

§ 91.32 Where to file for an appeal of a laboratory service and information required.

(a) Application for an appeal of a laboratory service may be filed with the supervisor in the office or laboratory facility that issued the certificate or laboratory report on which the appeal analysis covering the commodity product is requested.

(b) The application for an appeal of a laboratory service shall state the location of the lot of the commodity product and the reasons for the appeal; and date and serial number of the certificate covering the laboratory service of the commodity product on which the appeal is requested. In addition, such application shall be accompanied by the original and all available copies of the certificate or laboratory report.

(c) Application for an appeal of a laboratory service may be made orally (in person or by telephone), in writing, by facsimile, or by telegraph. If made orally, written confirmation shall be made promptly.

§ 91.33 When an application for an appeal of a laboratory service may be withdrawn.

An application for an appeal of a laboratory service may be withdrawn by the applicant at any time before the appealed laboratory service is performed: Provided, that, the applicant shall pay, at the hourly rate prescribed in § 91.37, for the time incurred by the laboratory personnel, any travel, telephone, telegraph, or other expenses which have been incurred by the laboratory service in connection with such application.

§ 91.34 When an appeal of a laboratory service may be refused.

An application for an appeal of a laboratory service may be refused if:

(a) The reasons for the appealed laboratory service are frivolous or not substantial;

(b) The quality or condition of the commodity product has undergone a material change since the laboratory service covering the commodity product on which the appealed laboratory service is requested;

(c) The lot in question is not, or cannot be made accessible for sampling;

(d) The lot relative to which the appealed laboratory service is requested cannot be positively identified as the lot from which samples were previously drawn and originally analyzed; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

§ 91.35 Who shall perform an appealed laboratory service.

An appealed laboratory service shall be performed, whenever possible, by another individual or other individuals than the scientist(s) or the technician(s) that performed the original analytical determination.

§ 91.36 Appeal laboratory certificate.

(a) An appeal laboratory certificate shall be issued showing the results of such appealed analysis. This certificate shall supersede the laboratory certificate previously issued for the commodity product involved.

(b) Each appeal laboratory certificate shall clearly identify the number and date of the laboratory certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appealed laboratory certificate and shall no longer represent the analytical results of the commodity product.

(c) The individual issuing an appeal laboratory certificate shall forward notice of such issuance to such persons as he or she considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the individual issuing the appeal certificate.

(d) The provisions in the regulations in this part concerning forms and certificates, issuance of certificates, and retention and disposition of certificates shall apply to appeal laboratory certificates, except that copies of such appeal certificates shall be furnished to all interested parties who received copies of the superseded certificate.

Subpart I—Fees and Charges

§ 91.37 Fees for laboratory testing, analysis, and other services (general schedules).

(a) The fees listed in the general schedules in this section for the individual laboratory analyses cover the costs of Science Division laboratory services, including issuance of certificates and personnel and overhead costs other than the commodity inspection fees referred to in §§ 52.42 through 52.46, 52.48 through 52.51, 55.510 through 55.530, 55.560 through 55.570, 58.38 through 58.43, 58.45 through 58.47, 70.71 through 70.72, and 70.75 through 70.78. The fees apply to all processed commodity products, except flue-cured and burley tobacco, citrus juices and certain citrus products. The laboratory fees are listed for single test analysis (unless specified) for processed fruits and vegetables (part 93), poultry and egg products (part 94), processed dairy products (part 95), and meat and meat products (part 98). The fees for chemical analysis of cottonseed associated with grading and novel variety seed certification under the Plant Variety Protection Act are specified in parts 96 and 97, respectively. Except as otherwise provided in this section, charges will be made for laboratory analysis at the hourly rate of $34.20 for the time required to perform the service. A minimum charge of one-half hour will be made for service pursuant to each request or certificate issued. The following times per single test on each schedule will apply:

General Schedules of Fees for Official Laboratory Test Services Performed at the AMS Science Division Laboratories for Processed Commodity Products

TABLE 1.—SINGLE TEST TIMES AND LABORATORY FEES FOR PROXIMATE ANALYSES

Type of analysis	Hours for single test	List fee
Ammonia, Ion Selective Electrode	2.25	$76.95
Ash, Total	1	34.20
Ash, Acid Insoluble	1.5	51.30
Fat, Acid Hydrolysis	1	34.20
Fat, Ether Extraction	1	34.20
Fat, Microwave—Solvent Extraction	1	34.20
Fat, Specific Gravity	1	34.20
Fiber, Crude	2	68.40
Moisture, Distillation	1	34.20
Moisture, Karl Fischer	1.5	51.30
Moisture, Oven	0.5	17.10

TABLE 1.—SINGLE TEST TIMES AND LABORATORY FEES FOR PROXIMATE ANALYSES—Continued

Type of analysis	Hours for single test	List fee
Protein, Kjeldahl	2	68.40
Salt, Back Titration	0.75	25.65
Salt, Potentiometric	0.5	17.10

TABLE 2.—SINGLE TEST TIMES AND LABORATORY FEES FOR LIPID RELATED ANALYSES

Type of analysis	Hours for single test	List fee
Acid Degree Value (Dairy)	1	$34.20
Acidity, Titratable	0.5	17.10
Carotene, Spectrophotometric	2.5	85.50
Catalase Test	0.5	17.10
Cholesterol	5	171.00
Moisture and fat analyses are required to be analyzed at an additional cost as prerequisites to the cholesterol test.		
Color (Honey)	0.5	17.10
Color, NEPA (Eggs)	1	34.20
Consistency, Bostwick (Cooked)	0.5	17.10
Consistency, Bostwick (Uncooked)	0.5	17.10
Density (Specific Gravity)	0.5	17.10
Dispersibility (Moats-Dabbah Method)	0.5	17.10
Fat Stability, AOM	1	34.20
Peroxide value analysis is required as a prerequisite to the fat stability test at the additional fee.		
Fatty Acid Profile (AOAC-GC method)	4	136.80
Flash Point Test only	2	68.40
Free fatty acids	0.75	25.65
Meltability (Process Cheese)	0.5	17.10
Peroxidase Test	0.5	17.10
Peroxide Value	1.5	51.30
Smoke Point Test only	2	68.40
Smoke Point and Flash Point	3.5	119.70
Solids, Total (Oven Drying)	0.5	17.10
Soluble Solids, Refractometer	0.5	17.10

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES

[Direct and Indirect]

Type of analysis	Hours for single test	List fee
Aflatoxin, (Dairy, Eggs)	3.5	$119.70
Alar or Daminozide Residue	6	205.20
Amitraz Residue, GLC	6	205.20
Alcohol (Qualitative)	2	68.40
Alkalinity of Ash	4	136.80
Antibiotic (Dry Milk)	4	136.80
Ascorbates (Qualitative—Meats)	0.5	17.10
Ascorbic Acid, Titration	1.0	34.20
Ascorbic Acid, Spectrophotometric	1.0	34.20
Benzene, Residual	2	68.40
Brix, Direct Percent Sucrose	0.5	17.10
Brix, Dilution	0.5	17.10
Butylated Hydroxyanisole (BHA)	1.5	51.30
Butylated Hydroxytoluene (BHT)	1.5	51.30
Caffeine, Micro Bailey-Andrew	1.5	51.30
Caffeine, Spectrophotometric	1	34.20
Calcium	1.5	51.30
Citric Acid, GLC or HPLC	1.5	51.30
Chlorinated Hydrocarbons:		
Pesticides and Industrial Chemicals—		
Initial Screen	4	136.80
Second Column Confirmation of Analyte	1	34.20
Confirmation on Mass Spectrometer	2	68.40
Dextrin (Qualitative)	0.5	17.10
Dextrin (Quantitative)	3	102.60
Filth, Heavy (Dairy)	2.5	85.50
Filth, Heavy (Eggs)	4	136.80
Filth, Light (Eggs)	2.5	85.50
Filth, Light and Heavy (Eggs Extraneous)	6	205.20

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES—Continued

[Direct and Indirect]

Type of analysis	Hours for single test	List fee
Flavor	0.75	25.65
Fumigants:		
Initial Screen—		
Dibromochloropropane (DBCP)	1	34.20
Ethylene Dibromide	1	34.20
Methyl Bromide	1	34.20
Confirmation on Mass Spectrometer—		
Each individual fumigant residue	2	68.40
Glucose (Qualitative)	0.75	25.65
Glucose (Quantitative)	1.75	59.85
Glycerol (Quantitative)	3	102.60
Gums	3	102.60
High Sucrose Content or Avasucrol—		
Percent Sucrose (Holland Eggs)	4	136.80
Hydrogen Ion Activity, pH	0.5	17.10
Mercury, Cold Vapor AA	2.5	85.50
Metals—Other Than Mercury, Each Metal	2	68.40
Monosodium Dihydrogen Phosphate	4	136.80
Monosodium Glutamate	4	136.80
Nitrites (Qualitative)	0.5	17.10
Nitrites (Quantitative)	3	102.60
Oxygen	0.5	17.10
Palatability and Odor:		
First Sample	0.75	25.65
Each Additional Sample	0.5	17.10
Phosphatase, Residual	1	34.20
Phosphorus	2	68.40
Propylene Glycol, Codistillation:		
(Qualitative)	2	68.40
Pyrethrin Residue (Dairy)	4	136.80
Scorched Particles	0.5	17.10
Sodium, Potentiometric	1	34.20
Sodium Benzoate, HPLC	1.5	51.30
Sodium Lauryl Sulfate (SLS)	8	273.60
Sodium Silicoaluminate (Zeolex)	2	68.40
Solubility Index	0.75	25.65
Starch, Direct Acid Hydrolysis	3	102.60
Sugar, Polarimetric Methods	1	34.20
Sugar Profile, HPLC—		
This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose	3	102.60
One type sugar from HPLC profile	0.5	17.10
Each additional type sugar	3	102.60
Sugars, Non-Reducing	2	68.40
Sugars, Total as Invert	0.75	25.65
Sulfites (Qualitative)	1.5	51.30
Sulfur Dioxide, Monier-Williams	1	34.20
Sulfur Dioxide, Direct Titration	2	68.40
Toluene, Residual	1	34.20
Triethyl Citrate, GC (Quantitative)	5	171.00
Vitamin A	8.5	290.70
Vitamin D, HPLC (Vitamins D_2 and D_3	2.5	85.50
Whey Protein Nitrogen	1.5	51.30
Xanthydrol Test for Urea		
This is an optional test to the extraneous materials isolation test		

TABLE 4.—SINGLE TEST TIMES AND LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES

Type of analysis	Hours for single test	List fee
Available Carbon Dioxide (Baking Powers)	4	$136.80
Complete Kohman Analysis (Dairy)	3	102.60
Jelly Strength (Bloom)	2.5	85.50
Methyl Anthranilate	1	34.20
Grape Juice Absorbancy Ratio	0.5	17.10
Net Weight (Per Can)	0.5	17.10
Non-Volatile Methylene Chloride Extract	2.5	85.50
Particle Size (Ether Wash)	0.5	17.10

TABLE 4.—SINGLE TEST TIMES AND LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES—Continued

Type of analysis	Hours for single test	List fee
Potassium Iodide (Table Salt)	1.5	51.30
Quinic Acid (Cranberry Juice)	1.75	59.85
Sieve or Particle Size	0.5	17.10
Water Activity (Canned Vegetables)	6	205.20
Water Insoluble Inorganic Residues (WIIR)	2	68.40
Yellow Onion Test	0.75	25.65

TABLE 5.—SINGLE TEST TIMES AND LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

Type of analysis	Hours for single test	List fee
Aerobic (Standard) Plate Count	0.5	$17.10
Anaerobic Bacterial Plate Count	0.75	25.65
Bacterial Direct Microscopic Count	1	34.20
Campylobacter jejuni	4	136.80
Coliform Plate Count, Violet Red Bile Agar:		
(Presumptive Coliform Plate Count)	0.75	25.65
Coliforms, Most Probable Number (MPN): [1]		
Step 1	0.75	25.65
Step 2	0.75	25.65
E. coli, Presumptive MPN (Additional Fee) [2]	1.5	51.30
Enterococci Count	3	102.60
Listeria monocytogenes confirmation analysis: [3]		
Step 1	1.5	51.30
Step 2	1.5	51.30
Step 3 (Confirmation)	2.5	85.50
Proteolytic Count	1	34.20
Psychrotrophic Bacterial Plate Count	0.75	25.65
Salmonella (USDA Culture Method): [4]		
Step 1	1.5	51.30
Step 2	0.75	25.65
Step 3 (Confirmation)	1.5	51.30
Serological Typing (Optional)	2.5	85.50
Salmonella (Rapid Methods): [5]		
Step 1	2.0	68.40
Step 2	0.75	25.65
Step 3 (Confirmation)	1.5	51.30
Staphylococcus aureus, MPN:		
With Coagulase Positive Confirmation	1.75	59.85
Thermoduric Bacterial Plate Count	0.75	25.65
Yeast and Mold Count	0.5	17.10
Yeast and Mold Differential Plate Count	0.75	25.65

[1] Coliform MPN analysis may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.

[2] Step 1 of the coliform MPN analysis is a prerequisite for the performance of the presumptive *E.* coli test. Prior enrichment in lauryl sulfate tryptose broth is required for optimal recovery of *E.* coli from inoculated and incubated EC broth (*Escherichia* coli broth). The *E.* coli test is performed through growth on eosin methylene blue agar. The fee stated for *E.* coli analysis is a supplementary charge to step 1 of coliform test.

[3] *Listeria* monocytogenes test using the USDA method may be in three steps as follows: Step 1—isolation by University of Vermont modified (UVM) broth and Fraser's broth enrichments and selective plating with Modified Oxford (MOX) agar; Presumptive Step 2—typical colonies inoculated from Horse Blood into brain heart infusion (BHI) broth and check for characteristic motility; Confirmatory Step 3—culture from BHI broth with typical motility is inoculated into the seven biochemical medias, BHI agar for oxidase and catalase tests, Motility test medium, and Christie-Atkins-Munch-Peterson (CAMP) test.

Listeria monocytogenes test using the FDA method may be in three steps as follows: Step 1—isolation by trypticase soy broth with 0.6% yeast extract (TSB–YE) broth enrichment and selective plating with Modified McBrides agar and Lithium chloride Phenylethanol Moxalactam (LPM) agar; Presumptive Step 2—typical colonies inoculated to trypticase soy agar with yeast extract (TSA–YE) with sheep blood plates to check for hemolysis followed by inoculations to BHI broth and TSA–YE plates to check for characteristic motility, gram stain and catalase test; Confirmatory Step 3—culture from BHI broth with typical motility for wet mount is inoculated into the required 10 biochemical medias, Sulfide-Indole-Motility (SIM) medium, and the CAMP test. Serology is checked using growth from TSA–YE plates.

Both methods for *Listeria* determination have the equivalent time needed for each step.

[4] *Salmonella* test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums. The serological typing of *Salmonella* is requested on occasion.

[5] *Salmonella* test may be in three steps as follows: Step 1—growth in enrichment broths and Elisa test or DNA hybridization system assay; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums.

TABLE 6.—SINGLE TEST TIMES AND LABORATORY FEES FOR AFLATOXIN ANALYSES

Aflatoxin test by commodity	Hours for single test	Fee per single analysis	Fee per pair analyses[1]
Peanut Butter (TLC-CB)	1	$34.20	[2] NA
Corn (TLC-CB)	1	34.20	NA
Roasted Peanuts (TLC-BF)	1	34.20	NA
Brazil Nuts (TLC-BF)	2	68.40	NA
Pistachio Nuts (TLC-BF)	2	68.40	NA
Shelled Peanuts (TLC-BF)	NA	14.00	28.00
Shelled Peanuts (Aflatest)	NA	20.00	40.00
Shelled Peanuts (HPLC)	NA	50.00	100.00
Tree Nuts (TLC)	1	34.20	NA
Oilseed Meals (TLC)	1	34.20	NA
Edible Seeds (TLC)	1	34.20	NA
Dried Fruit (TLC)	1	34.20	NA
Small Grains (TLC)	1	34.20	NA
In-Shell Peanuts (TLC)	NA	14.00	28.00
Silage; Other Grains (TLC)	1	34.20	NA

[1] Aflatoxin testing of raw peanuts under Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD is $28.00 per pair of analyses using Thin-Layer Chromatography (TLC) and Best Foods (BF) extraction method. The BF method has been modified to incorporate a water slurry extraction procedure. The Contaminants Branch (CB) method is used on occasion as an alternative method for peanuts and peanut meal when doubt exists as to the effectiveness of the BF method in extracting aflatoxin from the sample or when background interferences exist that might mask TLC quantitation of aflatoxin. The cost per pair of analyses using Aflatest and High Pressure Liquid Chromatography (HPLC) is $40.00 and $100.00, respecctively. Other aflatoxin analyses for fruits and vegetables are listed at Science Division's current hourly rate of $34.20.

[2] NA denotes not applicable.

TABLE 7.—MISCELLANEOUS CHARGES SUPPLEMENTAL TO THE SCIENCE DIVISION'S LABORATORY ANALYSIS FEES

Laboratory service description	Hours for single sample	List fee
Sample Grinding (Raw Peanuts)	0.25	$8.55
Sample Grinding (Canned Boned Poultry)	1	34.20
Sample Grinding (Meats, Meat Products, Meals, Ready-to-Eat):		
Per pouch or raw sample	0.25	8.55
Per tray pack	0.5	17.10
Compositing Multiple Subsamples for an Individual Test Sample Unit per subsample	0.25	8.55

TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO THE SAMPLE RECEIPT AND ANALYSIS REPORT

Service description	List charge
Established Courier Expense at Albany, Georgia Laboratory	$2.00.
Courier Expense at Other AMS Laboratories: Mileage Charge Set at $0.30 Per Mile Roundtrip from Laboratory to Delivery Site.	Varies.
Facsimile Charge (Per Analysis Report)	$3.00 minimum up to first 3 pages, then $1.00 per page.
Additional Analysis Report or Extra Certificate (½ hour charge)	$17.10 per report or certificate reissued.

(b) The fee charge for any laboratory analysis not listed in paragraph (a) of this section, or for any other applicable services rendered in the laboratory, shall be based on the time required to perform such analysis or render such service. The standard hourly rate shall be $34.20.

(c) When a laboratory test service is provided for AMS by a commercial or State government laboratory, the applicant will be assessed a fee which covers the costs to AMS for the service provided.

§ 91.38 Additional fees for appeal of analysis.

(a) The appellant will be charged an additional fee at a rate of 1.5 times the standard rate stated in paragraph (a) of section 91.37 if, as a result of an authorized appeal analysis, it is determined that the original test results are correct. The appeal laboratory rate is $51.30 per analysis hour.

(b) The appeal fee will be waived if the appeal laboratory test discloses that an error was made in the original analysis.

§ 91.39 Special request fees for overtime and legal holiday service.

(a) Laboratory analyses initiated at the special request of the applicant to be rendered on Saturdays, Sundays, Federal holidays, and on an overtime basis will be charged at a rate of 1.5 times the standard rate stated in paragraph (a) of § 91.37. The premium laboratory rate for holiday and overtime service will be $51.30 per analysis hour.

(b) Information on legal holidays or what constitutes overtime service at a particular AMS laboratory is available from the laboratory supervisor.

§ 91.40 Fees for courier service and facsimile of the analysis report.

(a) The AMS peanut aflatoxin laboratory at Albany, Georgia, has a set courier charge of $2.00 per trip to retrieve the sample package. The mileage charge specified in table 8 of this part for courier service at other AMS laboratories is based on the shortest roundtrip route from laboratory to sample retrieval site.

(b) The faxing of laboratory analysis reports or certificates is an optional service offered at the fee specified in table 8 of this part.

§ 91.41 Charges for demonstrations and courses of instruction.

Charges, not in excess of the cost thereof and as approved by the Division Director, may be made for demonstrations, samples, or courses of instruction when such are furnished upon request.

§ 91.42 Billing.

(a) Each billing cycle will end on the 25th of the month. The applicant will be billed by the National Finance Center on the 1st day, following the end of the billing cycle in which voluntary laboratory services and other services were rendered at a particular Science Division laboratory.

(b) The total charge shall normally be stated directly on the analysis report or on a standardized certificate form for the laboratory analyses of a specific agricultural commodity and related commodity products.

(c) The actual bill for collection will be issued by the National Finance Center, Program Billings and Collection Section, P.O. Box 60950, New Orleans, Louisiana 70160.

§ 91.43 Payment of fees and charges.

(a) Fees and charges for services shall be paid by the applicant, by check or money order payable, to the "Agricultural Marketing Service, USDA" and sent to the office indicated on the bill.

(b) Fees and charges for services under a cooperative agreement with a State or other AMS Division will be paid in accordance with the terms of the cooperative agreement.

(c) As necessary, the Division Director may require that fees shall be paid in advance of the performance of the requested service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by applicant.

§ 91.44 Charges on overdue accounts and issuance of delinquency notices.

(a) Accounts are considered overdue if payment is late with the National Finance Center (NFC). The timeliness of a payment will be based on the postmark date of the payment or the date of receipt by the NFC if no postmark date is present or legible. Bills are payable upon receipt and become delinquent 30 days from date of billing.

(b) Any amount due not paid by the due date will be increased by a late payment charge. The actual assessed rate applied to overdue accounts is set quarterly by the Department of the Treasury. This amount is one-twelfth of one year's late penalty interest rate computed at the prescribed rate.

(c) Overtime or holiday laboratory service will not be performed for any applicant with a notice of delinquency.

(d) Applicants with three notices of delinquency will be reviewed for possible termination of services. A deposit in advance sufficient to cover the fees and expenses for any subsequent service may be required of any person failing to pay in claim after issuance of such notice of delinquency.

(e) The Division Director will take such action as may be necessary to collect any delinquent amounts due.

§ 91.45 Charges for laboratory services on a contract basis.

(a) Irrespective of fees and charges prescribed in section 91.37, or in other sections of Subchapter E, the Division Director may enter into contracts with applicants to perform continuous laboratory services or other types of laboratory services pursuant to the regulations in this part and other requirements, as prescribed by the Division Director in such contract. In addition, the charges for such laboratory services, provided in such contracts, shall be on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such laboratory services, including an appropriate overhead charge to cover administrative overhead expenses as may be determined by the Administrator.

(b) Irrespective of fees and charges prescribed in § 91.37, or in other sections of Subchapter E, the Division Director may enter into a written Memorandum of Understanding (MOU) or agreement with any administrative agency or governing party for the performance of laboratory services pursuant to said agreement or order on a basis that will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such laboratory service, including an appropriate overhead administrative overhead charge.

(c) The conditions and terms for renewal of such Memorandum of Understanding or agreement shall be specified in the contract.

PART 92—TOBACCO

Sec.

91.1 General
92.2 Definitions
92.3 Location for laboratory testing and kind of services available
92.4 Approved forms for reporting analytical results
92.5 Analytical methods
92.6 Cost for pesticide analysis set by cooperative agreement

Authority: 7 U.S.C. 511m and 7 U.S.C. 511r.

§ 92.1 General.

Analytical testing of imported flue-cured and burley tobacco is performed for maximum allowable pesticide residue levels. Domestic grown tobacco may also be analyzed for pesticide residues at the Science Division's Eastern Laboratory facility.

§ 92.2 Definitions

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

Air-cured. Tobacco cured under natural atmospheric conditions. Artificial heat is sometimes used to control excess humidity during the curing period to prevent house-burn, barn-burn, and pole-burn in damp weather. Air-cured tobacco should not carry the odor of smoke or fumes resulting from the application of artificial heat.

Burley. A thin- to medium-bodied tobacco, usually a light tan to reddish-brown in color.

Burley, Type 93. That type of air-cured tobacco commonly known as foreign-grown Burley, produced in countries other than the United States.

Certificate of Analysis (Form CSSD–3). A legal document on which the test results for official samples will be certified by a Division chemist in charge of testing.

Cured. Tobacco dried of its sap by either natural or artificial processes.

2,4-D. The common abbreviation for the acid herbicide 2,4-Dichlorophenoxyacetic acid.

DBCP. The common abbreviation for the volatile fumigant pesticide 1,2-Dibromo-3-chloropropane.

DDE. The common abbreviation for the chlorinated pesticide Dichlorodiphenyldichloroethylene. Degradation product of DDT by loss of one molecule of hydrochloric acid or

referred to as a dehydrohalogeneration process.

DDT. The common abbreviation for Dicholoro diphenyl trichloroethane or the common name for the chlorinated insecticide or contact poison 1,1-Bis(p-chlorophenyl)-2,2,2-trichloroethane.

Dicamba. The common name for the acid herbicide 2-Methoxy-3,6-ichlorobenzoic acid.

EDB. The common abbreviation for Ethylene dibromide or the common name for the volatile fumigant pesticide 1,2-Dibromoethane.

Flue-cured. Tobacco cured under artificial atmospheric conditions by a process of regulating the heat and ventilation without allowing smoke or fumes from the fuel to come in contact with the tobacco; or tobacco cured by some other process which accomplishes the same results.

Flue-cured, Type 92. That type of flue-cured tobacco commonly known as Foreign-grown Flue-cured, produced in countries other than the United States.

Formothion. The common name for the organophosphorus pesticide S-(2-(Formylmethylamino)-2-oxoethyl) O-O-dimethyl phosphorodithioate.

HCB. The common abbreviation for the organochlorine pesticide Hexachlorobenzene.

Lot. A unit of shipment of tobacco encompassed by a single invoice. The lot may represent a pile, basket, bulk, hack, burden, or more than one bale, case, hogshead, tierce, package, or other definite package unit.

Maximum pesticide residue level. The maximum concentration of residue allowable for a specific pesticide or combination of pesticides, as set forth in section 29.427 by the Director of the Tobacco Division.

Pesticide. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Pesticide certification. A document issued by the Tobacco Division in a form approved by its Director, containing a certification by the importer that flue-cured and burley tobacco offered for importation does not exceed the maximum allowable residue levels of any pesticide that has been canceled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Pesticide test sample. An official sample or samples, collected from a lot of tobacco by the AMS Tobacco Division inspector for analysis by a certified chemist to ascertain the residue levels of pesticides that have been canceled, suspended, revoked, of otherwise prohibited under the FIFRA.

Sample Identification Form (Form TB–89). A document approved by the Director of the Tobacco Division that identifies and accompanies the sample to the testing facility.

2,4,5-T. The common abbreviation for the acid herbicide 2,4,5-Trichlorophenoxyacetic acid.

TDE. The common abbreviation for the chlorinated insecticide 1,1-Dichloro-2,2-bis(p-chlorophenyl)ethane.

Testing. The chemical analysis of a pesticide test sample to determine the presence and levels of pesticide residues.

Tobacco. Tobacco as it appears between the time it is cured and stripped from the stalk, or primed and cured, in whole leaf or strip form, and the time it enters into the different manufacturing processes. Conditioning, sweating, stemming, and threshing are not regarded as manufacturing processes. Tobacco, as used in this part does not include manufactured or semimanufactured products, stems, cuttings, clippings, trimmings, siftings, or dust.

§ 92.3 Location for laboratory testing and kind of services available.

(a) The analytical testing of imported Type 92 flue-cured tobacco samples and imported Type 93 burley tobacco samples for maximum pesticide residue level determinations is performed at the Science Division's Eastern Laboratory, and is located at: USDA, AMS, Science Division, Eastern Laboratory, 645 Cox Road, Gastonia, NC 28054.

(b) Domestic-grown tobacco and tobacco products may be analyzed for acid herbicides, chlorinated hydrocarbons, fumigants, and organophosphates at the Science Division facility in this section.

(c) The Division performs for the Tobacco Division the quantitative and confirmatory chemical residue analyses on pesticide test samples of imported tobacco for the following specific pesticides:

(1) Organochlorine pesticides such as Dichlorodiphenyldichloroethylene (DDE), Dichloro Diphenyl Trichloroethane (DDT), 1,1-Dichloro-2,2-bis (p-chlorophenyl)ethane (TDE), Toxaphene, Endrin, Aldrin, Dieldrin, Heptachlor, Methoxychlor, Chlordane, Heptachlor Epoxide, Hexachlorobenzene (HCB), Cypermethrin, and Permethrin.

(2) Organophosphorus pesticides such as Formothion.

(3) Fumigants such as Ethylene Dibromide (EDB) and Dibromochloropropane (DBCP).

(4) Acid herbicides such as 2,4-D, 2,4,5-T, and Dicamba.

§ 92.4 Approved forms for reporting analytical results.

(a) Form TB–89, "Imported Tobacco Pesticide Residue Analysis" certificate, is enclosed with and identifies the sample submitted to the laboratory.

(b) Test results of the pesticide analyses for tobacco shall be recorded on "Certificate of Analysis For Official Samples," Form CSSD–3, and shall be expressed in total parts per million, per gram sample for each particular pesticide residue found in the lot of tobacco. Form CSSD–3 is attached to Form TB–89 that is returned to the Tobacco Division. The analytical data on Form CSSD–3 substantiates the information placed on Form TB–89.

§ 92.5 Analytical methods.

Every chemist certified to analyze tobacco samples for pesticide residue contamination shall follow precisely the USDA developed analytical test methods and all successive official method updates, as approved by the Director, Science Division.

§ 92.6 Cost for pesticide analysis set by cooperative agreement.

The fee for the pesticide analysis of tobacco is set by the Tobacco Division, in conjunction with the Science Division, and appears at § 29.500 as part of Tobacco Division's fees for sampling and certification of imported flue-cured and burley tobacco. A Memorandum of Understanding (MOU) exists between the Tobacco Division and the Science Division for the testing of imported tobacco samples for pesticide residue contamination, and the corresponding agreement on the cost of analyses is specified in this document.

PART 93—PROCESSED FRUITS AND VEGETABLES

Subpart A—Citrus Juices and Certain Citrus Products

Section

93.1 General
93.2 Definitions
93.3 Analyses available and location of laboratory
93.4 Analytical methods
93.5 Fees for citrus product analyses set by cooperative agreement

Subpart B—Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products

93.10 General
93.11 Definitions
93.12 Location of the laboratory for processed food products

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Subpart C—Peanuts, Tree Nuts, Corn and Other Oilseeds

93.100 General
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93.102 Analyses available and location of laboratory
93.103 Analytical methods
93.104 Fees for aflatoxin testing
93.105 Fees for analytical testing of oilseeds

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624)

Subpart A—Citrus Juices and Certain Citrus Products

§ 93.1 General.

Domestic and imported citrus products are tested to determine whether quality and grade standards are satisfied as set forth in the Florida Citrus Code.

§ 93.2 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Acid. The grams of total acidity, calculated as anhydrous citric acid, per 100 grams of juice or citrus product. Total acidity is determined by titration with standard sodium hydroxide solution, using phenolphthalein as indicator.

Brix or degrees Brix. The percent by weight total soluble solids of the juice or citrus product when tested with a Brix hydrometer calibrated at 20 °C (68 °F) and to which any applicable temperature correction has been made. The Brix or degrees Brix may be determined by any other method which gives equivalent results.

Brix value. The refractometric sucrose value of the juice or citrus product determined in accordance with the "International Scale of Refractive Indices of Sucrose Solutions" and to which the applicable correction for acid is added. The Brix value is determined in accordance with the refractometric method outlined in the Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

Brix value/acid ratio. The ratio of the Brix value of the juice or citrus product, in degrees Brix, to the grams of anhydrous citric acid per 100 grams of juice or citrus product.

Brix/acid ratio. The ratio of the degrees Brix of the juice to the grams of anhydrous citric acid per 100 grams of the juice.

Citrus. All plants, edible parts and commodity products thereof, including pulp and juice of any orange, lemon, lime, grapefruit, mandarin, tangerine, kumquat or other tree or shrub in the genera *Citrus, Fortunella,* or *Poncirus* of the plant family Rutaceae.

Recoverable oil. The percent of oil by volume, determined by the Bromate titration method as described in the current edition of the AOAC.

§ 93.3 Analyses available and location of laboratory.

(a) Laboratory analyses of citrus juice and other citrus products are being performed at the following Science Division location: Science Division Citrus Laboratory, 111 Third Street, SW, suite 211, Winter Haven, FL 33880.

(b) Laboratory analyses of citrus fruit and products in Florida are available in order to determine if such commodities satisfy the quality and grade standards set forth in the Florida Citrus Code (Florida Statutes Pursuant to Chapter 601). Such analyses include tests for acid as anhydrous citrus acid, Brix, Brix-acid ratio, recoverable oil, and artificial coloring matter additive, as turmeric. The Florida Division of Fruit and Vegetable Inspection may also request analyses for arsenic metal, pulp wash (ultraviolet and fluorescence), standard plate count, yeast with mold count, and nutritive sweetening ingredients as sugars.

(c) Additional laboratory tests are available upon request at the Science Division Citrus Laboratory at Winter Haven, Florida. Such analyses include tests for vitamins, naringin, sodium benzoate, *Salmonella,* protein, salt, pesticide residues, sodium metal, ash, potassium metal, and coliforms for citrus products.

§ 93.4 Analytical methods.

(a) The majority of analytical methods for citrus products are found in the Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC).

(b) Other analytical methods for citrus products may be used as approved by the Director, Science Division.

§ 93.5 Fees for citrus product analyses set by cooperative agreement.

The fees for the analyses of fresh citrus juices and other citrus products shall be set by mutual agreement between the applicant, the State of Florida, and the Director, Science Division. A Memorandum of Understanding (MOU) or cooperative agreement exists presently with the AMS Science Division and the State of Florida, regarding the set hourly rate and the costs to perform individual tests on Florida citrus products, for the State.

Subpart B—Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products

§ 93.10 General.

Analytical testing is performed for certain types of food products, including processed fruits and vegetables, as part of the determination of their grade or conformance of the product with applicable analytical requirements.

§ 93.11 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Processed product. Any fruit, vegetable, or other food product covered under the regulations in this subpart which has been preserved by any recognized commercial process, including, but not limited to, canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

Quality. The inherent properties of any processed product which determine the relative degree of excellence or desirability of such product. This includes the effects of preparation and processing, and may or may not include the effects of packing media, or added ingredients.

§ 93.12 Location of the laboratory for processed food products.

(a) The Science Division Midwestern Laboratory conducts the majority of laboratory analyses for processed food products to assure uniformity of analytical requirements and conformance with applicable military, Federal, or State government specifications. The wide array of analyses for processed food products are performed at the following location: USDA, AMS, Science Division, Midwestern Laboratory, 3570 North Avondale Ave., Chicago, IL 60618.

(b) The analyses available for processed fruits and vegetables and related products include ash, oil or fat, crude fiber, moisture, protein, specific gravity, daminozide and amitraz

residues, ascorbic acid, quinic acid, methyl anthranilate, caffeine, calcium, brix, citric acid, and chlorinated hydrocarbon residues. In addition, chemical and physical analyses include extraneous materials, fumigants, pH, heavy metals and minerals, color, sodium, sugar profile, sulfur dioxide, vitamin A, bloom, non-volatile methylene chloride extract, sieve or particle size, water activity, Water Insoluble Inorganic Residues (WIIR) test, yellow onion test, and carbohydrates. Microbiological analyses for fruits and vegetables include standard plate counts, anaerobic bacterial plate counts, direct microscopic counts, coliforms, presumptive *Escherichia* coli, *Staphylococcus* aureus, *Salmonella*, Enterococci, psychrotrophic bacteria, *Bacillus*, and yeast with mold differential counts.

§ 93.13 Analytical methods.

The majority of analytical methods used for performing official analyses for processed food products are found in the following manuals:

(a) Official Analytical Methods of the American Spice Trade Association (ASTA), American Spice Trade Association, 580 Sylvan Avenue, P.O. Box 1267, Englewood Cliffs, NJ 07632.

(b) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, 1608 Broadmoor Drive, P.O. Box 3489, Champaign, IL 61826–3489.

(c) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(d) U.S. Army Individual Protection Directorate's Military Specifications, approved analytical test methods noted therein, U.S. Army Natick Research, Development and Engineering Center, Kansas Street, Natick, MA 01760–5017.

§ 93.14 Fees for processed fruits and vegetables and related products.

(a) The fee charged for any single laboratory analysis for processed fruits and vegetables is specified in the schedules of charges in paragraph (a) of section 91.37.

(b) The hourly rate for any requested laboratory analysis not listed shall be the standard rate specified in section 91.37, paragraph (b).

Subpart C—Peanuts, Tree Nuts, Corn and Other Oilseeds

§ 93.100 General.

Chemical analyses are performed to detect the presence of aflatoxin in lots of shelled peanuts and peanut products, as well as in other nuts and agricultural products. In addition, proximate chemical analyses for quality determination are performed on oilseeds.

§ 93.101 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Aflatoxin. A toxic metabolite produced by the molds *Aspergillus* flavus and *Aspergillus* parasiticus. The aflatoxin compounds fluoresce when viewed under UV light as follows: aflatoxin B_1, and derivatives with a blue fluorescence, aflatoxin B_2 with a blue-violet fluorescence, aflatoxin G_1 with a green fluorescence, aflatoxin G_2 with a green-blue fluorescence, aflotoxin M_1 with a blue-violet fluorescence, and aflatoxin M_2 with a violet fluorescence. These closely related molecular structures are referred to as aflatoxin B_1, B_2, G_1, G_2, M_1, M_2, GM_1, B_{2a}, G_{2a}, R_0, B_3, $1–OCH_3B_2$, and $1–CH_{32}$.

Peanut Administrative Committee (PAC). The committee established under the U.S. Department of Agriculture Marketing Agreement for Peanuts, 7 CFR part 998, which administers the terms and provisions of this Agreement, including the aflatoxin control program for domestically produced raw peanuts, for peanut shellers.

Peanut Marketing Agreement. The agreement concerning the regulations and instructions set forth since July 12, 1965, by the Peanut Administrative Committee (30 FR 9402), for the marketing of peanuts entered into by handlers of domestically produced peanuts under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Peanuts. The seeds of the legume *Arachis* hypogaea, and includes both inshell and shelled nuts.

Seed. Any vegetable or other agricultural plant ovule having an embryo that is capable of germinating to produce a plant.

§ 93.102 Analyses available and locations of laboratories.

(a) Aflatoxin testing services. The aflatoxin analyses for peanuts, other nuts, corn, and other oilseed products are performed at the following 9 locations for Science Division (SD) Aflatoxin Laboratories:

(1) USDA, AMS, SD
1411 Reeves Street
Mail: P.O. Box 1368
Dothan, AL 36302

(2) USDA, AMS, SD
2705 Taft Street
Albany, GA 31707

(3)USDA, AMS, SD
610 North Main Street
Blakely, GA 31723

(4) USDA, AMS, SD
107 South Fourth Street
Madill, OK 73446

(5) USDA, AMS, SD
308 Culloden Street
Mail: P.O. Box 1130
Suffolk, VA 23434

(6) USDA, AMS, SD
200 West Washington Street
Mail: P.O. Box 488
Ashburn, GA 31714

(7) USDA, AMS, SD
301 West Pearl Street
Mail: P.O. Box 279
Aulander, NC 27805

(8) USDA, AMS, SD
42 North Ellis Street
Mail: P.O. Box 548
Camilla, GA 31730

(9) USDA, AMS, SD
715 North Main Street
Mail: P.O. Box 272
Dawson, GA 31742

(b) Peanuts, peanut products, and oilseed testing services.

(1) The Science Division Aflatoxin Laboratories at Dothan, Alabama and Albany and Blakely, Georgia will perform other analyses for peanuts, peanut products, and a variety of oilseeds. The analyses for oilseeds include testing for free fatty acids, ammonia, nitrogen or protein, moisture and volatile matter, foreign matter, and oil (fat) content.

(2) All of the analyses described in subparagraph (1) performed on a single seed sample are billed at the rate of one hour per sample. Any single seed analysis performed on a single sample is billed at the rate of one-half hour per sample. The standard hourly rate shall be as specified in § 91.37, paragraph (b).

(c) Vegetable oil testing services. The analyses for vegetable oils are performed at the Science Division Midwestern Laboratory, as indicated in § 93.12, paragraph (a). The analyses of vegetable oils will include the flash point test, smoke point test, acid value, peroxide value, phosphorus in oil, and specific gravity. The fee charged for any single laboratory analysis for vegetable oils shall be obtained from the schedules of charges in paragraph (a) of § 91.37.

§ 93.103 Analytical methods.

Official analyses for peanuts, nuts, corn, oilseeds, and related vegetable oils are found in the following manuals and forthcoming revisions:

(a) Analyst's Instruction for Aflatoxin (November 1991), SD Instruction No. 1, USDA, Agricultural Marketing Service, Science Division, South Agriculture Building, 14th & Independence Avenue, SW, P.O. Box 96456, Washington, DC 20090–6456.

(b) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, 1608 Broadmoor Drive, P.O. Box 3489, Champaign, IL 61826–3489.

(c) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(d) Standard Analytical Methods of the Member Companies of Corn Industries Research Foundation, Corn Refiners Association (CRA), suite 1120, 1100 Connecticut Avenue, NW, Washington, DC 20036.

§ 93.104 Fees for aflatoxin testing.

(a) The fee charged for any single laboratory analysis for aflatoxins shall be obtained from the schedules of charges in paragraph (a) of § 91.37.

(b) The charge for the aflatoxin testing of raw peanuts under the Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD is a set cost per pair of analyses and shall be set by cooperative agreement between the Peanut Administrative Committee and AMS Science Division.

(c) The charge for any requested laboratory analysis for aflatoxins not listed shall be based on the standard hourly rate specified in § 91.37, paragraph (b).

§ 93.105 Fees for analytical testing of oilseeds.

(a) The fee charged for any single laboratory analysis for oilseeds shall be obtained from the schedules of charges in paragraph (a) of § 91.37.

(b) The charge for any requested laboratory analysis for oilseeds not listed shall be based on the standard hourly rate specified in § 91.37, paragraph (b).

PART 94—POULTRY AND EGG PRODUCTS

Subpart A—Mandatory Analyses of Egg Products

Sec.

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Subpart B—Voluntary Analyses of Egg Products

94.100 General
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Subpart C—Salmonella Laboratory Recognition Program

94.200 [Reserved]

Subpart D—Processed Poultry Products

94.300 General
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94.302 Analyses available and location of laboratories
94.303 Analytical methods
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Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056), Agricultural Marketing Act of 1946, Secs. 202–208 as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

Subpart A—Mandatory Analyses of Egg Products

§ 94.1 General.

Microbiological, chemical, and physical analysis of liquid, frozen, and dried egg products is performed under authority of the Egg Products Inspection Act (21 U.S.C. 1031–1056).

§ 94.2 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Egg. The shell egg of the domesticated chicken, turkey, duck, goose, or guinea. Some of the terms applicable to shell eggs are defined by the Poultry Division in § 59.5.

Egg product. Any dried, frozen, or liquid eggs, with or without added ingredients. However, products which contain eggs only in a relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry may be exempted by the Secretary under such conditions as may be prescribed to assure that the egg ingredients are not adulterated and such products are not represented as egg products. Some of the products exempted as not being egg products are specified by the Poultry Division in § 59.5.

Mandatory sample. An official sample of egg product(s) taken for testing under authority of the Egg Products Inspection Act (21 U.S.C. 1031–1056) for analysis by a U.S. Department of Agriculture, Agricultural Marketing Service, Science Division laboratory at government expense. A mandatory sample shall include an egg product sample to be analyzed for microbiological, chemical, or physical attributes.

Official plant. Any plant, as determined by the Secretary, at which the U.S. Department of Agriculture maintains inspection of the processing of egg products under the authority of the Egg Products Inspection Act.

Pasteurize. The subjecting of each particle of egg products to heat or other treatments to destroy harmful viable microorganisms by such processes as may be prescribed by the regulations in the EPIA.

Pesticide chemical, food additive, color additive, and raw agricultural commodity. These terms shall have the same meaning for purposes of this subpart as under sections 408, 409, and 706 of the Federal Food, Drug, and Cosmetic Act.

Plant. Any place of business where egg products are processed.

Processing. Manufacturing of egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products at official plants.

§ 94.3 Analyses performed and locations of laboratories.

(a) Samples drawn by a USDA egg products inspector will be analyzed by Science Division personnel for microbiological, chemical, and physical attributes. The analytical results of these samples will be reported to the resident egg products inspector at the applicable plant on the official certificate.

(b) Mandatory egg product samples for Samonella are required and are analyzed in Division laboratories to spot check and confirm the adequacy of Division approved and recognized laboratories for analyzing routine egg product samples for Salmonella.

(c) Mandatory egg product samples for chlorinated hydrocarbons are required and are submitted by the plant inspectors on a random basis. These samples screen for pesticide residues and industrial chemical contaminants in egg products.

(d) Samples are drawn by a USDA egg products inspector to determine potential adulteration. These egg product samples may be analyzed for extraneous material, color, color additive, pesticide, heavy metal,

microorganism, dextrin, or other substance.

(e) The Science Division's Eastern laboratory shall conduct the majority or laboratory analyses for egg products. The analyses for mandatory egg product samples are performed at the following USDA location: USDA, AMS, Science Division, Eastern Laboratory, 645 Cox Road, Gastonia, NC 28054.

§ 94.4 Analytical methods.

The majority of analytical methods used by the USDA laboratories to perform mandatory analyses for egg products are listed as follows:

(a) Edwards, P.R. and W.H. Ewing, Edwards and Ewing's Identification of Enterbacteriaceae, Elsevier Science Publishing Co., Inc., 53 Vanderbilt Avenue, New York, NY 10017.

(b) Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, U.S. Environmental Protection Agency (EPA), Environmental Toxicology Division, Health Effects Research Laboratory (HERL), Alexander Drive and Highway 54, Mail Drop 51, Research Triangle Park, NC 27711.

(c) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(d) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Eighteenth Street, NW, Washington, DC 20036.

(e) Standard Methods for the Examination of Water and Wastewater, American Public Health Association (APHA), the American Water Works Association and the Water Pollution Control Federation, APHA, 1015 Eighteenth Street, NW, Washington, DC 20036.

(f) U.S. Food and Drug Administration Bacteriological Analytical Manual (BAM), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(g) U.S. Food and Drug Administration Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, U.S. Department of Health and Human Services, 200 C Street, SW, Washington, DC 20204 (available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161).

§ 94.5 Charges for laboratory service.

The costs for analysis of mandatory egg product samples at Science Division laboratories shall be paid by annually appropriated and designated funds allocated to the egg products inspection program. The costs for any other mandatory laboratory analyses and testing of an egg product's identity and condition, necessitated by the Egg Products Inspection Act, shall also be paid by such program funding.

Subpart B—Voluntary Analyses of Egg Products

§ 94.10 General.

Analyses for voluntary egg product samples may be requested to certify that specifications regarding stated identity, quality, and wholesomeness are met; to test routinely for the presence of *Salmonella;* and to ensure laboratory quality control with testing activities.

§ 94.101 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

Certification sample. An egg product sample submitted by an applicant for chemical, physical, or microbiological analyses and tests at a Science Division laboratory. This voluntary sample is analyzed or tested by the Division's analyst or scientist to certify that an egg product lot meets applicable specifications for identity, quality, and wholesomeness.

Surveillance sample. This is a 100 gram sample for *Salmonella* analysis that is drawn by the USDA egg product inspector from each lot of egg product processed at an official plant. This sample may be analyzed by a Science Division laboratory, or by a laboratory approved and recognized by the Division to analyze for *Salmonella* in egg products.

Unofficial sample. These samples of egg products are drawn by plant personnel upon the request of plant management. Analyses of these samples are usually conducted for the plant's refractometer correlation, bacteriological evaluation of production techniques, or quality control of procedures. Official plant or Science Division laboratories can analyze these samples.

§ 94.102 Analyses available.

A wide array of analyses for voluntary egg product samples is available. Voluntary egg product samples include surveillance, certification, and unofficial samples. The physical and chemical tests for voluntary egg products include analyses for total ash, fat by acid hydrolysis, moisture, salt, protein, beta-carotene, catalase, cholesterol, NEPA color, density, total solids, aflatoxin, daminozide and amitraz residues, BHA, BHT, alcohol, chlorinated hydrocarbon and fumigant residues, dextrin, heavy and light filth, glucose, glycerol and gums. In addition, egg products can be analyzed for high sucrose content, pH, heavy metals and minerals, monosodium dihydrogen phosphate, monosodium glutamate, nitrites, oxygen, palatability and odor, phosphorus, propylene glycol, SLS, and zeolex. There are also tests for starch, total sugars, sugar profile, whey, standard plate count, direct microscopic count, *Campylobacter,* coliforms, presumptive *Escherichia* coli, *Listeria* monocytogenes, proteolytic count, psychrotrophic bacteria, *Salmonella, Staphylococcus,* thermoduric bacteria, and yeast with mold count.

§ 94.103 Analytical methods.

The analytical methods used by the Science Division laboratories to perform voluntary analyses for egg products shall be the same as listed in § 94.4.

§ 94.104 Fees and charges.

(a) The fee charged for any single laboratory analysis of voluntary egg product samples shall be obtained from the schedules of charges in paragraphs (a) of § 91.37.

(b) The charge for any requested laboratory analysis not listed shall be based on the standard hourly rate specified in § 91.37, paragraph (b).

Subpart C—Salmonella Laboratory Recognition Program § 94.200 [Reserved]

Subpart D—Processed Poultry Products

§ 94.300 General.

Laboratory services of processed poultry products are conducted to derive their analytical attributes used to determine the compliance of the product with applicable specifications.

§ 94.301 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Dark meat. Refers to the skinless and deboned drumstick, thigh, and back portions of poultry.

Light meat. Refers to the skinless and deboned breast and wing portions of poultry.

Poultry. Any kind of domesticated bird, including, but not limited to, chicken, turkey, duck, goose, pigeon, and guinea.

Poultry product. Any ready-to-cook poultry carcass or part therefrom or any specified poultry food product.

§ 94.302 Analyses available and locations of laboratories.

(a) The Science Division laboratories will analyze processed poultry products for moisture, fat, salt, protein, nitrites, and added citric acid.

(b) Deboned poultry for roasting will have the individual dark meat, light meat, and skin portions tumbled separately in the natural juices prior to grinding. The skin, light meat, and dark meat portion weight percentages of the total product are determined. The ground skin, ground dark meat, and ground light meat portions will be analyzed separately for moisture, protein, salt, and fat. Moisture to protein ratios will be reported also for the individual portions of poultry.

(c) Canned boned poultry for a variety of USDA programs will be tested as a total can composite of the canned product for moisture, fat, salt, and protein analyses. Additional poultry commodities and related products for specific USDA sponsored programs will be tested for different chemical and physical attributes.

(d) Microbiological analyses, as the *Salmonella* determination, are available for poultry products.

(e) The majority of analyses for processed poultry products shall be performed at the Science Division Eastern Laboratory, as indicated in paragraph (e) of § 94.3.

§ 94.303 Analytical methods.

The analytical methods used by the USDA laboratories to perform analyses for processed poultry products are found in the latest edition of the Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

§ 94.304 Fees and charges.

(a) The fee charged for any single laboratory analysis of processed poultry products shall be obtained from the schedules of charges in paragraph (a) of § 91.37.

(b) The laboratory analyses for processed poultry products shall result in an additional fee, found in table 7 of section 91.37, for sample preparation or grinding

(c) The charge for any requested laboratory analysis of processed poultry products not listed shall be based on the standard hourly rate specified in § 91.37, paragraph (b).

PART 95—PROCESSED DAIRY PRODUCTS

Sec.

95.1 General
95.2 Definitions
95.3 Analyses available and location of laboratory
95.4 Analytical methods
95.5 Quality assurance programs
95.6 Fees and charges

Authority: Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

§ 95.1 General.

Analytical services of processed dairy products are conducted to derive their grade and quality, and to determine the compliance of the product with applicable specifications.

§ 95.2 Definitions.

Words used in the regulations in this part in the singular form will be deemed to import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed, respectively to mean:

Approved laboratory. A laboratory in which the facilities and equipment used for official testing have been approved by the Science Division Director as being adequate to perform the necessary official tests in accordance with this part, or the Milk Marketing Administrator laboratories and Resident Grader Dairy laboratories granted approval by the Dairy Division Director.

Butter. The food product usually known as butter, as defined in the Butter Act of 1923 (Pub. L. 519 of the 67th Congress).

Cheese. The fresh or matured product obtained by draining after coagulation of milk, cream, skimmed or partly skimmed milk, or a combination of some or all these products.

Complete Kohman analysis. Analysis used for moisture, fat, and salt determinations in butter and margarine. A weighed portion is heated to drive off the moisture and then reweighed to determine the moisture content. The fat is extracted using ether, and the remaining solids are weighed to determine fat content. The solids are then dissolved, and the salt content is determined by titration with standard silver nitrate solution.

Concentrated milk, plain condensed milk or evaporated milk. The liquid food obtained by removing water partially from milk.

Corn-soya-milk. A blended and formulated food consisting of corn meal, soybean flour, and nonfat dry milk that is enriched with vitamins and minerals.

Curd. The coagulated portion of milk, used in making cheese, or one of the components of butter.

Cusum control chart. The cusum chart is a graphical presentation of a cusum value representing variability or cumulative deviation, of individual test results with the means of the analytical data, from all participating and approved laboratories in the quality control study. It can detect a subtle trend and bias with a reported result as it is occurring for a particular analysis of an individual laboratory.

Dairy products. Butter, cheese (whether natural or processed), skim milk, cream, whey or buttermilk (whether dry, evaporated, stabilized or condensed), frozen desserts and any other food product which is prepared or manufactured in whole or in part or fractions from any of the aforesaid products, as the Administrator may hereafter designate.

Dry milk. The pasteurized product resulting from the removal of water from milk which contains lactose, milk proteins, milk fat, and milk minerals in the same relative proportions as in the fresh milk from which it is made.

Percent curd. The percentage for the proteinaceous substance, referred to as curd, is obtained in butter by difference. The sum of the percentages for moisture, fat, and salt is subtracted from 100, giving the percent of curd.

Process cheese. The cheese made by comminuting and mixing, with the aid of heat, one or more cheeses of the same or two or more varieties, with the addition of an emulsifying agent.

Salt. Refined sodium chloride meeting the requirements of the Food Chemical Codex.

Sweetened condensed milk. The liquid or semi-liquid food made by evaporating a mixture of milk and refined sugar (sucrose) or any combination of refined sugar (sucrose) and refined corn sugar (dextrose).

§ 95.3 Analyses available and location of laboratory.

(a) Some of the wide array of analyses for each product available are listed by the category of processed dairy product as follows:

(1) *Dry Milk and Related Products:* Aflatoxin M_1, alkalinity of ash, antibiotic, ash, bacterial direct microscopic count, coliform count, density, dispersibility, fat, flavor, fortified Vitamin A, *Listeria*

monocytogenes, moisture, oxygen, phosphatase, protein, *Salmonella*, scorched particles, solubility index, *Staphylococcus*, titratable acidity, and whey protein nitrogen.

(2) *Condensed Milk and Related Products:* Aflatoxins M_1 and M_2, chlordane residue, extraneous material, fat, *Listeria* monocytogenes, sugar (sucrose), and total solids.

(3) *Cheese and Related Products:* Aflatoxin M_1, ash, calcium, extraneous material, fat, meltability (process cheese), moisture, nitrite, pH, phosphatase, pyrethrin residue, *Salmonella*, salt, and *Staphylococcus* aureus.

(4) *Butter and Related Products:* Acid degree value, coliform count, complete Kohman analysis, copper content, curd, enterococci count, fat, free fatty acid, iron content, moisture, peroxide value, pH, phosphatase, presumptive *Escherichia* coli, proteolytic count, salt, and yeast and mold.

(5) *Corn-Soya-Milk:* Bostwick (cooked), Bostwick (uncooked), crude fiber, density, fat, flavor, moisture, protein, and sieve test.

(b) The Science Division Midwestern Laboratory conducts the majority of laboratory analyses for processed dairy products to derive their analytical requirements used to determine the compliance of the product with applicable Federal or State government specifications. The location of this laboratory is as follows: USDA, AMS, Science Division, Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618.

§ 95.4 Analytical methods.

The three analytical manuals used by the USDA laboratory to perform the majority of analyses for processed dairy products are listed as follows:

(a) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(b) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Eighteenth Street, NW., Washington, DC 20036.

(c) U.S. Department of Agriculture's Instructions for Resident Grading Quality Control Service Programs and Laboratory Analysis, DA Instruction 918–RL, AMS, Dairy Division, Dairy Grading Section, P.O. Box 96456, Washington, DC 20090–6456.

§ 95.5 Quality assurance programs.

(a) Each month two different quality assurance (QA) check samples of nonfat dry milk will be sent by the Science Division (SD) to each applicable Dairy Division resident grader laboratory, as listed in the current edition of "Dairy Plants Surveyed and Approved for USDA Grading Service", USDA, AMS, Dairy Division, Washington, DC. Each month these approved resident grader laboratories will also receive a QA sample of butter from the SD Midwestern Laboratory. These QA dairy product samples shall be identified as proficiency check samples to the participants.

(b) The butter QA proficiency sample will be analyzed for fat, pH, salt, curd, and moisture. Both nonfat dry milk QA proficiency samples will be analyzed and evaluated for fat, moisture, titratable acidity, solubility index, scorched particles, Vitamin A, coliform, Standard Plate Count (SPC), Direct Microscopic Clump Count (DMCC), penicillin, whey protein nitrogen, flavor and grade.

(c) Each participating analyst will receive a monthly comparison of laboratory results in a report prepared by the director of the SD Midwestern Laboratory. All reported data will be statistically analyzed and individual laboratory outlier data will be highlighted in the report. The standard deviation and mean value of each statistically analyzed test result shall be included in the report. Copies of the report will be sent to the Dairy Division National Field Office and the Dairy Division in Washington, DC.

(d) On-site laboratory reviews of the Dairy Division's resident grader laboratories shall be conducted. The purpose of the reviews by the Science Division is to assess continued conformance of each laboratory with method and equipment requirements of the USDA-approved procedures for testing of processed dairy products. During the visit, the reviewer completes a checklist on the procedures used, physical facilities, equipment, materials used, records kept, and quality assurance, as well as other areas of a laboratory's operation.

§ 95.6 Fees and charges.

(a) The fee charged for any single laboratory analysis of processed dairy products shall be obtained from the schedules of charges in paragraph (a) of § 91.37.

(b) The charge for any requested laboratory analysis of processed dairy products not listed shall be based on the standard hourly rate specified in § 91.37, paragraph (b).

PART 96—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (CHEMICAL ANALYSIS AND UNITED STATES OFFICIAL GRADE CERTIFICATION)

Subpart A—Cottonseed Chemists—Licensing Regulations

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Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090, as amended, (7 U.S.C. 1622, 1624).

Subpart A—Cottonseed Chemists—Licensing Regulations

Scope

§ 96.1 General

Licenses are issued to chemists of laboratories involved in the grading of cottonseed. A chemist that has passed examinations for analyst proficiency

and for official standards used for grading shall be issued a license to perform quality analyses for grade determinations of cottonseed.

Definitions

§96.2 Terms defined.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Blind check sample. A sample designated to check the routine analytical testing performance of the licensed USDA cottonseed chemist. The cottonseed is originally mixed in bulk quantities at a Division laboratory and packaged so that it is a representative portion for the samples forwarded to all chemists in a region under a certain number code. An oil mill representative and official cottonseed sampler repackage and identify the cottonseed as an official sample so that it would be blind or unknown as a check sample to the analyst.

Commercial laboratory. A chemical laboratory operated by an individual, firm, or corporation in which one or more persons are engaged in the chemical analysis of materials for the public.

Cotton gin. The machine or device used to separate the cotton fiber from the cottonseed.

Cottonseed. The word "cottonseed" as used in this part means the seed, after having been put through the usual and customary process known as cotton ginning, of any cotton produced within the continental United States.

Dispute. A disagreement between parties as to the true grade of a sample of cottonseed analyzed and graded by a licensed chemist.

License. A license issued under the Act by the Secretary.

Licensed cottonseed chemist. A person licensed under the Act by the Secretary to make quantitative and qualitative chemical analyses of official samples of cottonseed, according to the methods prescribed by the Director of the Division, and to certify the grade according to the official cottonseed standards of the United States.

Licensed cottonseed sampler. A person licensed by the Secretary to draw and to certify the authenticity of samples of cottonseed in accordance with the regulations in this subpart.

Lot. That parcel or quantity of cottonseed, offered for sale or tendered for delivery, or delivered on a sale or contract of sale, in freight cars, trucks, wagons, or otherwise in the quantities and within the time limits, prescribed from time to time by the Director of the AMS Cotton Division, for the drawing and preparation of official samples by licensed cottonseed samplers.

Official cottonseed standards. The official standards of the United States for the grading, sampling, and analyzing of cottonseed sold or offered for sale for crushing purposes, established May 23, 1932, and amendments thereto.

Official sample. A specimen of not less than 2 pounds of cottonseed, drawn and prepared by a licensed cottonseed sampler and certified as representative of a certain identified lot, in accordance with the regulations in this subpart.

Owner. A person who through financial interest owns or controls, or has the disposition of either cottonseed or of samples of cottonseed.

Society. The American Oil Chemists' Society (AOCS), P.O. Box 3489, 1608 Broadmoor Drive, Champaign, IL 61826–3489.

Supervisor of cottonseed chemists. An officer of the Science Division designated as such by the Director.

Licensed Cottonseed Chemists

§96.3 Application for license as cottonseed chemist; form.

(a) Application for a license to analyze and grade cottonseed shall be made to the Director on a form furnished for the purpose by the Science Division.

(b) Each application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by satisfactory evidence:

(1) That the applicant is at least 25 years of age and that the applicant is an actual resident of the continental United States;

(2) That the applicant holds a degree in chemistry or chemical engineering from a recognized college or university, and has had not less than 3 years practical experience in laboratory work, in which the applicant shall have analyzed quantitatively and qualitatively samples of cottonseed; or in the absence of a degree from a recognized college or university, that the applicant has had at least 5 years practical laboratory experience, 3 years of which shall have been devoted chiefly to the analysis of samples of cottonseed;

(3) That the applicant has no financial interest, or is in the employ of anyone having a financial interest in any cottonseed oil mill or cotton ginning establishment;

(4) That the applicant agrees to comply with and abide by the terms of the Act and these regulations so far as they may relate to him or her;

(5) That the applicant is an independent analytical chemist or an employee of a commercial analytical laboratory; and

(6) That the applicant owns or will have the use of all of the apparatus specified in the regulations, established hereunder for the analysis and grading of cottonseed.

(c) Every chemist licensed hereunder to analyze cottonseed and to certify the grade thereof shall comply with the Society's official analytical test methods and other methods of analysis approved by the Director.

(d) The applicant shall furnish such additional information, as the Director shall at any time find to be necessary, to the consideration of the submitted application.

(e) Upon receipt of an incomplete or improperly executed application, the applicant will be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application will be considered as having been abandoned.

§96.4 Examination of applicant.

Each applicant for a license as a chemist and each licensed chemist shall, when requested, submit to a practical examination and written test, to show an ability to analyze and grade cottonseed. These examinations can only be administered by the supervisor of cottonseed chemists. The chemist's failure to pass such tests may be considered sufficient ground for withholding the issuance of a license or of a renewal of a license.

§96.5 Period of license; renewals.

The period for which a license may be issued shall be from the first day of August, until, and including the 31st day of July, following. Renewals shall be for not more than 1 year beginning with the first day of August of each year, provided that licenses issued on and after June 1 of any year shall be for the period ending on July 31 of the following year.

§96.6 Conditions in licensing.

(a) It shall be a condition of the licensing of any person and of the retention by him or her of a license, that during the active cotton season each year, the licensee shall be engaged in or in connection with the grading of cottonseed; that each cottonseed sample offered for grading shall be analyzed and grade certified by the licensee, in accordance with the official cottonseed

standards of the United States; and that the USDA license of the cottonseed chemist shall not be used or be allowed to be used for any improper purpose.

(b) A USDA licensed cottonseed chemist shall be required to participate in each quality assurance program and each collaborative study for the analytical testing of cottonseed as follows:

(1) The licensed chemist must participate in the American Oil Chemists' Society (AOCS) cottonseed series which requires the testing of 10 known cottonseed samples per year for foreign matter, moisture, free fatty acids, oil, and ammonia.

(2) The licensed chemist must analyze and issue a grade for 10 blind cottonseed check samples per year from the Science Division. These blind check samples will be submitted as "official" samples.

(3) The chemist shall participate in all collaborative cottonseed analytical method validation studies, initiated by the Division Director.

(c) Each licensed chemist shall keep his or her license conspicuously posted at the place where he or she functions as a chemist, or in such other place as may be approved by the Division Director.

(d) Each licensed chemist must pay in a timely manner an annual licensing renewal fee and other charges and fees assessed by the Division, as listed in sections 96.20 and 96.21. In the event the chemist fails to pay the annual license renewal fee by the 31st day of August, the chemist will be sent a written notice of a 7-day review by the Director for the suspension of his or her license.

§ 96.7 Sustained proficiency; suspension of license of cottonseed chemist.

(a) Sustained proficiency in the analysis of the two check sample series is required to maintain a license. If a licensed chemist fails to perform satisfactorily during a 1 year period on either the AOCS or the USDA check cottonseed series, the chemist shall be placed on probation for 1 year, providing that the person achieves a passing score (90 or higher) on a retake of the proficiency examination. In the event that the chemist fails the examination, he or she may be subject to an immediate suspension of the license.

(b) Failure to perform satisfactorily with either quality assurance program during a 1 year probationary period may also result in suspension of the license.

(c) Pending final action by the Director to suspend a license of a cottonseed chemist, a written notice of such suspension shall be given to the respective licensee, accompanied by a statement of the reasons therefore. Within 7 days after receipt of notice and statement of reasons by a licensee, an appeal may be filed in writing with the Director supported by any argument or evidence as to why the license should not be suspended. After expiration of the 7-day period and consideration of such argument and evidence, the Director shall take such action, as deemed appropriate, with respect to a suspension.

(d) Upon termination of service as a cottonseed chemist or suspension of such license, such licensee shall surrender the license immediately to the supervisor of the cottonseed chemists.

(e) The minimum period of license suspension for a cottonseed chemist shall be 1 year, after which the chemist may reapply and be reexamined for a USDA license.

(f) At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the suspension period shall be endorsed thereon and returned to the licensed chemist to whom it was originally issued.

§ 96.8 Annual review of licensed chemist.

Each licensed chemist shall be subject to an annual on-site review, by the supervisor of the cottonseed chemists, to assess the chemist's continued conformance with procedure and equipment requirements of official analytical test methods.

§ 96.9 Fees for grading and certification.

Whenever any licensed chemist shall grade and/or certify any cottonseed or samples for a fee, the fee charged shall be reasonable, unconditional, nondiscriminatory, and shall be in accordance with a schedule previously submitted to and approved by the Division. The schedule shall include the certificate fee provided for in section 96.21.

§ 96.10 Records of analyses; inspection of certificate recordkeeping.

(a) Certificate recordkeeping responsibilities. The laboratory shall have an adequate system for the numbering and accounting of issued official cottonseed certificates. Provisions shall be made for consecutively numbering all cottonseed grade certificates issued and listing in a separate journal certificate numbers with the sample identification for accurate billing.

(b) Retention of records for inspection. Each licensed chemist shall keep, or shall cause to be kept for him or her, for a period of at least 3 years after date of analysis, a record of the analysis of each individual sample of cottonseed graded by the licensee.

(c) Each licensed chemist shall permit any authorized officer or agent of the Department to inspect or examine, on any business day during normal business hours, books and records relating to analyses of cottonseed samples and issuance of cottonseed grade certificates under the Act and the regulations in this subpart.

§ 96.11 Official and unofficial samples; analyses; certificate.

(a) Each licensed cottonseed chemist shall designate a certificate number from a series of assigned numbers to each official sample of cottonseed as received and shall analyze and certify over his or her signature the grade of each sample or lot of cottonseed in the order of its receipt.

(b) Each such sample which is in proper condition for analysis under these regulations and which is accompanied by the certificate or a licensed cottonseed sampler certifying it to be an official sample that represents an identified lot of cottonseed shall be considered an official sample. In any case where the original sample is lost or destroyed before analysis, the duplicate thereof, retained by the licensed cottonseed sampler, as provided in § 61.34, shall become the official sample. Each licensed chemist shall retain for at least 2 weeks a portion of each official sample first analyzed; and in any case where a review is requested under § 61.8, such retained portion shall be considered an official sample for purposes of review analysis.

(c) Each such sample which is:

(1) Not sufficient for proper analysis as an official sample under these regulations, or

(2) Not accompanied by a certificate of a licensed cottonseed sampler, or

(3) Not believed to be samples of the same seed represented by an official sample (except duplicates or lost or destroyed official samples) shall be considered an unofficial sample and the licensed cottonseed chemist's certificate of the grade thereof shall be plainly marked: "Sample not official; grade applies to sample only." This paragraph shall not apply to mill control or crush samples.

§ 96.12 Unlicensed persons shall not analyze and certify the grade of official samples.

(a) No person shall in any way represent that he or she is a chemist licensed under the Act, unless that person holds a license issued under the

Act. Title 18 U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense to knowingly and willfully make such false representations.

(b) Only licensed chemists shall analyze and certify the grade of official cottonseed samples.

§ 96.13 Grade certificate; form.

Each grade certificate issued under the Act by a licensed chemist shall be in a form, approved for the purpose by the Director and shall embody within its written or printed terms:

(a) The caption "Cottonseed Grade Certificate."

(b) The serial number assigned to it.

(c) The date and place of issuance.

(d) A statement certifying that the analysis of the cottonseed sample was made according to the methods approved by the Director of the Division and that the grade given is according to the official standards of the United States.

(e) A statement of the condition of the lot of cottonseed as reported by the sampler, and in cases where the sample was submitted by a licensed sampler, the name and license number of the sampler.

(f) The identification of each lot of cottonseed by the marks and notations by which the seed was identified at the time the sample was taken, and the origin of the cottonseed by county and State.

(g) All analytical data required by the Director.

(h) The signature and license number of the chemist. In addition, the grade certificate may include any other matter consistent with the Act or the regulations in this part. Two copies of the grade certificate form shall be submitted to and approved by the Division, before use by a licensed chemist. A copy of each certificate shall be mailed to a designated office of the Division within 36 hours after its issuance.

§ 96.14 Reports of licensed chemists.

Each licensed chemist shall periodically, when requested by the Director, make reports on forms furnished for the purpose by the Division, concerning the activities as such licensed chemist.

§ 96.15 Information of violations.

Whenever any person licensed under this Part becomes aware of information relating to the violation of the Act or these regulations, such person shall inform the Director of the Division of the alleged violations.

§ 96.16 Licensed chemists; suspension or revocation of license.

The Director may, without a hearing, suspend or revoke the license issued to a licensed chemist upon written request and a satisfactory statement of reasons submitted by such licensed chemist. Pending final action by the Secretary, the Director may, whenever such action is deemed necessary, suspend or revoke the license of any licensed chemist when such licensed chemist:

(a) Has ceased to perform services as such chemist;

(b) Has knowingly or carelessly analyzed cottonseed improperly;

(c) Has violated or evaded any provision of the Act or the regulations so far as they relate to the licensee;

(d) Has used the license or allowed it to be used for any fraudulent or improper purposes; or

(e) Has in any manner become incompetent or incapacitated to perform the duties of a licensed chemist.

In such cases the Director shall give written notice of the suspension or revocation to the licensed chemist, accompanied by a statement of the reasons therefor. Within 10 days after the receipt of the aforesaid notice and statement of reasons by such licensee, the individual may file an appeal, in writing, with the Secretary, supported by any argument or evidence that the licensee may wish to offer, as to why the license should not be suspended or revoked. After the expiration of the aforesaid 10-day period and consideration of such argument and evidence, the Secretary will take such action as is deemed appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 10 days, the license shall be automatically suspended or revoked.

§ 96.17 Revoked license to be returned to Division.

If the license issued to a licensed chemist is revoked, such license shall be returned to the Division.

§ 96.18 Duplicate license.

Upon satisfactory proof of the loss or destruction of a license issued to a licensed chemist, a duplicate thereof may be issued under the same or a new number.

§ 96.19 Information on grading to be kept confidential.

Every person licensed under the Act as a licensed chemist shall keep confidential all information secured by the licensee, relative to cottonseed analyzed and graded by the licensee. The licensee shall not disclose such information to any person, except to the owner or custodian of the seed in question, or to an authorized agent of the Department.

Fees and Charges

§ 96.20 Fee for chemist's license.

(a) The fee for the examination of an applicant for a license as a chemist to analyze and certify the grade of cottonseed shall be $1100.00.

(b) The examination fee shall be paid at the time the application is filed or at a time prior to the administration of the examinations. This fee shall be paid regardless of the outcome of the licensing examinations. The examination fee shall be nonrefundable to the applicant; however, in the evident of death of the applicant prior to the examination, full payment of the fee may be returned to the applicant's beneficiary. If an application is filed with an insufficient fee, the application and fee submitted will be returned to the applicant.

(c) For each renewal of a chemist's license, the fee shall be $275.00.

§ 96.21 Fee for certificates to be paid by licensee to Service.

(a) To cover the cost of administering the regulations in this part, each licensed cottonseed chemist shall pay to the Service $3.00 for each certificate of the grade of cottonseed issued by the licensee.

(b) Upon receipt of a statement from the Service each month, showing the number of certificates issued by the licensee, such licensee will forward the appropriate remittance in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA."

§ 96.22 Fees for the review of grading of cottonseed.

For the review of the grading of any lot of cottonseed, the fee shall be $60.00. Remittance to cover such fee, in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA" shall accompany each application for review. For each such fee collected, $20.00 shall be disbursed to each of the two licensed chemists designated to make reanalysis of such seed.

Subpart B—Official Cottonseed Grade Calculations

§ 96.23 General.

Using methods prescribed by the Science Division, the licensed cottonseed chemist makes quantitative and qualitative chemical analyses, certificating the grade according to the

official cottonseed standards of the United States.

§ 96.24 Definitions, cottonseed quality analysis terms.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Cottonseed quality analysis. In determining the quality of cottonseed, testing is performed by licensed chemists for total composition of oil, ammonia, moisture, free fatty acids, and foreign matter. These individual analytical factors of cottonseed samples are combined to form indexes of quantity and quality, which in turn are used to determine the official grade of cottonseed, in accordance with the United States Official Standards for Grades.

Foreign matter. The foreign matter in cottonseed includes boll portions, sand, dirt, stones or gravel, hulls, leaves, stems, unginned locks of cotton, lint cotton, immature seeds, and any noncotton extraneous material.

Official grade. The official grade is the product of the quantity index times the quality index, and it is determined by a representative official sample of cottonseed, graded by a licensed chemist under the supervision of the United States Department of Agriculture. The base grade for cottonseed is 100.0.

Quality index. The quality index measures the deterioration of cottonseed in oil and meal and takes into account the excesses of moisture, foreign matter and free fatty acids.

Quantity index. The quantity index measures the oil and cake or meal in the cottonseed and takes into account variations in the quantity of oil and ammonia.

§ 96.25 Determination of grade.

The grade of cottonseed shall be determined from the analysis of samples, and it shall be the result, stated in the nearest whole or half numbers, obtained by multiplying a quantity index by a quality index and dividing the result by 100. The quantity index and the quality index shall be determined as hereinafter provided.

(a) The basis grade of cottonseed shall be grade 100.

(b) High grades of cottonseed shall be those grades above 100.

(c) Low grades of cottonseed shall be those grades below 100.

(d) Grades for American Pima cottonseed shall be suffixed by the designation "American Pima" or by the symbol "AP."

§ 96.26 Determination of quantity index.

The quantity index of cottonseed shall be determined as follows:

(a) For Upland cottonseed, the quantity index shall equal four times the percentage of oil, plus six times the percentage of ammonia, plus five.

(b) For American Pima cottonseed, the quantity index shall equal four times the percentage of oil, plus six times the percentage of ammonia, minus ten.

§ 96.27 Determination of quality index.

The quality index of cottonseed shall be an index of purity and soundness, and shall be determined as follows:

(a) *Prime quality cottonseed.* Cottonseed, that by analysis, contains not more than 1.0 percent of foreign matter, not more than 12.0 percent of moisture, and not more than 1.8 percent of free fatty acids in the oil in the seed, shall be known as prime quality cottonseed and shall have a quality index of 100.

(b) *Below prime quality cottonseed.* The quality index of cottonseed that, by analysis, contains foreign matter, moisture, or free fatty acids in the oil in the seed, in excess of the percentages prescribed in paragraph (a) of this section, shall be found by reducing the quality index of prime quality cottonseed as follows:

(1) Four-tenths of a unit for each 0.1 percent of free fatty acids in the oil, in the seed, in excess of 1.8 percent.

(2) One-tenth of a unit for each 0.1 percent of foreign matter in excess of 1.0 percent.

(3) One-tenth of a unit for each 0.1 percent of moisture in excess of 12.0 percent.

(c) *Off quality cottonseed.* Cottonseed that has been treated by either mechanical or chemical process other than the usual cleaning, drying, and ginning (except sterilization required by the United States Department of Agriculture for quarantine purposes) or that are fermented or hot, or that upon analysis are found to contain 12.5 percent or more of free fatty acids, in the oil, in the seed, or more than 10.0 percent of foreign matter, or more than 20.0 percent of moisture, or more than 25.0 percent of moisture and foreign matter combined, shall be designated as "off quality cottonseed."

(d) *Below grade cottonseed.* Cottonseed, the grade of which, when calculated according to section 96.25 is below grade 40.0, shall be designated as "below grade cottonseed," and a numerical grade shall not be indicated.

§ 96.28 Calculation of grades of official samples.

(a) Data on certificates of official cottonseed analyses shall be expressed as follows:

	Percent
Foreign Matter to	0.1
Oil to	0.1
Ammonia to	0.01
Free Fatty Acid, when 5% or under, to	0.1
Free Fatty Acid, when over 5%, to	0.5
Quantity Index to	0.01
Quality Index to	0.1

(b) Grade to whole or half units, whichever actual calculation is nearest shall be determined as follows:

(1) The calculation of grades shall be made by the method of disregarding the figures to the right of the second decimal place.

(2) Calculated grades ending with .2500 through .7499 will be considered to be in the .25 through .74 range, and will be reported to the nearest half grade.

(3) Calculated grades ending with .7500 through .2499 will be considered to be in the .75 through .24 range, and will be reported to the nearest whole grade.

§ 96.29 Analysis and certification of samples and grades.

The certification of samples of cottonseed, and the analysis and certification of grades of cottonseed shall be performed in accordance with methods, approved from time to time for the purposes by the Director, or a designated representative.

PART 97—PLANT VARIETY AND PROTECTION

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Authority: Secs. 6, 22, 23, 26, 31, 42(b), 43, 56, 57, 91(c), Plant Variety Protection Act, 84 Stat. 1542; 7 U.S.C. 2321, 2326, 2352, 2353, 2356, 2371, 2402b, 2403, 2426, 2427, 2501(c); 29 FR 16210, as amended, 37 FR 6327, 6505; U.S.C. 2371.

Scope

§ 97.1 General.

Certificates of protection are issued by the Plant Variety Protection office for novel varieties of sexually reproduced plants. Each certificate of plant variety protection certifies that the breeder has the right, during the term of the protection, to prevent others from selling the variety, offering it for sale, reproducing it, importing or exporting it, or using it in producing a hybrid or different variety from it, as provided by the Act.

Definitions

§ 97.2 Meaning of words.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. The definitions of terms contained in the Act shall apply to such terms when used in this part. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

Abandoned application. An application which has not been pursued to completion within the time allowed by the Office or has been voluntarily abandoned.

Act. The Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

Administrator. The Administrator of the Agricultural Marketing Service of the U.S. Department of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his or her stead.

Applicant. The person who applied for a certificate of plant variety protection.

Application. An application for plant variety protection under the Act.

Assignee. A person to whom an owner assigns his/her rights in whole or in part.

Board. The Plant Variety Protection Board appointed by the Secretary.

Certificate. A certificate of plant variety protection issued under the Act by the Office.

Certified seed. Seed which has been determined by an official seed certifying agency to conform to standards of genetic purity and identity as to variety, which standards have been approved by the Secretary.

Commissioner. The Examiner in Chief of the Office.

Decision and order. Includes the Secretary's findings of fact; conclusions with respect to all material issues of fact and law, as well as the reasons or basis therefor; and order.

Examiner. An employer of the Plant Variety Protection Office who determines whether a certificate is entitled to be issued. The term shall, in all cases, include the Commissioner.

Foreign application. An application for plan variety protection filed in a foreign country.

Hearing Clerk. The Hearing Clerk, U.S. Department of Agriculture, Washington, DC.

Hearing Officer. An Administrative Law Judge, U.S. Department of Agriculture, or other officer or employee of the Department of Agriculture, duly

assigned to preside at a hearing held pursuant to the rules of this part.

Hybrid. It shall be defined as set forth in the regulations under the Federal Seed Act (Secs. 201.2(y) of this chapter).

Office or Plant Variety Protection Office. The Plant Variety Protection Office, Science Division, AMS, USDA.

Official Journal. The "Official Journal of the Plant Variety Protection Office."

Owner. A breeder who developed or discovered a variety for which plant variety protection may be applied for under the Act, or a person to whom the rights to such variety have been assigned or transferred.

Person. An individual, partnership, corporation, association, government agency, or other business or governmental entity.

Secretary. The Secretary of Agriculture of the United States or any other officer or employee of the U.S. Department of Agriculture, to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his or her stead.

Seed certifying agency. It shall be defined as set forth in the Federal Seed Act (53 Stat. 1275).

Sale for other than seed purposes. The transfer of title to and possession of the seed by the owner to a grower or other person, for reproduction for the owner, for testing, or for experimental use, and not for commercial sale of the seed or the reproduced seed for planting purposes.

Administration

§ 97.3 Plant Variety Protection Board.

(a) The Plant Variety Protection Board shall consist of 14 members appointed for a 2-year term. The Board shall be appointed every 2 years and shall consist of individuals who are experts in various areas of varietal development. The membership of the Board, which shall include farmer representation, shall be drawn approximately equally from the private or seed industry sector and from the government or public sector. No member shall be eligible to act on any matter involving any appeal or questions under section 44 of the Act, in which the member or his or her employer has a direct financial interest.

(b) The functions of the Board are to:

(1) Advise the Secretary concerning adoption of rules and regulations to facilitate the proper administration of the Act;

(2) Make advisory decisions on all appeals from the examiner or Commissioner;

(3) Advise the Secretary on the declaration of a protected variety open to use in the public interest; and

(4) Advise the Secretary on any other matters under the regulations in this part.

(c) The proceedings of the Board shall be conducted in accordance with the Federal Advisory Committee Act (Pub. L. 92–463), Administrative Regulations of the U.S. Department of Agriculture (7 CFR part 25), and such additional operating procedures as are adopted by members of the Board.

The Application

§ 97.5 General requirements.

(a) Protection under the Act shall be afforded only as follows:

(1) Nationals and residents of the United States shall be eligible to receive all of the protection under the Act.

(2) Nationals and residents of Member States of the International Union for the Protection of New Varieties of Plants shall be eligible to receive the same protection under the Act as is provided to nationals of the United States.

(3) Persons who are not entitled to protection under paragraph (a) (1) or (2) of this section, and who are nationals of a foreign state which is not a member of the International Union for the Protection of New Varieties of Plants, shall be entitled to only so much of the protection provided under the Act, as is afforded by such foreign state to nationals of the United States, for the same genus and species under the laws of such foreign state in effect at the time that the application for protection under the Act is filed, except where further protection under the Act must be provided in order to avoid the violation of a treaty to which the United States is a party.

(b) Applications for certificates shall be made to the Plant Variety Protection Office. An application shall consist of:

(1) A completed application form, except that the section specifying that seed of the variety shall be sold by variety name only, as a class of certified seed, need not be completed at the time of application.

(2) A completed set of the exhibits, as specified in the application form, unless the examiner waives submission of certain exhibits as unnecessary, based on other claims and evidence presented in connection with the application.

(3) Language and legibility:

(i) Applications and exhibits must be in the English language and legibly written, typed or printed.

(ii) Any interlineation, erasure, cancellation, or other alteration must be made in permanent ink before the application is signed and shall be clearly initialed and dated by the applicant to indicate knowledge of such fact at the time of signing.

(4) To determine the extent of reciprocity of the protection to be provided under the Act, persons filing an application for plant variety protection in the United States under the provisions of paragraph (a)(3) of this section shall, upon request,[1] furnish the Plant Variety Protection Office with a copy of the current plant variety protection laws and regulations for the country of which the applicant is a national, and an accurate English translation of such laws and regulations.

(c) Application and exhibit forms shall be issued by the Commissioner. (Copies of the forms may be obtained from the Plant Variety Protection Office, Science Division, AMS, USDA, room 500 National Agricultural Library Building, Beltsville, Maryland 20705.)

(d) Effective the date of these regulations and rules of practice, the signature of the applicant, or his or her agent or attorney on any affidavit or other statement filed pursuant to these regulations and rules constitutes a certification by the applicant. The signature certifies that all information relied on in any affidavit or statement filed in the course of the proceeding is knowingly correct and false claims have not been made to mislead.

§ 97.6 Application for certificate.

(a) An application for a plant variety protection certificate shall be signed by, or on behalf, of the applicant.

(b) The application shall state the full name, including the full first name and the middle initial or name, if any, and the capacity of the person executing it.

(c) The fees for filing an application, and search or examination, shall be submitted with the application in accordance with §§ 97.175 through 97.178.

(d) The applicant shall submit with the application at least 2,500 seeds of the viable basic seed required to reproduce the variety.

§ 97.7 Statement of an applicant.

(a) The applicant, by signing a completed application, states in accordance with section 42 of the Plant Variety Protection Act that:

(1) The applicant believes himself or herself, or his or her privies, to be the original and first breeder or discoverer of the variety for which a certificate is solicited;

[1] Copies and translations of foreign laws and regulations will be requested only if they are not in the files of the Plant Variety Protection Office. Applicants may learn whether such a request will be made by writing to the address given in paragraph (c) of this section or by calling (301) 344-2518.

(2) The applicant, or his or her privies, has sexually reproduced the variety;

(3) The applicant does not know and does not believe that the variety was ever a public variety before the date of determination;

(4) The applicant is a sole or joint owner of the variety;

(5) The variety was not a public variety more than 1 year prior to the effective filing date of the application;

(6) Before the date of determination of the variety by the owner, or his or her privies, or more than 1 year before the effective filing date of the application, the variety was not effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country, which description must include a disclosure of the principal characteristics by which the variety is distinguished; and

(7) The applicant, or his or her privies, have not offered for sale or marketed the variety, with the agreement of the breeder, in a foreign state for longer than 6 years in the case of vines, forest trees, fruit trees, and ornamental trees, including, in each case, their rootstocks, or for longer than 4 years, in the case of all other plants.

(b) If the same variety has been marketed with the agreement of either the applicant or his or her privies, the applicant shall state the names of the countries in which the variety was marketed, and give the day, month, and year of first marketing in each country.

(c) When an applicant files an application, cross-references to other related applications may be made, when appropriate.

§ 97.8 Specimen requirements.

(a) The applicant may be required by the examiner to furnish representative specimens of the variety, or its flower, fruit, or seeds, in a quantity and at a specified stage of growth, as may be necessary to verify the statements in the application. Such specimens shall be packed and forwarded in conformity with instructions furnished by the examiner. If the applicant requests the examiner to inspect plants in the field before a final decision is made, all such inspection costs shall be borne by the applicant by payment of fees sufficient to reimburse the Office for all costs, including travel, per diem or subsistence, and salary.

(b) Plant specimens submitted in support of an application shall not be removed from the Office except by an employee of the Office or other person authorized by the Secretary.

(c) Plant specimens submitted to the Office shall, except as provided below, and upon request, be returned to the applicant at his or her expense after the specimens have served their intended purpose. The Commissioner, upon a finding of good cause, may require that certain specimens be retained in the Office for indefinite periods of time. Specimens which are not returned or not retained as provided above shall be destroyed.

§ 97.9 Drawings and photographs.

(a) Drawings or photographs submitted with an application shall disclose the distinctive characteristics of the variety.

(b) Drawings or photographs shall be in color when color is a distinguishing characteristic of the variety, and the color shall be described by use of Nickerson's or other recognized color chart.

(c) Drawings should be sent flat, or may be sent in a suitable mailing tube, in accordance with instructions furnished by the Commissioner.

(d) Drawings or photographs submitted with an application shall be retained by the Office as part of the application file.

§ 97.10 Parts of an application to be filed together.

All parts of an application, including exhibits, should be submitted to the Office together, otherwise, each part shall be accurately and clearly referenced to the application.

§ 97.11 Application accepted and filed when received.

(a) An application, if materially complete when initially submitted, shall be accepted and filed to await examination.

(b) If any part of an application is so incomplete, or so defective that it cannot be handled as a completed application for examination, as determined by the Commissioner, the applicant will be notified. The application will be held a maximum of 6 months for completion. Applications not completed at the end of the prescribed period will be considered abandoned. The application fee in such cases will not be refunded.

§ 97.12 Number and filing date of an application.

(a) Applications shall be numbered and dated in sequence in the order received in the Office. Applicants will be informed in writing as soon as practicable of the number and effective filing date of the application.

(b) An applicant may claim the benefit of the filing date of a prior foreign application in accordance with section 55 of the Act. A certified copy of the foreign application shall be filed upon request made by the examiner. If a foreign application is not in the English language, an English translation, certified as accurate by a sworn or official translator, shall be submitted with the application.

§ 97.13 When the owner is deceased or legally incapacitated.

In case of the death of the owner or if the owner is legally incapacitated, the legal representative (executor, administrator, or guardian) or heir or assignee of the deceased owner may sign as the applicant. If an applicant dies between the filing of his or her application and the granting of a certificate thereon, the certificate may be issued to the legal representative, heir, or assignee, upon proper intervention.

§ 97.14 Joint applicants.

(a) Joint owners shall file a joint application by signing as joint applicants.

(b) If an application for certificate is made by two or more persons as joint owners, when they were not in fact joint owners, the application shall be amended prior to issuance of a certificate by filing a corrected application, together with a written explanation signed by the original applicants. Such statement shall also be signed by the assignee, if any.

(c) If an application has been made by less than all the actual joint owners, the application shall be amended by filing a corrected application, together with a written explanation, signed by all of the joint owners. Such statement shall also be signed by the assignee, if any.

(d) If a joint owner refuses to join in an application or cannot be found after diligent effort, the remaining owner may file an application on behalf of him or herself and the missing owner. Such application shall be accompanied by a written explanation and shall state the last known address of the missing owner. Notice of the filing of the application shall be forwarded by the Office to the missing owner at the last known address. If such notice is returned to the Office undelivered, or if the address of the missing owner is unknown, notice of the filing of the application shall be published once in the Official Journal. Prior to the issuance of the certificate, a missing owner may join in an application by filing a written explanation. A certificate obtained by less than all of the joint owners under this paragraph conveys the same rights and privileges

to said owners as though all of the original owners had joined in an application.

§ 97.15 Assigned novel varieties and certificates.

In case the whole or a part interest in a variety is assigned, the application shall be made by the owner or one of the persons identified in section 97.13. However, the certificate may be issued to the assignee, or jointly to the owner and the assignee, when a part interest in a variety is assigned.

§ 97.16 Amendment by applicant.

An application may be amended before or after the first examination and action by the Office, after the second or subsequent examination or reconsideration as specified in § 97.107, or when and as specifically required by the examiner. Such amendment may include a specification that seed of the variety be sold by variety name only as a class of certified seed, if not previously specified or if previously declined. Once an affirmative specification is made, no amendment to reverse such a specification will be permitted unless the variety has not been sold and labeled or publication made in any manner that the variety is to be sold by variety name, only as a class of certified seed.

§ 97.17 Papers of completed application to be retained.

The papers submitted with a completed application shall be retained by the Office except as provided in § 97.23(c). After issuance of a certificate of protection the Office will furnish copies of the application and related papers to any person upon payment of the specified fee.

§ 97.18 Applications handled in confidence.

(a) Pending applications shall be handled in confidence. Except as provided below, no information may be given by the Office respecting the filing of an application, the pendency of any particular application, or the subject matter of any particular application. Also, nor will access be given to or copies furnished of any pending application or papers relating thereto, without written authority of the applicant, or his or her assignee or attorney or agent. Exceptions to the above may be made by the Commissioner in accordance with 5 U.S.C. 552 and § 1.4 of this title, and upon a finding that such action is necessary to the proper conduct of the affairs of the Office, or to carry out the provisions of any Act of Congress, or as provided in sections 56 or 57 of the Act and § 97.19.

(b) Abandoned applications shall not be open to public inspection. However, if an abandoned application is directly referred to in an issued certificate and is available, it may be inspected or copies obtained by any person on written request, and with written authority received from the applicant. Abandoned applications shall not be returned.

(c) Decisions of the Commissioner on abandoned applications not otherwise open to public inspection (see paragraph (b) of this section) may be published or made available for publication at the Commissioner's discretion. When it is proposed to release such a decision, the applicant shall be notified directly or through the attorney or agent of record, and a time, not less than 30 days, shall be set for presenting objections.

§ 97.19 Publication of pending applications.

Information relating to pending applications shall be published in the Official Journal periodically as determined by the Commissioner to be necessary in the public interest. With respect to each application, the Official Journal shall show the:

(a) application number and date of filing;

(b) the name of the variety or temporary designation;

(c) the name of the kind of seed; and

(d) whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed, together with a limitation in the number of generations that it can be certified.

Additional information, such as the name and address of the applicant or a brief description of the novel features of the variety, may be published only upon request or approval received from the applicant, at the time the application is filed or at any time before the notice of allowance of a certificate is issued.

§ 97.20 Abandonment for failure to respond within the time limit.

(a) Except as otherwise provided in § 97.104, if an applicant fails to advance actively his or her application within 6 months after the date when the last request for action was mailed to the applicant by the Office, or within such longer time as may be fixed by the Commissioner, the application shall be deemed abandoned. The application fee in such cases will not be refunded.

(b) The submission of an amendment to the application, not responsive to the last request by the Office for action, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When the applicant makes a bona fide attempt to advance the application, and is in substantial compliance with the request for action, but has inadvertently failed to comply with some procedural requirement, opportunity to comply with the procedural requirement shall be given to the applicant before the application shall be deemed abandoned. The Commissioner may set a shortened period, not less than 30 days, to correct any deficiency in the application.

§ 97.21 Extension of time for reply.

The time for reply by an applicant to a request by the Office for certain action, shall be extended by the Commissioner only for good and sufficient cause, and for a specified reasonable time. A request for extension shall be filed on or before the specified time for reply. In no case shall the mere filing of a request for extension require the granting of an extension or state the time for reply.

§ 97.22 Revival of an application abandoned for failure to reply.

An application abandoned for failure on the part of the applicant to advance actively his or her application to its completion, in accordance with the regulations in this part, may be revived as a pending application within 3 months of such abandonment, upon a finding by the Commissioner that the failure was inadvertent or unavoidable and without fraudulent intent. A request to revive an abandoned application shall be accompanied by a written statement showing the cause of the failure to respond, a response to the last request for action, and by the specified fee.

§ 97.23 Voluntary withdrawal and abandonment of an application.

(a) An application may be voluntarily withdrawn or abandoned by submitting to the Office a written request for withdrawal or abandonment, signed by the applicant or his or her attorney or agent of record, if any, or the assignee of record, if any.

(b) An application which has been voluntarily abandoned may be revived within 3 months of such abandonment by the payment of the prescribed fee and a showing that the abandonment occurred without fraudulent intent.

(c) An original application which has been voluntarily withdrawn shall be returned to the applicant and may be reconsidered only by refiling and payment of a new application fee.

§97.24 Assignee.

The assignee of record of the entire interest in an application is entitled to advance actively or abandon the application to the exclusion of the applicant.

Examinations, Allowances, and Denials

§97.100 Examination of applications.

(a) [Reserved]

(b) Examinations of applications shall include a review of all available documents, publications, or other material relating to varieties of the species involved in the application, except that if there are fundamental defects in the application, as determined by the examiner, the examination may be limited to an identification of such defects and notification to the applicant of needed corrective action. However, matters of form or procedure need not, but may, be raised by an examiner until a variety is found to be novel and entitled to protection.

§97.101 Notice of allowance.

If, on examination, it shall appear that the applicant is entitled to a certificate, a notice of allowance shall be sent to the applicant or his or her attorney or agent of record, if any, calling for the payment of the prescribed fee, which fee shall be paid within 1 month from the date of the notice of allowance. Thereafter, a fee for delayed payment shall be made as required under § 97.175.

§97.102 Amendments after allowance.

Amendments to the application, after the notice of allowance is issued, may be made, if the certificate has not been issued.

§97.103 Issuance of a certificate.

(a) After the notice of allowance has been issued, the prescribed fee is received by the Office, and the applicant has clearly specified whether or not the variety shall be sold by variety name only as a class of certified seed, the certificate shall be promptly issued. Once an election is made and a certificate issued specifying that seed of the variety shall be sold by variety name only as a class of certified seed, no waiver of such rights shall be permitted by amendment of the certificate.

(b) The certificate shall be delivered or mailed to the owner.

§97.104 Application or certificate abandoned.

(a) Except as provided in paragraph (c) of this section, if the fee specified in the notice of allowance is not paid within 1 month from the date of the notice, the application shall be considered abandoned.

(b) Upon request by the Office, the owner shall replenish the viable basic seed sample of the novel variety. Upon request, the sample of seed which has been replaced shall be returned to the owner, otherwise it shall be destroyed. Failure to replenish viable basic seed within 3 months from the date of request shall result in the certificate being regarded as abandoned. No sooner than 1 year after the date of such request, notices of abandoned certificates shall be published in the Official Journal, indicating that the variety has become open for use by the public and, if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

(c) If the allowance fee, the viable basic seed sample or the fee for delayed payment are submitted within 9 months of the final due date, it may be accepted by the Commissioner as though no abandonment had occurred. For good cause, the Commissioner may extend for a reasonable time the period for submitting a viable basic seed sample before declaring the certificate abandoned.

(d) A certificate may be voluntarily abandoned by the applicant or his or her attorney or agent of record or the assignee of record by notifying the Commissioner in writing. Upon receipt of such notice, the Commissioner shall publish a notice in the Official Journal that the variety has become open for use by the public, and if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

§97.105 Denial of an application.

(a) If the variety is found by the examiner to be not novel, the application shall be denied.

(b) In denying an application for want of novelty, the examiner shall cite the reasons the application was denied. When a reason involves the citation of certain material which is complex, the particular part of the material relied on shall be designated as nearly as practicable. The pertinence of each reason, if not obvious, shall be clearly explained.

(c) If prior domestic certificates are cited as a reason for denial, their numbers and dates and the names of the owners shall be stated. If prior foreign certificates or rights are cited, as a reason for denial, their nationality or country, numbers and dates, and the names of the owners shall be stated, and such other data shall be furnished, as may be necessary to enable the applicant to identify the cited certificates or rights.

(d) If printed publications are cited as a reason for denial, the author (if any), title, date, pages or plates, and places of publication, or place where a copy can be found shall be given.

(e) When a denial is based on facts known to the examiner, and upon request by the applicant, the denial shall be supported by the affidavit of the examiner. Such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

(f) Abandoned applications may not be cited as reasons for denial.

§97.106 Reply by applicant; request for reconsideration.

(a) After an adverse action by the examiner, the applicant may respond to the denial and may request a reconsideration, with or without amendment of his or her application. Any amendment shall be responsive to the reason or reasons for denial specified by the examiner.

(b) To obtain a reconsideration, the applicant shall submit a request for reconsideration in writing and shall specifically point out the alleged errors in the examiner's action. The applicant shall respond to each reason cited by the examiner as the basis for the adverse action. A request for reconsideration of a denial based on a faulty form or procedure may be held in abeyance by the Commissioner until the question of novelty is settled.

(c) An applicant's request for a reconsideration must be a bona fide attempt to advance the case to final action. A general allegation by the applicant that certain language which he or she cites in the application or amendment thereto establishes novelty without specifically explaining how the language distinguishes the alleged novel variety from the material cited by the examiner shall not be grounds for a reconsideration.

§97.107 Reconsideration and final action.

If, upon reconsideration, the application is denied by the Commissioner, the applicant shall be notified by the Commissioner of the reason or reasons for denial in the same manner as after the first examination. Any such denial shall be final unless appealed by the applicant to the Secretary within 60 days from the date of denial, in accordance with sections 97.300–97.303. If the denial is sustained by the Secretary on appeal, the denial shall be final subject to appeal to the courts, as provided in section 97.500.

§ 97.108 Amendments after final action.

(a) After a final denial by the Commissioner, amendments to the application may be made to overcome the reason or reasons for denial. The acceptance or refusal of any such amendment by the Office and any proceedings relative thereto shall not relieve the applicant from the time limit set for an appeal or an abandonment for failure to reply.

(b) No amendment of the application can be made in an appeal proceeding. After decision on appeal, amendments can only be made to carry into effect a recommendation under section 97.302(b).

Correction of Errors in Certificate

§ 97.120 Corrected certificate—office mistake.

When a certificate is incorrect because of a mistake in the Office, the Commissioner may issue a corrected certificate stating the fact and nature of such mistake, under seal, without charge, to be issued to the owner and recorded in the records at the Office.

§ 97.121 Correctd certificate—applicant's mistake.

When a certificate is incorrect because of a mistake by the applicant of a clerical or typographical nature, or of minor character, or in the description of the variety (including, but not limited to, the use of a misleading variety name or a name assigned to a different variety of the same species), and the mistake is found by the Commissioner to have occurred in good faith and does not require a further examination, the Commissioner may, upon payment of the required fee and return of the original certificate, correct the certificate by issuing a corrected certificate, in accordance with section 85 of the Act. If the mistake requires a reexamination, a correction of the certificate shall be dependent on the results of the reexamination.

Reissuance of Certificate

§ 97.122 Certified seed only election.

When an owner elects after a certificate is issued to sell the protected variety by variety name only as a class of certified seed, a new certificate may be issued upon return of the original certificate to the Office and payment of the appropriate fee.

Assignments and Recording

§ 97.130 Recording of assignments.

(a) Any assignment of an application for a certificate, or of a certificate of plant variety protection, or of any interest in a variety, or any license or grant and conveyance of any right to use of the variety, may be submitted for recording in the Office in accordance with section 101 of the Act (7 U.S.C. 2531).

(b) No instrument shall be recorded which is not in the English language or which does not identify the certificate or application to which it relates.

(c) An instrument relating to title of a certificate shall identify the certificate by number and date, the name of the owner, and the name of the novel variety as stated in the certificate. An instrument relating to title of an application shall identify an application by number and date of filing, the name of the owner, and the name of the novel variety as stated in the application.

(d) If an assignment is executed concurrently or subsequent to the filing of an application, but before its number and filing date are ascertained, the assignment shall identify the application by the date of the application, the name of the owner, and the name of the novel variety.

§ 97.131 Conditional assignments.

Assignments recorded in the Office are regarded as absolute assignments for Office purposes until canceled in writing by both parties to the assignment or by a decree of a court of competent jurisdiction. The Office shall not determine whether conditions precedent to the assignment, such as the payment of money, have been fulfilled.

§ 97.132 Assignment records open to public inspection.

(a) Assignment records relating to original or amended certificates shall be open to public inspection and copies of any recorded document may be obtained upon payment of the prescribed fee.

(b) Assignment records relating to any pending or abandoned application shall not be available for inspection except to the extent that pending applications are published as provided in section 57 of the Act and § 97.19, or where necessary to carry out the provisions of any Act of Congress. Copies of assignment records and information on pending or abandoned applications shall be obtainable only upon written authority of the applicant or his or her assignee, or attorney or agent of record, or where necessary to carry out the provisions of any Act of Congress. An order for a copy of an assignment shall give the proper identification of the assignment.

Marking or Labeling Provisions

§ 97.140 After filing.

Upon filing an application for protection of a novel variety and payment of the prescribed fee, the owner, or his or her designee, may label the variety or containers of the seed of the variety or plants produced from such seed, substantially as follows: "Unauthorized Propagation Prohibited—(Unauthorized Seed Multiplication Prohibited)—U.S. Variety Protection Applied For."

§ 97.141 After issuance.

Upon issuance of a certificate, the owner of the novel variety, or his or her designee, may label the variety or containers of the seed of the variety or plants produced from such seed substantially as follows: "Unauthorized Propagation Prohibited—(Unauthorized Seed Multiplication Prohibited)—U.S. Protected Variety."

§ 97.142 For testing or increase.

An owner who contemplates filing an application and releases for testing or increase, seed of the variety or other sexually reproducible plant material produced from seed of the variety, may label such plant material or containers of the seed or plant substantially as follows: "Unauthorized Propagation Prohibited—For Testing (or Increase) Only."

§ 97.143 Certified seed only.

(a) Upon filing an application, or amendment thereto, specifying seed of the variety is to be sold by variety name only as a class of certified seed, the owner, or his or her designee, may label containers of seed of the variety substantially as follows: "Unauthorized Propagation Prohibited—U.S. Variety Protection Applied for Specifying That Seed of This Variety Is To Be Sold By Variety Name Only as a Class of Certified Seed."

(b) An owner who has received a certificate specifying that a variety is to be sold by variety name only, as a class of certified seed, may label containers of the seed of the variety substantially as follows: "Unauthorized Propagation Prohibited—To Be Sold By Variety Name Only as a Class of Certified Seed—U.S. Protected Variety."

§ 97.144 Additional marking or labeling.

Additional clarifying information that is not false or misleading may be used by the owner, in addition to the above markings or labeling.

Attorneys and Agents

§ 97.150 Right to be represented.

An applicant may actively advance an application or may be represented by an attorney or agent authorized in writing.

§ 97.151 Authorization.

Only attorneys or agents specified by the applicant shall be allowed to inspect papers or take action of any kind, on behalf of the applicant, in any pending application or proceedings.

§ 97.152 Revocation of authorization; withdrawal.

An authorization of an attorney or agent may be revoked by an applicant at any time, and an attorney or agent may withdraw, upon application to the Commissioner. When the authorization is so revoked, or the attorney or agent has so withdrawn, the Office shall inform the interested parties and shall thereafter communicate directly with the applicant, or with such other attorney or agent as the applicant may appoint. An assignment will not of itself operate as a revocation of authorization previously given, but the assignee of the entire interest may revoked previous authorizations and be represented by an attorney or agent of his or her own selection.

§ 97.153 Persons recognized.

Unless specifically authorized as provided in section 97.151, no person shall be permitted to file or advance applications before the Office on behalf of another person.

§ 97.154 Government employees.

Officers and employees of the United States who are disqualified by statute (18 U.S.C. 203 and 205) from practicing as attorneys or agents in proceedings or other matters before government departments or agencies, shall not be eligible to represent applicants, except officers and employees whose official duties require the preparation and prosecution of applications for certificates of variety protection.

§ 97.155 Signatures.

Every document filed by an attorney or agent representing an applicant or party to a proceeding in the Office shall bear the signature of such attorney or agent, except documents which are required to be signed by the applicant or party.

§ 97.156 Addresses.

Attorneys and agents practicing before the Plant Variety Protection Office shall notify the Office in writing of any change of address. The Office shall address letters to any person at the last address received.

§ 97.157 Professional conduct.

Attorneys and agents appearing before the Office shall conform to the standards of ethical and professional conduct, generally applicable to attorneys appearing before the courts of the United States.

§ 97.158 Advertising.

(a) The use of advertising, circulars, letters, cards, and similar material to solicit plant variety protection business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Office or may be suspended, excluded, or disbarred from further practice before the Office.

(b) The use of simple professional letterheads, calling cards, or office signs, simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends and insertion of listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories, shall not be considered a violation of this section.

Fees and Charges

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

	Fee
(a) Filing the application and notifying the public of filing	$275
(b) Search or examination	2,050
(c) Allowance and issuance of certificate and notifying public of issuance	275
(d) Revive an abandoned application	275
(e) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material)	1
(f) Authentication (each page)	1
(g) Correcting or reissuance of a certificate	275
(h) Recording assignments (per certificate/application)	25
(i) Copies of 8 x 10 photographs in color	25
(j) Additional fee for reconsideration	275
(k) Additional fee for late payment	25
(l) Additional fee for late replenishment of seed	25
(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)	2,600
(n) Field inspections by a representative of the Plant Variety Protection Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations	.....
(o) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $40 per employee-hour	.....

§ 97.176 Fees payable in advance.

Fees and charges shall be paid at the time of making application or at the time of submitting a request for any action by the Office for which a fee or charge is payable and established in this part.

§ 97.177 Method of payment.

Checks or money orders shall be made payable to the Treasurer of the United States. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the prescribed fee. Money sent by mail to the Office shall be sent at the sender's risk.

§ 97.178 Refunds.

Money paid by mistake or excess payments shall be refunded, but a mere change of plans after the payment of money, as when a party decides to withdraw an application or to withdraw an appeal, shall not entitle a party to a refund. However, the examination or search fee shall be refunded if an application is voluntarily abandoned pursuant to § 97.23(a) before a search or examination has begun. Amounts of $1 or less shall not be refunded unless specifically demanded.

§ 97.179 Copies and certified copies.

(a) Upon request, copies of applications, certificates, or of any records, books, papers, drawings, or photographs in the custody of the Office and which are open to the public, will be furnished to persons entitled thereto, upon payment of the prescribed fee.

(b) Upon request, copies will be authenticated by imprint of the seal of the Office and certified by the official, authorized by the Commissioner upon payment of the prescribed fee.

Availability of Office Records

§ 97.190 When open records are available.

Copies of records, which are open to the public and in the custody of the

Office, may be examined in the Office during regular business hours upon approval by the Commissioner.

Protest Proceedings

§ 97.200 Protests to the grant of a certificate.

Opposition on the part of any person to the granting of a certificate shall be permitted while an application is pending and for a period not to exceed 5 years following the issuance of a certificate.

§ 97.201 Protest proceedings.

(a) Opposition shall be made by submitting in writing a petition for protest proceedings, which petition shall be supported by affidavits and shall show the reason or reasons for opposing the application or certificate. The petition and accompanying papers shall be filed in duplicate. If it appears to an examiner that a variety involved in a pending application or covered by a certificate may not be or may not have been entitled to protection under the Act, a protest proceeding may be permitted by the Commissioner.

(b) One copy of the petition and accompanying papers shall be served by the Office upon the applicant or owner, or his or her attorney or agent of record.

(c) An answer, by the applicant or owner of the certificate, or his or her assignee, in response to the petition, may be filed with the Commissioner within 60 days after service of the petition, upon such person. If no answer is filed within said period, the Commissioner shall decide the matter on the basis of the allegations set forth in the petition.

(d) If the petition and answer raise any issue of fact needing proof, the Commissioner shall afford each of the parties a period of 60 days in which to file sworn statements or affidavits in support of their respective positions.

(e) As soon as practicable after the petition or the petition and answer are filed, or after the expiration of any period for filing sworn statements or affidavits, the Commissioner shall issue a decision as to whether the protests are upheld or denied. The Commissioner may, following the protest proceeding, cancel any certificate issued and may grant another certificate for the same novel variety to a person who proves to the satisfaction of the Commissioner, that he or she is the breeder or discoverer. The decision shall be served upon the parties in the manner provided in § 97.403.

Priority Contest

§ 97.205 Definition; when declared.

A priority contest may be instituted by the Secretary, on his or her own motion, or upon the request of any person who has applied for protection on the same variety, for which an adverse certificate has been issued, for the purpose of determining the question of priority between two or more parties claiming development or discovery of the same novel variety: *Provided, however,* that any person shall have forfeited his or her right to assert priority when an adverse certificate has been issued, if he or she fails to make a request for the institution of a priority contest within 1 year of the publication in the Official Journal of issuance of the adverse certificate by the Secretary, or if he or she fails to make the request within the period for taking action after refusal of the application on the basis of the adverse certificate.

§ 97.206 Preparation for priority contest between applicants.

(a) Before a priority contest will be handled by the Office, an examiner must determine that the same novel variety is involved in separate applications filed by two or more parties and apparently certifiable to each of the parties, subject to the determination of the question of priority.

(b) The fact that a certificate has been issued will not prevent a priority contest.

§ 97.207 Preparation of priority papers and declaration of priority contest.

(a) When a priority question is found to exist, the examiner shall forward the pertinent files to the Commissioner, together with a written statement showing the reason for the contest.

(b) The Commissioner shall institute and declare the priority contest by forwarding a notice to each of the applicants involved. Each notice shall include the name and residence of each of the other applicants or those of his or her attorney or agent, if any, and of any assignee, and will identify the application of each opposing party by number and filing date, or in the case of a certificate, by the number and date of the certificate. The notice shall specify the basis of the priority contest. The notice shall specify a time, not to exceed 2 months, for filing preliminary statements.

(c) When a notice is returned to the Office undelivered, or when one of the parties resides abroad and his or her agent in the United States is unknown, notice may be given once by publication in the Official Journal.

§ 97.208 Burden of proof.

The parties to a priority contest will be presumed to have developed their varieties in the chronological order of the filing dates of their applications for certificates involved in the priority contest, and the burden of proof will rest upon the party who last filed an application.

§ 97.209 Preliminary statement on novel variety developed in the United States.

(a) Each party to the priority contest is required to file on or before a date fixed by the Office, a concise preliminary statement giving the facts and dates relating to the development of his or her alleged novel variety. The preliminary statement must be signed by the owner: *Provided, however,* that in appropriate circumstances, as when the owner is dead or legally incapacitated, or a showing is made of inability to obtain a statement from the owner, the preliminary statement may be made by the assignee or by someone authorized or entitled to make the statement, having knowledge of the facts.

(b) Preliminary statements shall be filed with the Office in duplicate. A copy shall be forwarded to each opposing party by the Office as soon as practicable after both parties have filed their statements within the requisite period.

(c) In filing a preliminary statement each party must show the following information:

(1) The date upon which the first determination of the novel variety was made.

(2) The date upon which the first written description of the novel variety was made. If a written description of the novel variety has not been made prior to the filing date of the application, it must be so stated.

(3) The date of the first act or acts susceptible of proof (other than making a written description or disclosing the novel variety to another person), which, if proven, would establish determination of the novel variety, and a brief description of such act or acts. If there have been no such acts, it must be so stated.

(4) The date of the actual production of the novel variety. If the novel variety had not been actually produced before the filing date of the application, it must be so stated.

(d) When an allegation as to the first written description (paragraph (c)(2) of this section) is made, a copy of such written description shall be attached to the statement.

(e) If a party intends to rely on a prior application, domestic or foreign, the preliminary statement shall clearly

identify such prior application. Copies of the cited application and related documents will be served by the Office, upon all interested parties to the contest. In the case of an application filed in a foreign country, English translations shall be served to all interested parties by the party relying on the application filed in the foreign country.

§ 97.210 Preliminary statement on novel variety developed in a foreign country.

When the novel variety was developed in a foreign country, the preliminary statement must show (a) the information specified in § 97.209 (c) through (e) and (b) whether , and if so, when and under what circumstances the novel variety was introduced into the United States by or on behalf of the party.

§ 97.211 Statements sealed before filing.

The preliminary statement shall be submitted in a sealed envelope bearing the name of the party filing it and the number and title of the priority contest as shown on the notice issued by the Office. The envelope should be enclosed in an outer mailing envelope marked "To Be Opened Only by the Commissioner."

§ 97.212 Correction of a statement on motion.

In case of material error arising through inadvertence or mistake, a preliminary statement may be corrected upon a satisfactory showing to the Commissioner that the correction is of material significance. Correction of the statement must be made as soon as practicable after the discovery of the error.

§ 97.213 Failure to file statements.

If any party to a priority contest fails to file a preliminary statement, he or she shall be restricted to his or her earliest effective filing date.

§ 97.214 Access to preliminary statements.

The preliminary statements shall be open to the inspection of any party after the date set for the filing of preliminary statements (§ 97.207(b)), but shall not be open to inspection prior to that time.

§ 97.215 Dissolution at the request of the Commissioner.

If during a priority contest, information is submitted or found which, in the opinion of the Commissioner, may render the variety ineligible for a certificate, the priority contest may be suspended by the Commissioner and referred to an examiner for consideration of the matter. The parties will be notified of the reason for the suspension. Arguments of the parties regarding the suspension will be considered, if filed within 60 days of the notification. The suspension will then be continued, modified, or dismissed, in accordance with the determination by the Commissioner.

§ 97.216 Concession; abandonment.

(a) An applicant or a certificate holder involved in a priority contest may, at any time, file a written concession of priority, or abandonment of the certificate, signed by him or her. Upon the filing of such an instrument by any party, the decision shall be rendered against the interested party by the Commissioner.

(b) A concession of priority may not be made by an assignee of a part interest.

§ 97.217 Affidavits and exhibits.

Affidavits and exhibits, including official records and any special matter contained in a printed publication, pertinent to the issue involved in the contest, may be introduced as evidence in a priority contest by any party to the contest. In the case of official records and printed publications, the party introducing the evidence shall specify the record or the printed publication, the page or pages to be used, indicate generally its relevancy, and submit to the Commissioner the record or authenticated copy, or the printed publication, or a copy. Copies of affidavits and exhibits, including any record or publication, shall be served by the Commissioner on each of the other interested parties.

§ 97.218 Matters considered in determining a priority.

In determining priority, the Commissioner will consider only priority of development based on the evidence submitted. Questions of novelty generally will not be considered in the decision on priority. The Commissioner may refer proposed findings of fact, conclusions, and notice of priority to the Board for an advisory decision.

§ 97.219 Recommendation by the Commissioner.

The Commissioner may, either before or concurrently with a decision on the question of priority, but independently of such decision, direct the attention of the examiner to any matter not relating to priority which may come to the Commissioner's attention, and which in his or her opinion establishes the fact that there has been an irregularity which amounts to a bar to the granting of a certificate to either of the parties. The Commissioner may suspend the priority contest and remand the case to the examiner for further consideration of the matters, to which attention has been directed.

§ 97.220 Decision by the Commissioner.

(a) When a priority contest is concluded on the basis of preliminary statements, or proposed findings of fact, conclusions and notice of priority shall be issued by the Commissioner to the interested parties, giving them a specified period, not less than 30 days, to show cause why such proposed findings of fact, conclusions, and notice of priority should not be made final. Any response made during the specified period will be considered by the Commissioner. Additional affidavits or exhibits will not be considered, unless accompanied by a showing of good cause acceptable to the Commissioner. Thereafter, final findings of fact, conclusions, and notice of priority shall be issued by the Commissioner.

(b) The decision shall be entered by the Commissioner against a party whose preliminary statement alleges a date of determination later than the filing date of the other party's application.

§ 97.221 Status of claims of defeated applicant.

Whenever a final notice of priority has been issued by the Commissioner in a priority proceeding, and the time limit for an appeal from such decision has expired, the claim or claims constituting the issue of the priority stand finally disposed of without further action by the Commissioner.

§ 97.222 Second priority contest.

A second priority contest between the same parties shall not be entertained by the Commissioner for the same novel variety.

Appeal to the Secretary

§ 97.300 Petition to the Secretary.

(a) Petition may be made to the Secretary from any final action of the Commissioner denying an application or refusing to allow a certificate to be issued, or from any adverse decision of the Commissioner made under §§ 97.18(c), 97.107, 97.201(e), and 97.220.

(b) Any such petition shall contain a statement of the facts involved and the point or points to be reviewed, and the actions requested.

(c) A petition to the Secretary shall be filed in duplicate and accompanied by the prescribed fee (see § 97.175).

(d) Upon request, an opportunity to present data, views, and arguments orally, in an informal manner or in a

formal hearing, shall be given to interested persons. If a formal hearing is requested, the proceeding shall be conducted in accordance with §§ 50.28 and 50.30 through 50.33 (§§ 50.28, 50.30 through 50.33 of this chapter) of the rules of practice under the Agriculture Marketing Act of 1946, as amended (7 U.S.C. 1621, et seq.).

(e) Except as otherwise provided in the rules in this part, any such petition not filed within 60 days from the action complained of shall be dismissed as untimely.

§ 97.301 Commissioner's answer.

(a) The Commissioner may, within such time as may be directed by the Secretary, furnish a written statement to the Secretary in answer to the appellant's petition, including such explanation of the reasons for the action as may be necessary and supplying a copy to the appellant.

(b) Within 20 days from the date of such answer, the appellant may file a reply statement directed only to such new points of argument as may be raised in the Commissioner's answer.

§ 97.302 Decision by the Secretary.

(a) The Secretary, after receiving the advice of the Board, may affirm or reverse the decision of the Commissioner, in whole or in part.

(b) Should the decision of the Secretary include an explicit statement that a certificate be allowed, based on an amended application, the applicant shall have the right to amend his or her application in conformity with such statement and such decision shall be binding on the Commissioner.

§ 97.303 Action following the decision.

(a) Copies of the decision of the Secretary shall be served upon the appellant and the Commissioner in the manner provided in § 97.403.

(b) When an appeal petition is dismissed, or when the time for appeal to the courts pursuant to the Act has expired and no such appeal or civil action has been filed, proceedings in the appeal shall be considered terminated as of the dismissal or expiration date, except in those cases in which the nature of the decision requires further action by the Commissioner. If the decision of the Secretary is appealed or a civil action has been filed pursuant to sections 71, 72, or 73 of the Act, the decision of the Secretary will be stayed pending the outcome of the court appeal or civil action.

General Procedures in Priority, Protest, or Appeal Proceedings

§ 97.400 Extensions of time.

Upon a showing of good cause, extensions of time not otherwise provided for may be granted by the Commissioner or, if an appeal has been filed by the Secretary for taking any action required in any priority, protest, or appeal proceeding.

§ 97.401 Miscellaneous provisions.

(a) Petitions for reconsideration or modification of the decision of the Commissioner in priority or protest proceedings shall be filed within 20 days after the date of the decision.

(b) The Commissioner may consider on petition any matter involving abuse of discretion in the exercise of an examiner's authority, or such matters as may be deemed proper to consider. Any such petition, if not filed within 20 days from the decision complained of, may be dismissed as untimely.

§ 97.402 Service of papers.

(a) Every paper required to be served on opposing parties and filed in the Office in any priority, protest, or appeal proceeding, must be served by the Secretary in the manner provided in § 97.403.

(b) The requirement in certain sections that a specified paper shall be served includes a requirement that all related supporting papers shall also be served. Proof of such service upon other parties to the proceeding must be made before the supporting papers will be considered by the Commissioner or Secretary.

§ 97.403 Manner of service.

Service of any paper under this part must be on the attorney or agent of the party if there be such, or on the party if there is no attorney or agent, and may be made in any of the following ways:

(a) By mailing a copy of the paper to the person served by certified mail, with the date of the return receipt controlling the date of service;

(b) By leaving a copy at the usual place of business of the person served with someone in his or her employ;

(c) When the person served has no usual place of business, by leaving a copy at his or her home with a member of the family over 14 years of age and of discretion; and

(d) Whenever it shall be found by the Commissioner or Secretary that none of the above modes of serving the paper is practicable, service may be by notice, published once in the Office Journal.

Review of Decisions by Court

§ 97.500 Appeal to U.S. Courts.

Any applicant dissatisfied with the decision of the Secretary on appeal may appeal to the U.S. Court of Customs and Patent Appeals or the U.S. Courts of Appeals, or institute a civil action in the U.S. District Court as set forth in sections 71, 72, and 73 of the Act. In such cases, the appellant or plaintiff shall give notice to the Secretary, state the reasons for appeal or civil action, and obtain a certified copy of the record. The certified copy of the record shall be forwarded to the Court by the Plant Variety Protection Office on order of, and at the expense of the appellant or plaintiff.

Cease and Desist Proceedings

§ 97.600 Rules of practice.

Any proceedings instituted under section 128 of the Act for false marking shall be conducted in accordance with §§ 202.10 through 202.29 of this chapter (rules of practice under the Federal Seed Act) (7 U.S.C. 1551 et seq.), except that all references in those rules and regulations to "Examiner" shall be construed to be an Administrative Law Judge, U.S. Department of Agriculture, and not an "Examiner" as defined in the regulations under the Plant Variety Protection Act.

Public Use Declaration

§ 97.700 Public interest in wide usage.

(a) If the Secretary has reason to believe that a protected variety should be declared open to use by the public in accordance with section 44 of the Act, the Secretary shall give the owner of the variety appropriate notice and an opportunity to present views orally or in writing, with regard to the necessity for such action to be taken in the public interest.

(b) Upon the expiration of the period for the presentation of views by the owner, as provided in paragraph (a) of this section, the Secretary shall refer the matter to the Plant Variety Protection Board for advice, including advice on any limitations or rate of remuneration.

(c) Upon receiving the advice of the Plant Variety Protection Board, the Secretary shall advise the owner of the variety, the members of the Plant Variety Protection Board, and the public, by issuance of a press release, of any decision based on the provisions of section 44 of the Act to declare a variety open to use by the public. Any decision not to declare a variety open to use by the public will be transmitted only to the owner of the variety and the

members of the Plant Variety Protection Board.

Publication

§ 97.800 Publication of public variety descriptions.

Voluntary submissions of varietal descriptions of "public varieties" on forms obtainable from the Office will be accepted for publication in the Official Journal. Such publication shall not constitute recognition that the variety is, in fact, novel.

PART 98—MEALS, READY-TO-EAT (MRE's), MEATS, AND MEAT PRODUCTS

Subpart A—MRE's, Meats, and Related Meat Food Products

Sec.

98.1 General
98.2 Definitions
98.3 Analyses performed and locations of laboratories
98.4 Analytical methods
98.5 Fees and charges

Subpart B—USDA Certification of Laboratories for the Testing of Trichinae in Horsemeat

Sec.

98.100 General
98.101 Definitions
98.102–98.600 [Reserved]

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

Subpart A—MRE's, Meats, and Related Meat Food Products

§ 98.1 General.

Analytical services of meat and meat food products are performed for fat, moisture, salt, protein, and other content specifications.

§ 98.2 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Lard (Edible). The fat rendered from clean and sound edible tissues from swine.

Meals, Ready-To-Eat (MRE). Meals, Ready-To-Eat are complete portions of one meal for one military person and are processed and packaged to destroy or retard the growth of spoilage-type microorganisms in order to extend product shelf life for 7 years. Composition analyses for MRE's are covered by the reimbursable agreement in the Memorandums of Understanding (MOU's) between AMS, USDA and the Defense Personnel Support Center, Department of Defense (DOD). These DOD, Defense Personnel Support Center (DPSC) contracts state certain military specifications for an acceptable one meal serving, retorted pouched or 18–24 serving hermetically-sealed tray packed meat, or meal product regarding satisfactory analyses for fat, salt, protein, moisture content, added stabilizer ingredient, and sometimes microbiological composition. MRE's are for use by the DOD, DPSC as a component of operational food rations, and as an item of general issue by the military.

Meat. This includes the edible part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, and which is intended for human food, with or without the accompanying and overlying fat, and the portions of bone, skin, tendon, nerve, and blood vessels which normally accompany the muscle tissue, and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

Meat food product. Any article capable for use as human food (other than meat, prepared meat, or a meat by-product), which is derived or prepared wholly or in substantial part from meat or other portion of the carcass of any cattle, sheep, swine, or goats. An article exempted from definition as a meat food product by the Administrator, such as an organotherapeutic substance, meat juice, meat extract, and the like, which is used only for medicinal purposes and is advertised solely to the medical profession is not included.

Ready-to-eat. The term means consumers are likely to apply little or no additional heat to the fully-cooked and the fully-prepared food product before consumption.

Specifications. Descriptions with respect to the class, grade, other quality, quantity or condition of products, approved by the Administrator, and available for use by the industry regardless of the origin of the descriptions.

Tallow (Edible). The hard fat derived from USDA inspected and passed cattle, sheep, or goats.

Titer. The measure of the hardness or softness of the tested material as determined by the solidification point of fatty acids and expressed in degrees centigrade (°C).

§ 98.3 Analyses performed and locations of laboratories.

(a) Tables 1 through 4 list the special laboratory analyses rendered by the Science Division as a result of an agreement with the Livestock and Seed Division. The payment for such laboratory services rendered at the request of an individual or third party served shall be reimbursed pursuant to the terms as specified in the cooperative agreement.

TABLE 1.—SCHEDULE ANALYSIS

Identity	Analyses	Samples tested
Schedule BC (Beef chunks, canned)	fat, salt	1
Schedule BJ (Beef with natural juices, canned)	fat	1
Schedule CS (Canned meatball stew)	fat	3
Schedule GP (Frozen ground pork)	fat	4
Schedule PJ (Pork with natural juices, canned)	fat	1
Schedule RB (Beef for reprocessing)	fat	4
Schedule RG (Beef roasts and ground beef)	fat	4
Schedule SB (Slab or sliced bacon)	moisture, fat, salt	1
Schedule WS (Beef or wafer steaks)	fat	1

TABLE 2.—MICROBIOLOGICAL ANALYSIS

Type of analysis	Number of samples tested
Psychrotrophic bacterial plate count	1

TABLE 3.—NONSCHEDULE ANALYSIS

Identity	Analyses	Samples tested
Fed Specification PP–B–2120B (Ground Beef Products)	fat	4
Fed Specification PP–B–81J (Sliced Bacon)	fat, salt, moisture	1
Fed Specification PP–L–800E (Luncheon Meat, Canned)	fat, salt	1
Ground Beef or Ground Pork	fat	4
Ground Beef or Ground Pork	fat	1
Pork Sausage	fat, salt	4
Pork Sausage	fat, moisture	4
Pork Sausage	fat	4
Mil–P–44131A (Pork Steaks, Flaked, Formed, Breaded)	fat	4
Milwaukee Public Schools (Breaded/Unbreaded Meat)	fat	4
Chili Con Carne Without Beans	fat	1
A–A–20047–B	fat, protein	3
A–A–20136	salt	3
A–A–20148	fat, salt	3
Mil–B–44133 (GL)	fat, salt	3
Mil–B–44158A	water activity	6
Mil–C–44253	fat, salt	3
Mil–H–44159B (GL)	fat, salt	1
PP–F–02154 (Army GL)	fat, salt, moisture	1

TABLE 4.—LARD AND TALLOW ANALYSIS

Type of analysis	Number of samples tested
Fat analysis committee (FAC) color	1
Free fatty acids	1
Insoluble impurities	1
Moisture and volatile matter	1
Specific gravity	4–6
Titer test	1
Unsaponifiable material	1

(b) Meats, such as ground beef or ground pork, meat food products, and MRE's, not covered by an agreement with Livestock and Seed Division, are analyzed for fat, moisture, salt, sulfur dioxide, nitrites, sulfites, ascorbates, citric acid, protein, standard plate counts, and coliform counts, among other analyses. These food product analyses are performed at any one of the Science Division (SD) field laboratories as follows:

(1) USDA, AMS, Science Division, Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618
(2) USDA, AMS, SD Aflatoxin Laboratory, 107 South 4th Street, Madill, OK 73446
(3) USDA, AMS, SD, Eastern Laboratory, 645 Cox Road, Gastonia, NC 28054

§ 98.4 Analytical methods.

(a) The majority of analytical methods used by the USDA laboratories to perform analyses of meat, meat food products and MRE's are listed as follows:

(1) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(2) U.S. Army Individual Protection Directorate's Military Specifications, approved analytical test methods noted therein, U.S. Army Natick Research, Development and Engineering Center, Kansas Street, Natick, MA 01760–5017.

(b) Additional analytical methods for these foods will be used, from time to time, as approved by the Director.

§ 98.5 Fees and charges.

(a) The fee charged for any single laboratory analysis of meat, meat food products, and MRE's, not covered by an agreement with Livestock and Seed Division, is specified in the schedules of charges in paragraph (a) of § 91.37.

(b) The laboratory analyses of meat, meat food products, and MRE's not covered by a cooperative agreement, shall result in an additional fee, found in table 7 of § 91.37, for sample preparation or grinding.

(c) The charge for any requested laboratory analysis of meat, meat food products, and MRE's not listed shall be based on the standard hourly rate specified in § 91.37, paragraph (b).

Subpart B—USDA Certification of Laboratories for the Testing of Trichinae in Horsemeat

§ 98.100 General.

A laboratory that has met the requirements for certification specified in this subpart shall receive an AMS Science Division certificate to approve its analysis for *trichinella* spiralis in horsemeat. Certification would be granted to a qualified analyst or a laboratory based on having the proper

training, facilities, and equipment. This AMS laboratory certification program will enable horsemeat exporters to comply with trichinae testing requirements of the European Community.

§ 98.101 Definitions.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

European Community. The European Community (EC) consists of the initial 12 European countries and the updated and expanded membership of nations. The original EC members are Belgium, Britain, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain.

Horsemeat. That U.S. inspected and passed clean, wholesome muscle tissue of horses, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat and the portions of sinews, nerves, and blood vessels, which normally accompany the muscle tissue and which are not separated from it in the process of dressing.

Trichinae. Round worms or nematodes of the genus *Trichinella,* which live as parasites in man, horses, rats, and other animals.

Trichinella spiralis. A small parasitic nematode worm which lives in the flesh of various animals, including the horse. When such infected meat is inadequately cooked and eaten by man, the live worm multiplies within the body and the larvae burrow their way into the muscles, causing a disease referred to as trichinosis.

§§ 98.102–98.600 [Reserved]

PART 99—STATISTICAL SCIENCE PROGRAM

Sec.

99.1 General [Reserved]
99.2 Definitions [Reserved]
99.3 Locations for statistical science services
99.4–99.999 [Reserved]

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090, as amended, (7 U.S.C. 1622, 1624); 104 Stat. 3562–3565 (7 U.S.C. 138, 138(a), 138(b), 138(c), 138(d), 138(e), 138(f), 138(g), 138(h), 138(i)).

§ 99.1 General [Reserved].

§ 99.2 Definitions [Reserved].

§ 99.3 Locations for statistical science services.

The Science Division (SD) statistical science services are performed at any one of the offices as follows:

(a) USDA, AMS, Science Division, Statistical Branch, Kansas City Technical Center, 10383 No. Executive Hills Blvd., Kansas City, MO 64153

(b) USDA, AMS, SD, Statistical Branch, 0611 So. Agriculture Bldg., 14th & Independence Ave., SW, Washington, DC 20250

§§ 99.4–99.999 [Reserved]

Part 100—NATIONAL LABORATORY ACCREDITATION PROGRAM

Sec.

100.1 General [Reserved]
100.2 Definitions [Reserved]
100.3 Location of administrative office
100.4–100.999 [Reserved]

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090, as amended, (7 U.S.C. 1622, 1624); 104 Stat. 3562–3565 (7 U.S.C. 138, 138(a), 138(b), 138(c), 138(d), 138(e), 138(f), 138(g), 138(h), 138(i)).

§ 100.1 General [Reserved].

§ 100.2 Definitions [Reserved].

§ 100.3 Location of administrative office.

The Science Division (SD) office that administers the National Laboratory Accreditation Program is located as follows:

USDA, AMS, Science Division, Office of Chief, Technical Services Branch, 3521 South Agriculture Bldg., Washington, DC 20250.

§§ 100.4–100.999 [Reserved]

Part 101—PESTICIDE DATA PROGRAM

Sec.

101.1 General [Reserved]
101.2 Definitions [Reserved]
101.3 Locations of administrative offices
101.4–101.999 [Reserved]

Authority: Public Law 101–624, Sections 1321–1330.

§ 101.1 General [Reserved].

§ 101.2 Definitions [Reserved].

§ 101.3 Locations of administrative offices.

The Science Division (SD) offices that administer the Pesticide Data Program are located as follows:

(a) USDA, AMS, Science Division, 8700 Centreville Rd., suite 200, Manassas, Virginia 22110

(b) USDA, AMS, Science Division, Office of Director, 3507 So. Agriculture Bldg., Washington, DC 20250

§§ 101.4–101.999 [Reserved]

Parts 102–109—[RESERVED]

Part 110—RECORDKEEPING ON RESTRICTED USE PESTICIDES BY CERTIFIED APPLICATORS; SURVEYS AND REPORTS

Sec.

110.1 Scope [Reserved]
110.2 Definitions [Reserved]
110.3 Records, retention, and access to records [Reserved]
110.4 Demonstration of compliance [Reserved]
110.5 Availability of records to facilitate medical treatment [Reserved]
110.6 Federal cooperation with States [Reserved]
110.7 Penalties [Reserved]
110.8 Rules of practice [Reserved]
110.9 Locations of administrative offices

Authority: 7 U.S.C. 136i–1; 7 U.S.C. 1624.

§ 110.1 Scope [Reserved].

§ 110.2 Definitions [Reserved].

§ 110.3 Records, retention, and access to records [Reserved].

§ 110.4 Demonstration of compliance [Reserved].

§ 110.5 Availability of records to facilitate medical treatment [Reserved].

§ 110.6 Federal cooperation with States [Reserved].

§ 110.7 Penalties [Reserved].

§ 110.8 Rules of practice [Reserved].

§ 110.9 Locations of administrative offices.

The Science Division (SD) offices that administer the Recordkeeping Program are located as follows:

(a) USDA, AMS, Science Division, 8700 Centreville Rd., suite 200, Manassas, Virginia 22110

(b) USDA, AMS, Science Division, Office of Director, 3507 So. Agriculture Bldg., Washington, DC 20250

PARTS 111–159—[RESERVED]

Dated: February 23, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–4750 Filed 3–8–93; 8:45 am]

BILLING CODE 3410–02–M

federal register

Tuesday
March 9, 1993

Part III

Environmental Protection Agency

40 CFR Part 68
List of Regulated Substances and Thresholds for Accidental Release Prevention; Requirements for Petitions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[A–91–74; FRL–4601–9]

List of Regulated Substances and Thresholds for Accidental Release Prevention; Requirements for Petitions Under Section 112(r) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period and notice of public hearing.

SUMMARY: On January 19, 1993 the Environmental Protection Agency proposed a list of regulated substances and threshold quantities as required under section 112(r) of the Clean Air Act as amended. EPA also proposed the requirements for the petition process that will be used to add or delete substances from the final list. The list and threshold quantities will determine the need for owners and operators of facilities to comply with future regulations under 112(r) of the Clean Air Act as amended, addressing the prevention and detection of accidental releases. This notice extends the public comment period for the proposed rule and schedules a public hearing.

DATES: The comment period for the proposed rule will be extended from the original closing date of March 22, 1993 to May 14, 1993.

EPA will hold a public hearing on this proposed rule on April 12, 1993, from 9:30 a.m. to 3:30 p.m. Individuals who wish to participate in the public hearing must register as participants and must submit their written statements in full on or before April 2, 1993.

ADDRESSES: Comments on the proposed rule may be mailed or submitted to: Environmental Protection Agency, Air Docket (LE–131), Attn: Docket No. A–91–74, Waterside Mall, 401 M St., SW., Washington, DC 20460.

The public hearing will be held at the EPA Headquarters Auditorium, 401 M St., SW., Washington, DC 20460. Written statements for the public hearing should be mailed to Vanessa Rodriguez, Chemical Emergency Preparedness and Prevention Office, OS–120, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Those wishing to present statements at the public hearing must call (703) 218–2570 to register. Statements for the public hearing as well as comments on the proposed rule must be submitted in duplicate.

FOR FURTHER INFORMATION CONTACT: Vanessa Rodriguez, (202) 260–7913, Chemical Emergency Preparedness and Prevention Office, OS–120, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Hot Line at 1–800–535–0202.

Dated: March 1, 1993.

Richard J. Guimond,

Assistant Surgeon General, USPHS.

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 93–5263 Filed 3–8–93; 8:45 am]

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federal register

Tuesday
March 9, 1993

Part IV

Department of Education

34 CFR Part 230 et al.
Drug-Free Schools and Communities; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 230, 231, 236, and 238

RIN 1810–AA66

Drug-Free Schools and Communities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends title 34 of the Code of Federal Regulations (CFR) to add a new part 238 containing regulations for the Drug-Free Schools and Communities Counselor Training Grants Program, which is authorized by the Drug-Free Schools and Communities Act of 1986 (Act), as amended by the Crime Control Act of 1990 (1990 Amendments) (Pub. L. 101–647). The Secretary also makes technical amendments to 34 CFR parts 230, 231, and 236.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bill Mattocks, U.S. Department of Education, 400 Maryland Avenue SW., Washington DC 20202– 6439. Telephone (202) 401–1258. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The 1990 Amendments to Part C of the Drug-Free Schools and Communities Act—Training of Teachers, Counselors, and School Personnel—established the Counselor Training Grants Program (Section 5129 of the Act).

Grants under the Counselor Training Grants Program are awarded to provide additional financial assistance to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), and consortia of these organizations to establish, expand, and enhance programs and activities for the training of counselors, social workers, psychologists, or nurses who are providing, or will provide, drug abuse prevention, counseling, or referral services in elementary and secondary schools. Grants also may be awarded to private nonprofit agencies that have an agreement with an LEA to provide training in drug abuse counseling for individuals who will provide the counseling in the schools of that LEA.

The regulations describe the personnel eligible to receive training under the program in terms of professional training and certification, as well as employment status. In addition to counselors, social workers, nurses, and psychologists, who are currently serving students in elementary and secondary schools, these regulations also include, as eligible personnel, counselors, social workers, nurses, and psychologists with evidence that they will be employed to serve students in elementary and secondary schools. The key factor in designating personnel eligible to receive training is the assurance that the results of the training will be of immediate benefit to students in elementary and secondary schools. The regulations also identify the organizations eligible as grantees; clarify application requirements and allowable activities; authorize funding priorities; and establish the selection criteria to be used in the review of grant applications by adopting the criteria currently used in 34 CFR 231.22.

The Counselor Training Grants Program provides resources directly applicable to the accomplishment of National Education Goal six: safe and drug-free schools.

Public Comment

On September 23, 1992 the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (57 FR 44046).

In the NPRM the Secretary invited comments on the proposed regulations. The Secretary did not receive any comments, and except for the addition of technical amendments to 34 CFR parts 230 and 236, there are no differences between the NPRM and these final regulations.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Most of the changes in these final regulations were published for public comment on September 23, 1992. However, some of the changes are technical amendments needed to conform the regulations to statutory changes and previous amendments to the Education Department General Administrative Regulations. Public comment would have no effect on the content of these changes. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 230

Drug abuse, Drug-Free schools and communities, Education, Elementary and secondary education, Grant programs—Education, Local educational agencies, Reporting and recordkeeping.

34 CFR Part 231

Drug abuse, Drug-Free schools and communities, Education, Elementary and secondary education, Grant programs—Education, Local educational agencies, Reporting and recordkeeping.

34 CFR Part 236

Drug abuse, Drug-Free schools and communities, Education, Elementary and secondary education, Grant programs—Education, Local educational agencies, Reporting and recordkeeping.

34 CFR Part 238

Drug abuse, Drug-Free schools and communities, Education, Elementary and secondary education, Grant programs—Education, Local educational agencies, Reporting and recordkeeping.

Dated: February 10, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.199 Drug-Free Schools and Communities Hawaiian Natives Program; 84.188 Drug-Free Schools and Communities Regional Centers Program; Drug-Free Schools and Communities Counselor Training Program Catalog of Federal Domestic Assistance Number has not been assigned)

The Secretary amends title 34 of the Code of Federal Regulations by revising parts 230, 231, and 236, and adding a new part 238 as follows:

PART 230—DRUG-FREE SCHOOLS AND COMMUNITIES—HAWAIIAN NATIVES PROGRAM

1. The authority citation for part 230 is revised to read as follows:

Authority: 20 U.S.C. 3214, unless otherwise noted.

2. The authority citation following each section of Part 230 except § 230.30 is revised to read as follows:

(Authority: 20 U.S.C. 3214)

3. Section 230.4 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (d), and adding new paragraphs (b) and (c) to read as follows:

§ 230.4 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement)

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98.

(c) The regulations for Family Educational Rights and Privacy in 34 CFR part 99.

* * * * *

4. Section 230.5 is amended by removing "4134(b)" in paragraph (a), and adding, in its place, "5134(b)", and removing "4141(b)(1)" in the authority citation following paragraph (a) and adding, in its place "5141(b)(1)".

5. Section 230.30 is amended by correcting the section designation in the text and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3214, 3224)

PART 231—DRUG-FREE SCHOOLS AND COMMUNITIES—GENERAL PROVISIONS

6. The authority citation for part 231 is revised to read as follows:

Authority: 20 U.S.C. 3201, 3202, 3203, 3211, 3212, 3216, unless otherwise noted.

7. The authority citation following each section of part 231 except § 231.30 is revised to read as follows:

(Authority: 20 U.S.C. 3201, 3202, 3203, 3211, 3212, 3216)

8. Section 231.1 is revised to read as follows:

§ 231.1 What are the Drug-Free Schools and Communities Programs?

The programs described in 34 CFR parts 232, 233, 234, 235, and 238 provide assistance for drug and alcohol abuse education and prevention projects.

(Authority: 20 U.S.C. 3201, 3202, 3203, 3211, 3212, 3216)

9. Section 231.3 is amended by revising paragraphs (a) and (d) to read as follows:

§ 231.3 What regulations apply to these programs?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) are as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

* * * * *

(d) The regulations in 34 CFR parts 231, 232, 233, 234, 235, and 238.

10. In § 231.4, paragraphs (a), (b), and (c) are amended by adding ", and 238" following "parts 232–235".

PART 236—[AMENDED]

11. The title of part 236 is revised to read as follows:

PART 236—DRUG-FREE SCHOOLS AND COMMUNITIES—REGIONAL CENTERS PROGRAM

12. The authority citation for part 236 continues to read as follows:

(Authority: 20 U.S.C. 3215, unless otherwise noted)

13. The authority citation following each section of part 236 except § 236.41 is revised and an authority citation is added following § 236.2 to read as follows:

(Authority: 20 U.S.C. 3215)

14. Section 236.9 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (d), and adding new paragraphs (b) and (c) to read as follows:

§ 236.9 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement)

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98.

(c) The regulations for Family Educational Rights and Privacy in 34 CFR part 99.

* * * * *

15. Section 236.10 is amended by removing "4141" in paragraph (a), and adding, in its place, "5141".

16. The authority citation following § 236.41 is revised to read as follows:

(Authority: 20 U.S.C. 3224)

17. A new part 238 is added to read as follows:

PART 238—DRUG-FREE SCHOOLS AND COMMUNITIES COUNSELOR TRAINING GRANTS PROGRAM

Sec.

238.1 What is the Drug-Free Schools and Communities Counselor Training Grants Program?
238.2 What parties are eligible for a grant under this program?
238.3 What parties may grantees train under this program?
238.4 What must an application include?
238.5 What types of projects may the Secretary assist under this program?
238.6 How does the Secretary establish priorities for this program?
238.7 What regulations apply to this program?

Authority: 20 U.S.C. 3202, 3203, unless otherwise noted.

§ 238.1 What is the Drug-Free Schools and Communities Counselor Training Grants Program?

The Drug-Free Schools and Communities Counselor Training Grants Program provides assistance to establish, expand, or enhance programs and activities for the training of counselors, social workers, psychologists, or nurses, who are providing, or will provide, drug abuse prevention, counseling, or referral services in elementary and secondary schools.

(Authority: 20 U.S.C. 3202)

§ 238.2 What parties are eligible for a grant under this program?

The Secretary may award grants under this program to SEAs, LEAs, IHEs, consortia of these organizations, and any private nonprofit agency that has entered into a written agreement with an LEA to provide training in drug abuse counseling to individuals who will provide counseling in the schools of that LEA.

(Authority: 20 U.S.C. 3202, 3203)

§ 238.3 What parties may grantees train under this program?

Under this program, grantees may train counselors, social workers, psychologists, or nurses who—

(a) Possess a currently valid State license, credential, or certificate entitling them to practice as a counselor, social worker, psychologist, or nurse; and

(b) Are currently employed by, or under contract with, or can provide evidence that they will be employed by, one of the eligible parties listed in § 238.2 to provide drug abuse prevention, counseling, or referral services in an elementary or secondary school.

(Authority: 20 U.S.C. 3202)

§ 238.4 What must an application include?

Each application must—

(a) Describe the activities and programs to be carried out with the funds made available;

(b) Contain an estimate of the cost for the establishment and operation of the activities and programs;

(c) Provide assurances that the Federal funds made available will be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of those Federal funds, be made available by the applicant for the purpose described in this part, and in no case to supplant these funds;

(d) Provide assurances of compliance with the provisions of this part, including—

(1) Assurances that all persons trained under this grant possess a currently valid State license, credential, or certificate entitling them to practice as a counselor, social worker, psychologist, or nurse; and

(2) Assurances that all persons trained under the grant are currently employed, or under contract, or can provide evidence that they will be employed to provide drug abuse prevention, counseling, or referral services in an elementary or secondary school;

(e) Discuss how the training to be provided under the grant will assist the applicant to—

(1) Increase the number of school personnel who are trained to provide drug abuse counseling services; and

(2) Improve the quality of drug abuse counseling services offered by the applicant or the LEA concerned; and

(f) Provide, in the case of an application from a private nonprofit agency, a copy of the written agreement between the agency and an LEA, under which the agency will provide training in drug abuse counseling to individuals who will provide counseling in the schools of the LEA.

(Approved by the Office of Management and Budget under control number 1810–0552.)

(Authority: 20 U.S.C. 3202, 3203)

§ 238.5 What types of projects may the Secretary assist under this program?

The Secretary may fund projects that—

(a) Establish, expand, or enhance programs and activities for the training of school counselors, social workers, psychologists, or nurses in the recognition of signs and symptoms of the use of alcohol, steroids, and other illegal drugs, and in the pharmacology of drugs;

(b) Train school counselors, social workers, psychologists, or nurses, who work with high-risk youth, in the area of drug and alcohol abuse education and prevention;

(c) Train school counselors, social workers, psychologists, or nurses in the implementation of drug prevention and education programs, including programs that involve family members and focus on children of alcoholics, children from families that are dysfunctional because of problems related to alcohol and drugs, and children with social problems that stem from addiction; or

(d) Train school counselors, social workers, psychologists, or nurses on how to prevent and eliminate the use of alcohol and other drugs among our Nation's youth by expanding and improving drug abuse education and prevention through intervention, counseling, and referral services, and on methods of providing positive alternative activities to alcohol and other drug use.

(Authority: 20 U.S.C. 3202, 3203)

§ 238.6 How does the Secretary establish priorities for this program?

(a) The Secretary selects priorities by taking into consideration unmet national needs for drug and alcohol abuse education and prevention.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 238.5. The Secretary may limit any priority to a particular educational level, type of substance abuse, or type of personnel to be trained, including counselors, social workers, psychologists, or nurses.

(Authority: 20 U.S.C. 3202, 3203)

§ 238.7 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities Counselor Training Grants Program:

(a) The regulations in 34 CFR part 231.

(b) The regulations in this part 238.

(Authority: 20 U.S.C. 3202, 3203)

[FR Doc. 93–5321 Filed 3–8–93; 8:45 am]

BILLING CODE 4000–01–U

federal register

Tuesday
March 9, 1993

Part V

The President

Presidential Determination No. 93–15—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Proclamation 6532—Save Your Vision Week, 1993

Proclamation 6533—Irish-American Heritage Month, 1993

Federal Register
Vol. 58, No. 44
Tuesday, March 9, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93–15 of February 27, 1993

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $5,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of Haitian refugee applicants. These funds may be contributed on a multilateral or bilateral basis, as appropriate, to international organizations, private voluntary organizations and other non-governmental organizations engaged in this relief effort, as well as to cover Department of State refugee-related administrative support costs.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register.**

William J. Clinton

[FR Doc. 93–5601
Filed 3–8–93; 11:18 am]
Billing code 3195–01–M

Presidential Documents

Proclamation 6532 of March 5, 1993

Save Your Vision Week, 1993

By the President of the United States of America

A Proclamation

Vision is a remarkable gift. Providing nearly 40 percent of all sensory input to the brain, our eyes allow us to read, drive, and experience many of life's greatest pleasures. Vision, however, is an extremely fragile gift, one that can dim with injury or the onset of disease. Moreover, it is a gift that, with few exceptions, cannot be restored once it is lost.

Thus, given the important but delicate nature of good vision in our lives, it is tragic that each year thousands of Americans suffer vision loss that might have been prevented.

Having a periodic eye examination is an effective and simple way for most of us to prevent this tragedy from occurring in our lives. A comprehensive eye examination can provide an early warning of developing eye disease and allow an eye care professional the opportunity to initiate appropriate treatment.

Both glaucoma and diabetes are potentially blinding diseases that can be controlled and treated effectively, if detected early. However, each remains a leading cause of blindness in the United States. People at high risk for glaucoma, African Americans over the age of 40 and everyone over the age of 60, should receive an eye examination at least every two years to reduce the risk of blindness.

For people with diabetes, a regular eye examination is an absolute necessity. People with diabetes who have their eyes examined through dilated pupils at least once a year take a responsible preventive measure in protecting their vision.

Children also need early and regular eye examination. Even the seemingly healthiest child may have an unsuspected visual problem that needs prompt attention. A routine checkup can identify such disorders in time for effective treatment, sparing the child a lifetime of visual impairment.

Guarding against eye injuries is important for all members of our society. Both in the home and workplace, people should wear appropriate face masks, goggles, or safety glasses when working with chemicals or machinery that might be dangerous to the eyes. If possible, athletes should also wear protective eye wear, and children should be taught the basic principles of eye safety from an early age.

To encourage Americans to cherish and protect their vision, the Congress, by a joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 169a), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby designate the week beginning March 7, 1993, as Save Your Vision Week. I urge all Americans to participate in the observance by making eye care and eye safety an important part of their lives. Also, I invite eye care professionals, the communications media, and all public and private organizations committed to the goal of sight conservation to

join in activities that will make Americans more aware of the steps they can take to protect their vision.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of March, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93–5609
Filed 3–8–93; 11:33 am]
Billing code 3195–01–M

Presidential Documents

Proclamation 6533 of March 6, 1993

Irish-American Heritage Month, 1993

By the President of the United States of America

A Proclamation

The story of the Irish in America, of those millions of Americans who trace their ancestry back to the Emerald Isle, is typical of so many American immigrants, yet is also uniquely influenced by the rich culture of Ireland. Like so many of our forebears, they came to this land seeking a better future. In the process of becoming Americans, they changed themselves, changed America, and changed the world.

By 1776, 300,000 natives of Ireland had already emigrated to the Colonies. They fought bravely in the American Revolution and helped to establish a new Nation. Eight signatories of the Declaration of Independence were of Irish origin. In the early years of the young Republic, as workers on the canals and railroads, they played a major role in the settlement of the West.

However, it was not until the great potato famine of the late 1840s that the trickle of Irish immigration became a flood. More than one million Irish men and women came to the United States during that period. They moved primarily into our great cities, which they quickly transformed into the bustling beehives of activity that they have been ever since.

Confronted by prejudice and sign after sign proclaiming "No Irish Need Apply," the new immigrants immersed themselves in the politics of such cities as New York, Boston, and Chicago. In fact, the political legacy of the Irish-American community may well be the most important of all its contributions to our Nation. Presidents John F. Kennedy and Ronald Reagan, as well as 16 other Presidents, have proudly proclaimed their Irish-American heritage. America has been blessed by the leadership of other Irish Americans as well, including Mike Mansfield, Tip O'Neill, and Tom Foley in the Congress, and Al Smith, Ray Flynn, and Richard Daley at the State and local levels.

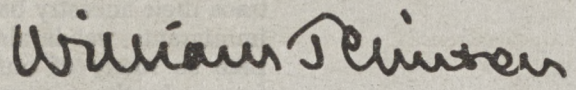
However, the contributions of Irish Americans go well beyond politics. In Washington, D.C., alone, James Hoban designed and supervised the construction of the White House and assisted in the construction of the Capitol; Colonel Thomas Lincoln Casey completed the construction of the Washington Monument after it had been abandoned during the Civil War; and William Wilson Corcoran founded the gallery that now bears his name.

Irish Americans have also enriched the culture of their adopted land. Whether we think of Finley Peter Dunne, who satirized politics in the early 20th century; Jimmy Breslin, who has done much the same more recently; or Eugene O'Neill, one of the great playwrights of all time, the Irish contribution to American literature is broad and deep. In the performing arts, composer George M. Cohan, dancer Gene Kelly, and actress Grace Kelly have come to symbolize America to the world.

In tribute to all Irish Americans, the Congress, by House Joint Resolution 500, has designated March 1993 as "Irish-American Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 1993 as Irish-American Heritage Month. I urge all Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of March, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.



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